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Presidential Documents

Title 3—

The President

Proclamation 8703 of September 1, 2011

National Ovarian Cancer Awareness Month, 2011

By the President of the United States of America

A Proclamation

Ovarian cancer continues to have one of the highest mortality rates of any cancer, and it is a leading cause of cancer deaths among women in the United States. This month, we remember the mothers, sisters, and daughters we have lost to ovarian cancer, and we extend our support to those living with this disease. We also reaffirm our commitment to raising awareness about ovarian cancer, and to advancing our screening and treatment capabilities for the thousands of American women who will be diagnosed this year.

Ovarian cancer touches women of all backgrounds and ages. Because of a lack of early symptoms and effective screening tests, ovarian cancer is often not detected in time for successful interventions. It is crucial that women know how to recognize the warning signs of gynecological cancers and can detect the disease as early as possible. I encourage all women to learn about risk factors, including family history, and to discuss possible symptoms, including abdominal pain, with their doctor. Now, because of the Affordable Care Act, a wide range of preventive screenings are available to women without any copayments, deductibles, or coinsurance.

My Administration is committed to supporting the women, families, and professionals working to end this disease. The Centers for Disease Control and Prevention and the Department of Health and Human Services have started a campaign to educate women on cancers affecting reproductive organs. The National Cancer Institute is researching new ways to detect ovarian cancer, publishing a comprehensive study of the most aggressive types of ovarian cancer, and conducting clinical trials for new combinations of therapy. And this year, agencies across the Federal Government, from the National Institutes of Health to the Department of Defense, have committed to supporting ovarian cancer prevention and treatment research.

So many lives have been touched by ovarian cancer—from the women who fight this disease, to the families who join their loved ones in fighting their battle. In the memory of all the brave women who have lost their lives to ovarian cancer, and in support of generations of women to come, let us recommit to reaching a safer, healthier future for all our citizens.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2011 as National Ovarian Cancer Awareness Month. I call upon citizens, government agencies, organizations, health-care providers, and research institutions to raise ovarian cancer awareness and continue helping Americans live longer, healthier lives. And I urge women across the country to talk to their health-care providers and learn more about this disease.

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

[FR Doc. 2011–22937
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Presidential Documents

Proclamation 8704 of September 1, 2011

National Wilderness Month, 2011

By the President of the United States of America

A Proclamation

The mystery and wonder of wilderness is deeply rooted in our national character. For many of the first Americans—American Indians and Alaska Natives—the wilderness provided a source of sustenance and a foundation for their ways of life. Later, as explorers and the pioneers of a young country moved west, they found adventure and new beginnings in the landscapes of our Nation.

As we continue our country's proud journey and explore new opportunities in the 21st century, the importance of maintaining our wilderness has only grown. Protecting our wilderness areas and their riches—clean water, stretches of undisturbed land, thriving wildlife, and healthy ecosystems—is critical to the health of our environment and our communities. Today, wilderness areas serve as places for us to roam, hunt, fish, and find solitude. They are also strong engines of local economies, providing tourism and recreation revenue for communities.

To help preserve our natural surroundings, I established the America's Great Outdoors Initiative to advance a conservation agenda for the 21st century, with ideas stemming directly from the American people. We are working with State, local, and tribal communities to support community-driven initiatives that embody the values and character of our wilderness heritage and other landscapes. And in recognition of the importance of our wilderness, my Administration has expanded protected wilderness areas by 2 million acres.

From our earliest days, America's identity has been tied to the powerful waterfalls, soaring peaks, and vast plains of its land. As a people, we are defined by its diversity and empowered by its richness. This month, we honor this land that we love, and commit to ensuring our wilderness remains a place where all can experience the spirit that has shaped America. During National Wilderness Month, let each of us embrace our Nation's legacy of protecting and preserving our vast wilderness for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2011 as National Wilderness Month. I invite all Americans to visit and enjoy our wilderness areas, to learn about their vast history, and to aid in the protection of our precious national treasures.

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

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Rules and Regulations

Federal Register

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN 3206–AM29

Technical Amendments to Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees; Corrections

AGENCY: Office of Personnel Management.

ACTION: Correcting amendments.

SUMMARY: The Office of Personnel Management published a final rule in the **Federal Register** on August 23, 2011, (76 FR 52539) revising the factor at 5 CFR 843.309(b)(2) used to convert a lump sum basic employee death benefit under 5 U.S.C. 8442(b) to 36 installment payments. That change inadvertently stated that the revised factor would apply to deaths occurring on or after October 1, 2004. The revised factor, however, applies to deaths occurring on or after October 1, 2011. Therefore, this document corrects the final regulation by revising this date. Additionally, this document corrects a misspelling in the heading to Appendix A to subpart C of part 843 that was included with the rule.

DATES: Effective on September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published a final rule in the **Federal Register** on August 23, 2011, (76 FR 52539) that changed the factor at 5 CFR 843.309(b)(2) used to convert a lump sum basic employee death benefit under 5 U.S.C. 8442(b) to 36 installment payments. The rule inadvertently stated that the revised factor at 5 CFR 843.309(b)(2) applies to deaths occurring on or after October 1, 2004. Section 843.309(b)(2) is being corrected to state that the revised factor applies when an employee's death occurs on or after October 1, 2011. Additionally, the misspelling of the word, ''deceased'' is being corrected in the heading to Appendix A to subpart C of part 843.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Accordingly, 5 CFR part 843 is corrected by making the following correcting amendments:

PART 843—FEDERAL EMPLOYEE RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and § 843.209 also issued under 5 U.S.C. 8424; 843.309 also issued under 5 U.S.C. 8442; 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. Amend § 843.309 by revising paragraph (b)(2) to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *

(2) For deaths occurring on or after October 1, 2011, 36 equal monthly installments of 3.01643 percent of the amount of the basic employee death benefit.

* * * * *

■ 3. Revise the Heading of Appendix A to subpart C of part 843 to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

* * * * *

U.S. Office of Personnel Management.

John Panagakos,

Manager, Retirement Policy.

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BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 88

[Docket No. APHIS–2006–0168]

RIN 0579–AC49

Commercial Transportation of Equines to Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the commercial transportation of equines to slaughter to add a definition of *equine for slaughter* and make other changes that will extend the protections afforded by the regulations to equines bound for slaughter but delivered first to an assembly point, feedlot, or stockyard. This action will further ensure the humane treatment of such equines by helping to ensure that the unique and special needs of equines in commercial transportation to slaughter are met.

DATES: *Effective Date:* October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. P. Gary Egrie, Farm Animal Welfare Coordinator, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 734–0695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 88 (referred to below as the regulations) contain minimum standards to ensure the humane movement of equines for slaughter via commercial transportation. The regulations cover, among other things, the food, water, and rest provided to such equines prior to their transportation to slaughter, standards for conveyances used to transport equines to slaughter, and certain paperwork required to accompany equines during such transportation. The regulations also require the owner/shipper of the equines to take certain actions to ensure the safety and humane treatment of equines during loading and transportation for slaughter, including seeking immediate assistance from an equine veterinarian for any equine in obvious physical distress. In addition, the regulations prohibit the commercial transportation to slaughtering facilities

of equines considered to be unfit for travel, the use of electric prods on equines in commercial transportation to slaughter, and, after December 7, 2006, the use of double-deck trailers for commercial transportation of equines to slaughtering facilities. The regulations were issued pursuant to the provisions of the Federal Agriculture Improvement and Reform Act of 1996 (the Act), in which Congress, recognizing that equines being transported to slaughter have unique and special needs, authorized the Secretary of Agriculture to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity in the United States (see 7 U.S.C. 1901 note).

On November 7, 2007, we published in the **Federal Register** (72 FR 62798–62802, Docket No. APHIS–2006–0168) a proposed rule [1] to amend the regulations by adding a definition of *equine for slaughter* and make other changes that would extend the protections afforded by the regulations to slaughter equines delivered first to an assembly point, feedlot, or stockyard. We proposed this action to further ensure the humane treatment of such equines by helping to ensure that the unique and special needs of equines in commercial transportation to slaughter are met.

We solicited comments concerning our proposal for 60 days ending January 7, 2008. We received 93 comments by that date. They were from private citizens, a State animal industry board, livestock industry associations, horse rescue organizations, animal welfare groups, and a foreign government. Thirty-five commenters supported the rule as proposed. Four commenters opposed the rule but did not address its specific provisions. The remaining commenters raised several issues relating to the proposed rule. These issues are discussed below.

Several commenters opposed the rule because of the potential for negative economic impacts on those engaged in horse transport but did not discuss specific issues. One of these commenters expressed concern that these potential negative economic impacts could result in horse abandonment.

We have prepared an analysis of the potential economic effects of the rule, as required by the Regulatory Flexibility Act. Based on that analysis, a summary of which is set forth below,[2] we do not expect that this rule will have a significant economic impact on small entities. Similar concerns about horse abandonment were expressed when the regulations were first adopted in 2001, but horse abandonment did not increase significantly then, and therefore we do not anticipate that horse abandonment will increase as a result of this final rule.

Seven commenters asked how the regulations would be enforced and expressed concern that enforcement will not be sufficiently aggressive.

Enforcement is and will continue to be a cooperative effort between the Animal and Plant Health Inspection Service (APHIS) and State officials. APHIS will take strong measures to ensure that the requirements of the regulations are met and violations prosecuted.

Two commenters asked why, if the number of entities transporting equines to slaughter is under 100, APHIS did not work with them to gain voluntary compliance.

APHIS has worked, and continues to work, with owner/shippers to gain compliance with the regulations. However, as a result of the closure of slaughter facilities that handle equines in the United States, there is an increased need to transport the equines to intermediate points before transporting them to slaughter facilities. Therefore the risk for those equines being treated inhumanely has increased as well. For reasons that are elaborated in the final regulatory flexibility analysis, we believe that most transporters to and from intermediate points are already in compliance with most or all of the rule's requirements on a voluntary basis. However, we also need regulatory options to address the owner/shippers who have chosen not to transport them humanely.

One commenter requested that the terms ''assembly point,'' ''feedlot,'' and ''stockyard'' be defined in the regulations to improve clarity.

We agree with the commenter and will add definitions for these terms to the regulations. Those terms are set forth in the regulatory text at the end of this document and are intended to be consistent with common industry and dictionary definitions of those terms as well as with the definitions established by the Grain Inspection, Packers, and Stockyards Administration in 9 CFR part 201.

One commenter stated that the definition of ''shipper'' is too narrow and will exempt commercial shipments of equines to slaughter when those shipments are incidental to the primary activity of production agriculture.

APHIS disagrees that the definition is too narrow. The definition specifies that for purposes of these regulations, ''production agriculture'' means food or fiber production. Therefore, any entity that moves more than 20 equines to slaughter annually is subject to the regulations, regardless of that entity's primary line of business. We did not propose to amend the definition of ''owner/shipper'' already established in the regulations and are making no changes in response to this comment.

Several commenters asked for changes to the definition for *equine for slaughter.* Some of these commenters stated that the term should exclude equines moving from premises of origin to a market or assembly point. Others asked that the definition be expanded to include equines moving to auctions specifically.

These suggested modifications are not consistent with the definition in the Act. We are making no changes in response to these comments.

One commenter stated that because there are no equine slaughter facilities in the United States at this time, the rule will not accomplish anything.

The commenter is correct that there are currently no equine slaughter facilities in the United States, but equines are still being sent to slaughter in Mexico and Canada. These animals need protection on their way to the border. Furthermore, while some States have banned horse slaughter, not all have done so, and the possibility exists that slaughter facilities that handle equines may open in the future.

Three commenters stated a certificate of veterinary inspection and a negative equine infectious anemia (EIA) test chart may not be reliable evidence that an equine is not for slaughter.

We agree with the commenters, but note that there are other ways to tell if an equine is for slaughter; for example, horses come away from sales designated as slaughter animals on the bill of sale. We have never used the presence or absence of certificates of veterinary inspection or EIA test charts as the sole means of identifying slaughter equines.

One commenter stated that the same penalties that apply to owner/shippers who falsify documents such as certificates of veterinary inspection and EIA test charts should also apply to veterinarians who provide falsified documents.

[1] To view the proposed rule, economic analysis, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0168.*

[2] The complete economic analysis is available on the regulations.gov Web site. See footnote 1 for directions on accessing the Web site.

APHIS notes that the same penalties already do apply to both owner/shippers and veterinarians who provide falsified documents.

One commenter stated that the regulations should be extended to prohibit the transport of heavily pregnant mares, and that owner/shippers should be automatically considered in violation of the regulations if a mare gives birth in transit.

APHIS notes that the regulations already provide these protections to heavily pregnant mares. The owner/shipper certificate must include a statement of fitness to travel at the time of loading, which will indicate that the equine is able to bear weight on all four limbs, is able to walk unassisted, is not blind in both eyes, is older than 6 months of age, and is not likely to give birth during the trip. These certificates are subject to review by a United States Department of Agriculture (USDA) representative and the USDA representative may direct the owner/shipper to take appropriate actions to alleviate the suffering of any equine.

One commenter stated that if an equine arrives at a slaughter facility or United States border crossing with an injury that should have prevented the equine from being transported, the owner/shipper should be found in violation of the regulations and subject to civil penalties.

APHIS notes that this is already the case. As we described above in reference to heavily pregnant mares, the owner/shipper certificate must include a statement of fitness to travel, and these certificates are subject to review by USDA representatives, who may direct the owner/shipper to take appropriate action to alleviate the suffering of any equine.

One commenter asked how APHIS defines inhumane treatment, and whether it was different for equines than for other livestock. Another commenter asked for elaboration as to why double-deck trailers specifically are considered a source of injury or discomfort to equines.

For purposes of this regulation, APHIS considers inhumane treatment to mean actions that result in the infliction of pain, discomfort, or distress on equines for slaughter. There is a sizeable body of evidence, including studies in peer-reviewed journals, showing that significantly more equines are injured during transport in double-deck trailers than in single-deck trailers.[3] Double-deck trailers do not provide adequate headroom for adult equines, which may acquire cuts and abrasions on the tops of their heads. Because equines cannot stand in a normal position with their heads raised, they cannot maintain balance as easily and may suffer injuries from falling. In addition, ramps used to load animals onto double-deck trailers are at a relatively steep angle. While other species of animal, such as sheep, can maneuver the ramps without incident, equines frequently sustain injuries from being forced up and down the steep inclines. Because of their long legs and relatively high center of gravity, equines injure their withers and heads when they jump for the small opening at the top of a ramp leading out of a double-deck trailer.

One commenter asked if APHIS had considered issuing more specific guidelines for trailer design specifications rather than banning double-deck trailers outright.

As we explained above, there is a significant body of evidence indicating that many more equines are injured during transport in double-deck trailers than in single-deck trailers. The overpasses on most U.S. interstate highways are between 14- to 16-feet high. A tall equine can be 8 feet tall to the top of its head when standing on all four legs and close to 12 feet tall when rearing. Therefore, we believe that no conveyance is capable, under normal circumstances, of traversing most U.S. highways while carrying equines standing in a normal postural position on two or more stacked levels. Moreover, even if a route was chosen that did not involve passage under overpasses, a conveyance tall enough to transport equines standing in a normal postural position on two or more stacked levels would be extremely top-heavy and prone to tipping. For these reasons we do not believe that equines can be safely and humanely transported on a conveyance that has an animal cargo space divided into two or more stacked levels.

One commenter stated that the proposed ban on electric prods is inappropriate without solid scientific evidence to support it.

We did not propose to ban the use of electric prods on equines for slaughter. The regulations already provide that electric prods may not be used on equines for slaughter except when human safety is threatened.

A number of commenters requested changes outside the scope of the current rulemaking. These changes included adding certification requirements for owner/shippers, adding inspection requirements, and increasing recordkeeping requirements. These changes, if undertaken, would have to be part of a separate rulemaking and made available for public comment before being adopted.

Many commenters suggested banning the use of double-deck trailers for transport of all equines, restricting shipments of equines to Mexico and Canada, establishing a complete ban on the use of electric prods, and outlawing slaughter of equines in the United States. These suggested actions are outside APHIS' statutory authority.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess the costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize benefits, reduce costs, harmonize rules across agencies, and promote flexibility. The economic analysis also analyzes the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see footnote 1 above for instructions for accessing *Regulations.gov*).

This final rule amends the regulations regarding the commercial transportation of equines to slaughter by making equines delivered to intermediate points en route to slaughter subject to the same regulations as those moved directly to slaughtering establishments. The purpose of the rule is to ensure the humane treatment of equines bound for slaughter that are moved first to an assembly point, feedlot, or stockyard.

The regulations require that the equines have access to food, water and the opportunity to rest for at least 6 hours prior to transit and following 28 consecutive hours or more of transit; adequate space during transit to prevent injury or discomfort; segregation of

[3] See, *e.g.,* C.L. Stull, ''Responses of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter,'' *J. Anim. Sci.* 77:2925–2933; Temple Grandin, *Livestock Handling and Transport* (CABI, 2007), 257.

stallions or other aggressive equines; use of electric prods only in life-threatening situations; and certification of each equine's fitness to travel, including notation of any special handling needs.

Since 2007, no commercial equine slaughter facilities have operated in the United States. However, the amended regulations will apply to entities that transport equines within the United States for slaughter in Canada or Mexico. Shippers who transport equines from farms or feedlots to intermediate points en route to slaughter are likely to be largely in regulatory compliance voluntarily. They have an incentive to provide the animals with food, water, and care as required by the regulations because healthy equines have increased slaughter value.

The rule will ban the use of double-deck trailers, as is currently the case when equines are transported directly to slaughter. Double-deck trailers have a greater carrying capacity (45 equines) than single-deck trailers (38 equines). Fewer equines per conveyance will mean increased transportation costs on a per animal basis. Commercial transporters typically charge a flat rate per shipment, and should be little affected by the ban on double-deck trailers. However, businesses that rely on their own or hired double-deck trailers to transport equines will be negatively affected by the reduced number of animals that can be transported per trip. Notwithstanding the prevalence of small entities among businesses that may be affected, the effects of the rule are expected to be relatively minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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 in conflict 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.

Executive Order 13175

In accordance with Executive Order 13175, APHIS has consulted with Tribal Government officials. A tribal summary impact statement has been prepared that includes a summary of Tribal officials' concerns and of how APHIS has attempted to address them. The tribal summary impact statement may be viewed on the Regulations.gov Web site (see *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0168*). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0332.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 9 CFR Part 88

Animal welfare, Horses, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 88 as follows:

PART 88—COMMERCIAL TRANSPORTATION OF EQUINES FOR SLAUGHTER

■ 1. The authority citation for part 88 continues to read as follows:

Authority: 7 U.S.C. 1901, 7 CFR 2.22, 2.80, 371.4.

■ 2. Section 88.1 is amended by adding, in alphabetical order, new definitions for *''assembly point'', ''equine for slaughter'', ''feedlot''*, and *''stockyard''* to read as follows:

§ 88.1 Definitions.

* * * * *

Assembly point. Any facility, including auction markets, ranches, feedlots, and stockyards, in which equines are gathered in commerce.

* * * * *

Equine for slaughter. Any member of the Equidae family being transferred to a slaughter facility, including an assembly point, feedlot, or stockyard.

* * * * *

Feedlot. Any facility which consolidates livestock for preconditioning, feeding, fattening, or holding before being sent to slaughter.

* * * * *

Stockyard. Any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

* * * * *

§ 88.2 [Amended]

■ 3. In § 88.2, paragraph (b) is amended by removing the words ''equines to a slaughtering facility'' and adding the words ''equines for slaughter'' in their place.

§ 88.3 [Amended]

■ 4. Section 88.3 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the words ''equines to slaughtering facilities'' and adding the words ''equines for slaughter'' in their place.

■ b. In paragraph (b), by removing the words ''Equines in commercial transportation to slaughtering facilities'' and adding the words ''Equines for slaughter'' in their place.

§ 88.4 [Amended]

■ 5. Section 88.4 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the words ''equines to a slaughtering facility'' and adding the words ''equines for slaughter'' in their place.

■ b. In paragraph (a)(3) introductory text, by removing the words ''transit to the slaughtering facility'' and adding the words ''transit to slaughter'' in their place.

■ c. In paragraph (b) introductory text, by removing the words ''transit to the slaughtering facility'' and adding the words ''commercial transportation of equines for slaughter'' in their place.

■ d. In paragraph (b)(4), by removing the words ''equine to the slaughtering facility'' and adding the words ''equines for slaughter'' in their place.

■ e. In paragraph (c), by removing the words ''equines in commercial

transportation to a slaughtering facility'' both times they occur and adding the words ''equines for slaughter'' in their place.

■ f. In paragraphs (d) and (e), by removing the words ''equines to a slaughtering facility'' both times they occur and adding the words ''equines for slaughter'' in their place.

■ g. By adding an OMB citation at the end of the section to read ''(Approved by the Office of Management and Budget under control numbers 0579–0160 and 0579–0332)''.

Done in Washington, DC, this 30th day of August 2011.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2011–22762 Filed 9–6–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 17

[Docket No. FAA–2010–0840; Amdt. No. 17–1]

RIN 2120–AJ82

Procedures for Protests and Contracts Dispute

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action updates, simplifies, and streamlines the current regulations governing the procedures for bid protests brought against the FAA and contract disputes brought against or by the FAA. It also adds a voluntary dispute avoidance and early resolution process. This action ensures the regulations reflect the changes that have evolved since they were first implemented in 1999. The intended effect of this action is to further improve the protest and dispute process.

DATES: Effective October 7, 2011.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see the How To Obtain Additional Information section of this document.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Senior Attorney and Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 8332, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–6400.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking and Background

In 1995 Congress, through the Department of Transportation Appropriations Act,[1] directed the FAA ''to develop and implement, not later than April 1, 1996, an acquisition management system that addressed the unique needs of the agency and, at a minimum, provided for more timely and cost effective acquisitions of equipment and materials.'' The Act instructed the FAA to design the system, notwithstanding provisions of Federal acquisition law, and to not use certain provisions of Federal acquisition law. In response, the FAA developed the Acquisition Management System (AMS) for the management of FAA procurement. The AMS included a system of policy guidance that maximized the use of agency discretion in the interest of best business practices. As a part of the AMS, the FAA created the Office of Dispute Resolution for Acquisition (ODRA) to facilitate the Administrator's review of procurement protests and contract disputes. In a 1996 notice[2] published in the **Federal Register**, the FAA announced the creation of the ODRA and stated the agency would promulgate rules of procedure governing the dispute resolution process.

In August 1998, the FAA issued a Notice of Proposed Rulemaking (NPRM)[3] that proposed regulations under 14 CFR part 17 for the conduct of protests and contract disputes under the FAA AMS. The comment period for the NPRM closed on October 26, 1998. On June 18, 1999,[4] the FAA published the final rule entitled, Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations, which codified (effective June 28, 1999) the procedures governing the dispute resolution process. On August 31, 1999, the FAA published a document[5] that made certain corrections to the June 1999 final rule.

In addition to the rules of procedures, ODRA operates pursuant to delegations of authority from the Administrator. In a memorandum signed by the Administrator on July 29, 1998 (1998 Delegation),[6] the Administrator generally authorized the ODRA through its Director to provide dispute resolution services including administrative adjudication of all bid protests and contract disputes under the AMS. The 1998 Delegation further provided that all final decisions must be executed by the Administrator. The 1998 Delegation was expanded by a Delegation dated March 27, 2000 (2000 Delegation), which provided additional authority to the ODRA Director ''to execute and issue, on behalf of the Administrator, Orders and Final Decisions for the Administrator in all matters within the ODRA's jurisdiction valued at not more than $1 Million.''[7] The 2000 Delegation was superseded by a Delegation of Authority from the Administrator, dated March 10, 2004 (2004 Delegation), which increased the dollar limit of the final decisional authority of the ODRA Director from $1 Million to $5 Million.[8] The 2004 Delegation was superseded by another Delegation of Authority dated March 31, 2010 (2010 Delegation), which increased the dollar limit of the final decisional authority of the ODRA Director from $5 Million to $10 Million.[9]

Congress provided further confirmation about the FAA's dispute resolution authority in the Vision 100-Century of Aviation Reauthorization Act of 2003 (2003 Reauthorization Act), *see* Public Law 108–176, § 224(b), 117 Stat. 2490, 2528 (codified as amended at 49 U.S.C. 40110(d)(4)), which confirmed the ODRA's exclusive jurisdiction. Specifically, the 2003 Reauthorization Act expressly provided at Subsection (b)(2)(4) under the title ''Adjudication of Certain Bid Protests and Contract Disputes,'' that ''[a] bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator, through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to Sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under Section 46110 and Section 504 of Title 5.''

The ODRA dispute resolution procedures encourage the parties to

[1] Public Law 104–50, 109 Stat. 436 (November 15, 1995).

[2] 61 FR 24348; May 14, 1996.

[3] 63 FR 45372; August 25, 1998.

[4] 64 FR 32926; June 18, 1999.

[5] 64 FR 47361; August 31, 1999.

[6] The FAA published the text of the delegations set forth in the July 29, 1998 memorandum in the **Federal Register** (see 63 FR 49151; September 14, 1998).

[7] 65 FR 19958–01; April 13, 2000.

[8] 69 FR 17469–02; April 2, 2004.

[9] The 2010 Delegation was issued by the Administrator in a memorandum dated March 31, 2010. Although the FAA has not yet published the text of the memorandum in the **Federal Register**, the public can view the memorandum itself at *http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc70/odra_process/*.

protests and contract disputes to use Alternative Dispute Resolution (ADR) as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996 (''ADRA''), Public Law 104–320, 5 U.S.C. 570–579, and in consonance with Department of Transportation and FAA policies to maximize the use of ADR to the extent possible. Under these procedures, the ODRA actively encourages the parties to consider ADR techniques such as case evaluation, mediation, arbitration, or other types of ADR. In this regard, on October 15, 2001, the FAA published in the **Federal Register** Final Guidance (66 FR 52475) for the use of binding arbitration for purposes of resolving bid protests and contract disputes relating to procurements and contracts under the FAA AMS after receiving the concurrence of the Attorney General in accordance with Section 575 of the ADRA. Additionally, the ODRA developed an informal pre-dispute process, which provides voluntary dispute avoidance services that are available to parties upon request.

On January 12, 2011, the FAA published the Procedures for Protests and Contracts Dispute NPRM,[10] which proposed to update, simplify and streamline the procedures for bid protests against the FAA and contract disputes brought against or by the FAA. The NPRM had a 60-day comment period, which ended March 14, 2011.

Statement of the Problem

Since the issuance of the FAA's rules of procedure more than 10 years ago, the ODRA's statutory and regulatory authorities for conducting a dispute resolution process evolved, along with the body of case law interpreting those rules. The ODRA's implementation of these rules of procedure also resulted in the identification of procedural issues in need of clarification to provide uniform guidance. The ODRA further identified certain aspects of the rules that need revision to reflect evolving practices at the ODRA, as well as evolving dispute resolution practices in general. An example of such practices is the increased emphasis on early intervention and dispute avoidance efforts.

Overview of Final Rule

In order to address the changing environment with respect to the FAA's dispute resolution process, the agency adopts the rules proposed in the Procedures for Protests and Contracts Dispute NPRM it published on January 12, 2011. Today's final rule revises part 17 to incorporate the ODRA's evolving practices; reflect the availability of a pre-dispute process; reorganize and streamline the rules for ease of use; and harmonize the existing part 17 rules with current statutory and other authority.

The final rule reorganizes and consolidates for ease of use the current part 17 procedures for adjudicating protests and contract disputes. The procedures related to the adjudicative process for protests and for contract disputes that are currently in subpart E are now included in subpart B and subpart C, respectively. The finality and review provisions have been moved from subpart F to subpart E.

Also, today's final rule includes streamlined procedures, as well as expanded coverage in areas where guidance was lacking or a process has evolved over time. Examples of expanded coverage include the addition of a section on the confidentiality of ADR (§ 17.39) and a section for filing requests for reconsideration (§ 17.47). In addition, new sections have been added to subpart F to address ''other matters'' like sanctions and professional conduct. Further, new subpart G has been added to address procedures for filing pre-disputes.

Summary of the NPRM

The NPRM proposed to update, simplify, and streamline the FAA's regulations governing the procedures for bid protests brought against the FAA and contract disputes brought against or by the FAA. It also proposed to add a voluntary dispute avoidance and early resolution process. The FAA published the NPRM in the **Federal Register** on January 12, 2011 with a 60-day comment period. The comment period ended on March 14, 2011. No comments were received to the rulemaking docket. You may refer to the NPRM for further details.

Discussion of Final Rule

A discussion, organized by subpart, and excluding minor editorial revisions and clarifications, of the adopted changes to 14 CFR part 17, follows. Additionally, even though we received no comments, the FAA has made non-substantive editorial and clarifying changes to the NPRM which are explicitly identified below.

Subpart A—General

Subpart A is revised as noted below.

Definitions (§ 17.3)

The following new definitions are added to this section: Adjudicative Process, Default Adjudicative Process, Counsel, Contractor, Legal Representative, and Pre-disputes. An additional editorial change was made to correct the sentence structure of paragraph (s) by relocating the phrase ''of the parties.''

Filing and Computation of Time (§ 17.7)

Paragraph (c) is revised to clarify that ''other days on which Federal Government offices in Washington, DC are not open'' is an excluded timeframe in calculating time limits for filings. In addition, paragraph (d) is added to allow the use of electronic filing where permitted by the ODRA.

Protective Orders (§ 17.9)

Paragraph (d) is revised to explain the type of sanctions that could be imposed if a protective order is violated.

Subpart B—Protests

In subpart B, current § 17.21 (Protest remedies) is renumbered as § 17.23, and the Adjudicative process for protests section that is currently in subpart E is moved to § 17.21.

Filing a Protest (§ 17.15)

Paragraph (d)(2) is revised to make clear the standard of review for a request for a suspension or delay of the procurement. Also, paragraph (d)(3) is added to explain the possible consequences of protesters'' failure to provide appropriate supporting documentation in their requests to suspend a procurement or contract performance. An additional editorial change was made to correct the sentence structure of paragraph (a)(1) by relocating the phrase ''SIR or solicitation,'' and to paragraph (d)(4) by substituting the word ''That'' for ''Whether.''

Initial Protest Procedures (§ 17.17)

In § 17.17(a), the timeframes for responding to a request for a suspension or delay of the procurement are revised according to the established ODRA practice of granting an extension until the date of the initial status conference. In § 17.17(b), the purpose of the initial status conference is clarified. In § 17.17(c), the requirement that parties file a joint statement about whether they are pursuing ADR, and the adjudication timeframes that automatically begin when no ADR is contemplated are removed. An additional editorial change was made to correct the sentence structure by substituting the word ''If'' for ''Should'' in paragraphs (d) and (e).

[10] 76 FR 2035; January 12, 2011.

Motions Practice and Dismissal or Summary Decision of Protests (§ 17.19)

Paragraph (a) is revised to clarify the use of appropriate motions for dismissal or summary decision of protests and the ODRA's standard of review for such motions. Paragraph (d) is revised to clarify when such a decision is construed as a final agency order. An additional editorial change was made to provide consistency with § 17.31(a) which states the same standard in a more concise manner.

Adjudicative Process for Protests (§ 17.21)

In addition to moving the procedures for the Adjudicative Process for protests from current § 17.37 of subpart E to proposed § 17.21 of subpart B, this section is revised to more fully address the management of the discovery process and the type of discovery that is authorized. This section further is revised to delineate the ODRA's standard of review for protests, the development of the administrative record, and under what circumstances *ex parte* communications are permitted in protests. In addition, the revisions to this section address the procedures for preparing and issuing the ODRA's findings and recommendations and final FAA order. An additional editorial change was made for clarification by replacing the words ''to pursue'' with ''for.''

Protest Remedies (§ 17.23)

Paragraph (b) of this section is revised to identify the factors the ODRA considers in determining an appropriate remedy.

Subpart C—Contract Disputes

In subpart C, current §§ 17.23, 17.25, 17.27, and 17.29 are renumbered as §§ 17.25, 17.27, 17.29 and 17.31, respectively. Section 17.33 (Adjudicative process for contract disputes), which has been moved from current § 17.39 of subpart E, is added to proposed subpart C. Also, the requirement in current § 17.27 (Submission of joint or separate statements) is deleted. An additional editorial change was made to correct the sentence structure in § 17.21 (p) by substituting the words ''if'' for ''should'' and ''be'' for ''was.'' An additional editorial change was made to delete the redundant phrase ''or more.''

Filing a Contract Dispute (§ 17.25)

Paragraph (a) is revised to provide additional guidance on the information to be included in the contract dispute. Paragraph (e) is added to state the ODRA retains the discretion to modify any timeframe established by the regulations in connection to contract disputes.

Informal Resolution Period (§ 17.29)

This section is revised to conform to current practice regarding the informal resolution process. This includes clarifications related to scheduling and assigning a potential neutral for ADR.

Dismissal or Summary Decision of Contract Disputes (§ 17.31)

Section 17.31 is revised to clarify the standard for requesting a dismissal or summary decision, and the process for responding to and issuing a decision on a request for dismissal or summary decision. This section also is revised to clarify when such a decision is to be construed as a final agency order.

Adjudicative Process for Contract Disputes (§ 17.33)

In addition to moving this section from current § 17.39 of subpart E, § 17.33 is revised to clarify that the process for submitting the Dispute File applies to cases initiated by the contractor or alternatively by the FAA. Also, it is revised to more fully explain what documents will be admitted into the administrative record and the timeframes for responding to written discovery. Further, the section is revised to streamline the requirements for final submissions. Additionally, the revisions state that the ODRA must conduct a de novo review using the preponderance of the evidence standard, unless a different standard is required. The revisions also identify the circumstances under which *ex parte* communications are permitted in contract disputes. An additional editorial change was made to § 17.33 (g)(1) to delete the unnecessary phrase ''to resolve the dispute.''

Subpart D—Alternative Dispute Resolution

The current sections under subpart D are renumbered from §§ 17.31 and 17.33 to §§ 17.35 and 17.37, respectively. Also, a new § 17.39 (Confidentiality of ADR) is added to provide for the applicability of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571 *et seq.,* and to clarify how ADR communications are treated. Further, current § 17.35 (Selection of neutrals for the alternative dispute resolution process) is deleted. An additional editorial correction was made to § 17.37 (e) to delete the word ''informal.'' An additional revision was made to § 17.39 (c) to reflect current practice permitting the parties to agree to include ADR communications in the administrative record.

Subpart E—Finality and Review

As noted previously, §§ 17.37 and 17.39 of current subpart E (Default Adjudicative Process) is moved to subparts B (§ 17.21) and C (§ 17.33), respectively. In today's final rule, the requirements in current subpart F (Finality and Review—§§ 17.41, 17.43, and 17.45) are moved to subpart E. Also, § 17.47 (Reconsideration) is added to subpart E to provide the timeframe for filing requests for reconsideration and to state the standard for reconsideration according to ODRA precedent.

Subpart F—Other Matters

Subpart F is revised to add sections covering sanctions, decorum and professional conduct, the use of orders and subpoenas for testimony and document production, and Standing Orders of the ODRA Director.

Subpart G—Pre-Disputes

A new subpart (subpart G) is added. This subpart makes clear that the pre-dispute process applies to all potential disputes arising under contracts or solicitations with the FAA. Also, it sets forth the process for filing a pre-dispute. Further, it clarifies the non-binding voluntary nature of the pre-dispute process and that it is subject to the confidentiality requirements of § 17.39.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

Appendix A is revised to eliminate the description of ''Minitrial'' and to add a provision that addresses and clarifies the use of binding arbitration.

Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include

a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impact of the final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule.

The reasoning for this determination follows: Under the FAA's Acquisition Management System, the Office of Dispute Resolution for Acquisition (ODRA) manages the dispute resolution process, including administrative adjudication of all procurement protests and contract disputes. This final rule simplifies and clarifies the current part 17 regulations under which ODRA operates, including clarifying language and definitions, reorganization and consolidation of certain sections, and simplification and clarification of certain procedures such as filing requirements. These changes will make it easier (less costly) to use the dispute resolution process.

In addition, the final rule is updated to incorporate changes in statutory authority and additional authority delegated by the Administrator to ODRA (these changes will have no effect on expected costs). The rulemaking also will codify a voluntary dispute avoidance and early resolution process that ODRA is already using. The voluntary process is inherently less costly than the more formal dispute resolution process. The FAA expects that codification of the voluntary process will increase its use, thereby lowering the overall cost of dispute resolutions.

Since no comments were received regarding our determination in the NPRM that the benefits exceed the costs, the FAA expects the final rule to have benefits that exceed the costs. The FAA therefore has determined that this final rule does not warrant a full regulatory evaluation.

The FAA has also determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, the changes to part 17 are either cost beneficial or have no effect on costs. We received no comments regarding the initial regulatory flexibility analysis determination of no significant economic impact. Accordingly, the final rule will not have a significant impact on a substantial number of small entities. Therefore, as the FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined it will have little or no effect on international trade as it applies to both foreign and domestic contractors with the FAA.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $140.8 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We

have determined that it is not a ''significant energy action'' under the executive order, it is not a ''significant regulatory action'' under Executive Order 12866 and DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order Determinations

Executive Order 12866

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

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

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

How To Obtain Additional Information

Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov/*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies*; or
3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 0591, or by calling (202) 267–9680.

The Rulemaking Docket

The rulemaking docket includes a copy of the rulemaking and related documents, as well as any public comments. You may access the docket for this rulemaking at *http://www.regulations.gov.* Follow the online instructions to search the docket number for this action.

While no comments were filed to this rulemaking docket, anyone is able to search the electronic form of comments received into any of the FAA's dockets by using the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 17

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations by revising part 17 to read as follows:

PART 17—PROCEDURES FOR PROTESTS AND CONTRACT DISPUTES

Subpart A—General

Sec.
17.1 Applicability.
17.3 Definitions.
17.5 Delegation of authority.
17.7 Filing and computation of time.
17.9 Protective orders.

Subpart B—Protests

17.11 Matters not subject to protest.
17.13 Dispute resolution process for protests.
17.15 Filing a protest.
17.17 Initial protest procedures.
17.19 Motions practice and dismissal or summary decision of protests.
17.21 Adjudicative Process for protests.
17.23 Protest remedies.

Subpart C—Contract Disputes

17.25 Dispute resolution process for contract disputes.
17.27 Filing a contract dispute.
17.29 Informal resolution period.
17.31 Dismissal or summary decision of contract disputes.
17.33 Adjudicative Process for contract disputes.

Subpart D—Alternative Dispute Resolution

17.35 Use of alternative dispute resolution.
17.37 Election of alternative dispute resolution process.
17.39 Confidentiality of ADR.

Subpart E—Finality and Review

17.41 Final orders.
17.43 Judicial review.
17.45 Conforming amendments.
17.47 Reconsideration.

Subpart F—Other Matters

17.49 Sanctions.
17.51 Decorum and professional conduct.
17.53 Orders and subpoenas for testimony and document production.
17.55 Standing orders of the ODRA director.

Subpart G—Pre-Disputes

17.57 Dispute resolution process for pre-disputes.
17.59 Filing a pre-dispute.
17.61 Use of alternative dispute resolution.
Appendix A to Part 17—Alternative Dispute Resolution (ADR)

Authority: 5 U.S.C. 570–581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

Subpart A—General

§ 17.1 Applicability.

This part applies to all Acquisition Management System (AMS) bid protests and contract disputes involving the FAA that are filed at the Office of Dispute Resolution for Acquisition

(ODRA) on or after October 7, 2011, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996, where such contracts have not been modified to be made subject to the FAA AMS. This part also applies to pre-disputes as described in subpart G of this part.

§ 17.3 Definitions.

(a) *Accrual* means to come into existence as a legally enforceable claim.

(b) *Accrual of a contract claim* means that all events relating to a claim have occurred, which fix liability of either the government or the contractor and permit assertion of the claim, regardless of when the claimant actually discovered those events. For liability to be fixed, some injury must have occurred. Monetary damages need not have been incurred, but if the claim is for money, such damages must be capable of reasonable estimation. The accrual of a claim or the running of the limitations period may be tolled on equitable grounds, including but not limited to active concealment, fraud, or if the facts were inherently unknowable.

(c) *Acquisition Management System* (AMS) establishes the policies, guiding principles, and internal procedures for the FAA's acquisition system.

(d) *Adjudicative Process* is an administrative adjudicatory process used to decide protests and contract disputes where the parties have not achieved resolution through informal communication or the use of ADR. The Adjudicative Process is conducted by a Dispute Resolution Officer (DRO) or Special Master selected by the ODRA Director to preside over the case in accordance with Public Law 108–176, Section 224, Codified at 49 U.S.C. 40110(d)(4).

(e) *Administrator* means the Administrator of the Federal Aviation Administration.

(f) *Alternative Dispute Resolution* (ADR) is the primary means of voluntary dispute resolution that is employed by the ODRA. See Appendix A of this part.

(g) *Compensated Neutral* refers to an impartial third party chosen by the parties to act as a facilitator, mediator, or arbitrator functioning to resolve the protest or contract dispute under the auspices of the ODRA. The parties pay equally for the services of a compensated neutral, unless otherwise agreed to by the parties. An ODRA DRO or neutral cannot be a compensated neutral.

(h) *Contract Dispute*, as used in this part, means a written request to the ODRA seeking, as a matter of right under an FAA contract subject to the AMS, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to, or involving an alleged breach of that contract. A contract dispute does not require, as a prerequisite, the issuance of a Contracting Officer final decision. Contract disputes, for purposes of ADR only, may also involve contracts not subject to the AMS.

(i) *Counsel* refers to a Legal Representative who is an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory.

(j) *Contractor* is a party in contractual privity with the FAA and responsible for performance of a contract's requirements.

(k) *Discovery* is the procedure whereby opposing parties in a protest or contract dispute may, either voluntarily or to the extent ordered by the ODRA, obtain testimony from, or documents and information held by, other parties or non-parties.

(l) *Dispute Resolution Officer* (DRO) is an attorney and member of the ODRA staff. The term DRO can include the Director of the ODRA.

(m) *Interested party*, in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not ''interested parties'' within this definition and are not eligible to submit protests to the ODRA. Subcontractors not in privity with the FAA are not interested parties in the context of a contract dispute.

(n) *Intervenor* is an interested party other than the protester whose participation in a protest is allowed by the ODRA. For a post-award protest, the awardee of the contract that is the subject of the protest will be allowed, upon timely request, to participate as an intervenor in the protest. In such a protest, no other interested parties will be allowed to participate as intervenors.

(o) *Legal Representative* is an individual(s) designated to act on behalf of a party in matters before the ODRA. Unless otherwise provided under §§ 17.15(c)(2), 17.27(a)(1), or 17.59(a)(6), a Notice of Appearance must be filed with the ODRA containing the name, address, telephone and facsimile (Fax) numbers of a party's legal representative.

(p) *Neutral* refers to an impartial third party in the ADR process chosen by the parties to act as a facilitator, mediator, arbitrator, or otherwise to aid the parties in resolving a protest or contract dispute. A neutral can be a DRO or a person not an employee of the ODRA.

(q) *ODRA* is the FAA's exclusive forum acting on behalf of the Administrator, pursuant to the statutory authority granted by Public Law 108–176, Section 224, to provide dispute resolution services and to adjudicate matters within its jurisdiction. The ODRA may also provide non-binding dispute resolution services in matters outside of its jurisdiction where mutually requested to do so by the parties involved.

(r) *Parties* include the protester(s) or the contractor, the FAA, and any intervenor(s).

(s) *Pre-Disputes* mean an issue(s) in controversy concerning an FAA contract or solicitation that, by mutual agreement of the parties, is filed with the ODRA. See subpart G of this part.

(t) *Product Team,* as used in these rules, refers to the FAA organization(s) responsible for the procurement or contracting activity, without regard to funding source, and includes the Contracting Officer (CO). The Product Team, acting through assigned FAA counsel, is responsible for all communications with and submissions to the ODRA in pending matters.

(u) *Screening Information Request* (SIR or Solicitation) means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA.

(v) A *Special Master* is a non-FAA attorney or judge who has been assigned by the ODRA to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Adjudicative Process.

§ 17.5 Delegation of authority.

(a) The authority of the Administrator to conduct dispute resolution and adjudicative proceedings concerning acquisition matters is delegated to the Director of the ODRA.

(b) The Director of the ODRA may redelegate to Special Masters and DROs such delegated authority in paragraph (a) of this section as deemed necessary by the Director for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions for the filing of frivolous pleadings, making false statements, or other disciplinary actions. See subpart F of this part.

§ 17.7 Filing and computation of time.

(a) Filing of a protest or contract dispute may be accomplished by overnight delivery, by hand delivery, by

Fax, or, if permitted by Order of the ODRA, by electronic filing. A protest or contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 a.m. to 5 p.m. Eastern Time. A protest or contract dispute received after the time period prescribed for filing shall not be considered timely filed. Service shall also be made on the Contracting Officer (CO) pursuant to §§ 17.15(e) and 17.27(d).

(b) Submissions to the ODRA after the initial filing of a protest or contract dispute may be accomplished by any means available in paragraph (a) of this section. Copies of all such submissions shall be served on the opposing party or parties.

(c) The time limits stated in this part are calculated in business days, which exclude weekends, Federal holidays and other days on which Federal Government offices in Washington, DC are not open. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

(d) Electronic Filing—Procedures for electronic filing may be utilized where permitted by Order of the ODRA on a case-by-case basis or pursuant to a Standing Order of the ODRA permitting electronic filing.

§ 17.9 Protective orders.

(a) The ODRA may issue protective orders addressing the treatment of protected information, including protected information in electronic form, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the ODRA's standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the ODRA. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the ODRA, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure. Objections to an applicant's admission shall be raised within two (2) days of the application, although the ODRA may consider objections raised after that time for good cause.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions, including but not limited to removal of the violator from the protective order and reporting of the violator to his or her bar association(s), and the taking of other actions as the ODRA deems appropriate. Additional civil or criminal penalties may apply.

Subpart B—Protests

§ 17.11 Matters not subject to protest.

The following matters may not be protested before the ODRA, except for review of compliance with the AMS:

(a) FAA purchases from or through, State, local, and tribal governments and public authorities;

(b) FAA purchases from or through other Federal agencies;

(c) Grants;

(d) Cooperative agreements;

(e) Other transactions.

§ 17.13 Dispute resolution process for protests.

(a) Protests concerning FAA SIRs, solicitations, or contract awards shall be resolved pursuant to this part.

(b) Potential protestors should, where possible, attempt to resolve any issues concerning potential protests with the CO. Such attempts are not a prerequisite to filing a protest with the ODRA.

(c) Offerors or prospective offerors shall file a protest with the ODRA in accordance with § 17.15. The protest time limitations set forth in § 17.15 will not be extended by attempts to resolve a potential protest with the CO. Other than the time limitations specified in § 17.15 for the filing of protests, the ODRA retains the discretion to modify any timeframes established herein in connection with protests.

(d) In accordance with § 17.17(b), the ODRA shall convene an initial status conference for the purpose of scheduling proceedings in the protest and to encourage the parties to consider using the ODRA's ADR process to attempt to resolve the protest, pursuant to subpart D of this part. It is the Agency's policy to use voluntary ADR to the maximum extent practicable. If the parties elect not to attempt ADR, or if ADR efforts do not completely resolve the protest, the protest will proceed under the ODRA Adjudicative Process set forth in subpart E of this part. Informal ADR techniques may be utilized simultaneously with ongoing adjudication.

(e) The ODRA Director shall designate DROs, outside neutrals or Special Masters as potential neutrals for the resolution of protests through ADR. The ultimate choice of an ADR neutral is made by the parties participating in the ADR. The ODRA Director also shall, at his or her sole discretion, designate an adjudicating DRO or Special Master for each matter. A person serving as a neutral in an ADR effort in a matter, shall not serve as an adjudicating DRO or Special Master for that matter.

(f) Multiple protests concerning the same SIR, solicitation, or contract award may be consolidated at the discretion of the ODRA Director, and assigned to a single DRO or Special Master for adjudication.

(g) Procurement activities, and, where applicable, contractor performance pending resolution of a protest, shall continue during the pendency of a protest, unless there is a compelling reason to suspend all or part of the procurement activities or contractor performance. Pursuant to §§ 17.15(d) and 17.17(a), the ODRA may impose a temporary suspension and recommend suspension of award or contract performance, in whole or in part, for a compelling reason. A decision to suspend procurement activities or contractor performance is made in writing by the Administrator or the Administrator's delegee upon recommendation of the ODRA.

§ 17.15 Filing a protest.

(a) An interested party may initiate a protest by filing with the ODRA in accordance with § 17.7(a) within the timeframes set forth in this Section. Protests that are not timely filed shall be dismissed. The timeframes applicable to the filing of protests are as follows:

(1) Protests based upon alleged SIR or solicitation improprieties that are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for the receipt of initial proposals.

(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next

closing time for receipt of proposals following the incorporation.

(3) For protests other than those related to alleged solicitation improprieties, the protest must be filed on the later of the following two dates:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date on which the Product Team holds that debriefing.

(b) Protests shall be filed at:

(1) ODRA, AGC–70, Federal Aviation Administration, 800 Independence Avenue, SW., Room 323, Washington, DC 20591; Telephone: (202) 267–3290, Fax: (202) 267–3720; or

(2) Other address as shall be published from time to time in the **Federal Register**.

(c) A protest shall be in writing, and set forth:

(1) The protester's name, address, telephone number, and FAX number;

(2) The name, address, telephone number, and FAX number of the protester's legal representative, and who shall be duly authorized to represent the protester, to be the point of contact;

(3) The SIR number or, if available, the contract number and the name of the CO;

(4) The basis for the protester's status as an interested party;

(5) The facts supporting the timeliness of the protest;

(6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;

(7) A detailed statement of both the legal and factual grounds of the protest, and one (1) copy of each relevant document;

(8) The remedy or remedies sought by the protester, as set forth in § 17.23;

(9) The signature of the legal representative, or another person duly authorized to represent the protester.

(d) If the protester wishes to request a suspension of the procurement or contract performance, in whole or in part, and believes that a compelling reason(s) exists to suspend the procurement or contract performance because of the protested action, the protester shall, in its initial filing:

(1) Set forth such compelling reason(s), supply all facts and documents supporting the protester's position; and

(2) Demonstrate—

(i) The protester has alleged a substantial case;

(ii) The lack of a suspension would be likely to cause irreparable injury;

(iii) The relative hardships on the parties favor a suspension; and

(iv) That a suspension is in the public interest.

(3) Failure of a protester to provide information or documents in support of a requested suspension or failure to address the elements of paragraph (d)(2) of this section may result in the summary rejection of the request for suspension, or a requirement that the protester supplement its request prior to the scheduling of a Product Team response to the request under § 17.17(a).

(e) Concurrent with the filing of a protest with the ODRA, the protester shall serve a copy of the protest on the CO and any other official designated in the SIR for receipt of protests, by means reasonably calculated to be received by the CO on the same day as it is to be received by the ODRA. The protest shall include a signed statement from the protester, certifying to the ODRA the manner of service, date, and time when a copy of the protest was served on the CO and other designated official(s).

(f) Upon receipt of the protest, the CO shall notify the awardee of a challenged contract award in writing of the existence of the protest. The awardee and/or interested parties shall notify the ODRA in writing, of their interest in participating in the protest as intervenors within two (2) business days of receipt of the CO's notification, and shall, in such notice, designate a person as the point of contact for the ODRA.

(g) The ODRA has discretion to designate the parties who shall participate in the protest as intervenors. In protests of awarded contracts, only the awardee may participate as an intervenor as a matter of right.

§ 17.17 Initial protest procedures.

(a) If, as part of its initial protest filing, the protester requests a suspension of procurement activities or contractor performance in whole or in part, in accordance with § 17.15(d), the Product Team shall submit a response to the request to the ODRA by no later than the close of business on the date of the initial scheduling conference or on such other date as is established by the ODRA. Copies of the response shall be furnished to the protester and any intervenor(s) so as to be received within the same timeframe. The protester and any intervenor(s) shall have the opportunity of providing additional comments on the response within two (2) business days of receiving it. Based on its review of such submissions, the ODRA, in its discretion, may—

(1) Decline the suspension request; or

(2) Recommend such suspension to the Administrator or the Administrator's designee. The ODRA also may impose a temporary suspension of no more than ten (10) business days, where it is recommending that the Administrator impose a suspension.

(b) Within five (5) business days of the filing of a protest, or as soon thereafter as practicable, the ODRA shall convene an initial status conference for purposes of:

(1) Reviewing the ODRA's ADR and adjudication procedures and establishing a preliminary schedule;

(2) Identifying legal or other preliminary or potentially dispositive issues and answering the parties' questions regarding the ODRA process;

(3) Dealing with issues related to protected information and the issuance of any needed protective order;

(4) Encouraging the parties to consider using ADR;

(5) Appointing a DRO as a potential ADR neutral to assist the parties in considering ADR options and developing an ADR agreement; and

(6) For any other reason deemed appropriate by the DRO or by the ODRA.

(c) The Product Team and protester will have five (5) business days from the date of the initial status conference to decide whether they will attempt to use an ADR process in the case. With the agreement of the ODRA, ADR may be used concurrently with the adjudication of a protest. See § 17.37(e).

(d) If the Product Team and protester elect to use ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an ODRA DRO or a compensated neutral of their own choosing) pursuant to § 17.37, and shall execute and file with the ODRA a written ADR agreement. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) If the Product Team or protester indicate that ADR proceedings will not be used, or if ADR is not successful in resolving the entire protest, the ODRA Director upon being informed of the situation, will schedule an adjudication of the protest.

§ 17.19 Motions practice and dismissal or summary decision of protests.

(a) Separate motions generally are discouraged in ODRA bid protests. Counsel and parties are encouraged to incorporate any such motions in their respective agency responses or comments. Parties and counsel are encouraged to attempt to resolve typical motions issues through the ODRA ADR process. The ODRA may rule on any non-dispositive motion, where

appropriate and necessary, after providing an opportunity for briefing on the motion by all affected parties. Unjustifiable, inappropriate use of motions may result in the imposition of sanctions. Where appropriate, a party may request by dispositive motion to the ODRA, or the ODRA may recommend or order, that:

(1) The protest, or any count or portion of a protest, be dismissed for lack of jurisdiction, timeliness, or standing to pursue the protest;

(2) The protest, or any count or portion of a protest, be dismissed, if frivolous or without basis in fact or law, or for failure to state a claim upon which relief may be had;

(3) A summary decision be issued with respect to the protest, or any count or portion of a protest, if there are no material facts in dispute and a party is entitled to summary decision as a matter of law.

(b) In connection with consideration of possible dismissal or summary decision, the ODRA shall consider any material facts in dispute, in a light most favorable to the party against whom the dismissal or summary decision would operate and draw all factual inferences in favor of the non-moving party.

(c) Either upon motion by a party or on its own initiative, the ODRA may, at any time, exercise its discretion to:

(1) Recommend to the Administrator dismissal or the issuance of a summary decision with respect to the entire protest;

(2) Dismiss the entire protest or issue a summary decision with respect to the entire protest, if delegated that authority by the Administrator; or

(3) Dismiss or issue a summary decision with respect to any count or portion of a protest.

(d) A dismissal or summary decision regarding the entire protest by either the Administrator, or the ODRA by delegation, shall be construed as a final agency order. A dismissal or summary decision that does not resolve all counts or portions of a protest shall not constitute a final agency order, unless and until such dismissal or decision is incorporated or otherwise adopted in a decision by the Administrator (or the ODRA, by delegation) regarding the entire protest.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the ODRA shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to the proposed dismissal or summary decision.

§ 17.21 Adjudicative Process for protests.

(a) Other than for the resolution of preliminary or dispositive matters, the Adjudicative Process for protests will be commenced by the ODRA Director pursuant to § 17.17(e).

(b) The Director of the ODRA shall appoint a DRO or a Special Master to conduct the adjudication proceedings, develop the administrative record, and prepare findings and recommendations for review of the ODRA Director.

(c) The DRO or Special Master may conduct such proceedings and prepare procedural orders for the proceedings as deemed appropriate; and may require additional submissions from the parties.

(d) The Product Team response to the protest will be due to be filed and served ten (10) business days from the commencement of the ODRA Adjudication process. The Product Team response shall consist of a written chronological, supported statement of proposed facts, and a written presentation of applicable legal or other defenses. The Product Team response shall cite to and be accompanied by all relevant documents, which shall be chronologically indexed, individually tabbed, and certified as authentic and complete. A copy of the response shall be furnished so as to be received by the protester and any intervenor(s) on the same date it is filed with the ODRA. In all cases, the Product Team shall indicate the method of service used.

(e) Comments of the protester and the intervenor on the Product Team response will be due to be filed and served five (5) business days after their receipt of the response. Copies of such comments shall be provided to the other participating parties by the same means and on the same date as they are furnished to the ODRA. Comments may include any supplemental relevant documents.

(f) The ODRA may alter the schedule for filing of the Product Team response and the comments for good cause or to accommodate the circumstances of a particular protest.

(g) The DRO or Special Master may convene the parties and/or their representatives, as needed for the Adjudicative Process.

(h) If, in the sole judgment of the DRO or Special Master, the parties have presented written material sufficient to allow the protest to be decided on the record presented, the DRO or Special Master shall have the discretion to decide the protest on that basis.

(i) The parties may engage in limited, focused discovery with one another and, if justified, with non-parties, so as to obtain information relevant to the allegations of the protest.

(1) The DRO or Special Master shall manage the discovery process, including limiting its length and availability, and shall establish schedules and deadlines for discovery, which are consistent with timeframes established in this part and with the FAA policy of providing fair and expeditious dispute resolution.

(2) The DRO or Special Master may also direct the parties to exchange, in an expedited manner, relevant, non-privileged documents.

(3) Where justified, the DRO or Special Master may direct the taking of deposition testimony, however, the FAA dispute resolution process does not contemplate extensive discovery.

(4) The use of interrogatories and requests for admission is not permitted in ODRA bid protests.

(5) Where parties cannot voluntarily reach agreement on a discovery-related issue, they may timely seek assistance from an ODRA ADR neutral or may file an appropriate motion with the ODRA. Parties may request a subpoena.

(6) Discovery requests and responses are not part of the record and will not be filed with the ODRA, except in connection with a motion or other permissible filing.

(7) Unless timely objection is made, documents properly filed with the ODRA will be deemed admitted into the administrative record.

(j) Hearings are not typically held in bid protests. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings will be conducted:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the protest, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(k) The Director of the ODRA may review the status of any protest in the

Adjudicative Process with the DRO or Special Master.

(l) After the closing of the administrative record, the DRO or Special Master will prepare and submit findings and recommendations to the ODRA that shall contain the following:

(1) Findings of fact;

(2) Application of the principles of the AMS, and any applicable law or authority to the findings of fact;

(3) A recommendation for a final FAA order; and

(4) If appropriate, suggestions for future FAA action.

(m) In preparing findings and recommendations in protests, the DRO or Special Master, using the preponderance of the evidence standard, shall consider whether the Product Team actions in question were consistent with the requirements of the AMS, had a rational basis, and whether the Product Team decision was arbitrary, capricious or an abuse of discretion. Notwithstanding the above, allegations that government officials acted with bias or in bad faith must be established by clear and convincing evidence.

(n) The DRO or Special Master has broad discretion to recommend a remedy that is consistent with § 17.23.

(o) A DRO or Special Master shall submit findings and recommendations only to the Director of the ODRA or the Director's designee. The findings and recommendations will be released to the parties and to the public upon issuance of the final FAA order in the case. If an ODRA protective order was issued in connection with the protest, or if a protest involves proprietary or competition-sensitive information, a redacted version of the findings and recommendations, omitting any protected information, shall be prepared wherever possible and released to the public, as soon as is practicable, along with a copy of the final FAA order. Only persons admitted by the ODRA under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations that contain proprietary or competition-sensitive information.

(p) Other than communications regarding purely procedural matters or ADR, there shall be no substantive *ex parte* communication between ODRA personnel and any principal or representative of a party concerning a pending or potentially pending matter. A potential or serving ADR neutral may communicate on an *ex parte* basis to establish or conduct the ADR.

§ 17.23 Protest remedies.

(a) The ODRA has broad discretion to recommend and impose protest remedies that are consistent with the AMS and applicable law. Such remedies may include, but are not limited to one or a combination of, the following:

(1) Amend the SIR;

(2) Refrain from exercising options under the contract;

(3) Issue a new SIR;

(4) Require a recompetition or revaluation;

(5) Terminate an existing contract for the FAA's convenience;

(6) Direct an award to the protester;

(7) Award bid and proposal costs; or

(8) Any other remedy consistent with the AMS that is appropriate under the circumstances.

(b) In determining the appropriate recommendation, the ODRA may consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the feasibility of any proposed remedy; the urgency of the procurement; the cost and impact of the recommended remedy; and the impact on the Agency's mission.

(c) Attorney's fees of a prevailing protester are allowable to the extent permitted by the Equal Access to Justice Act, 5 U.S.C. 504(a)(1) (EAJA) and 14 CFR part 14.

Subpart C—Contract Disputes

§ 17.25 Dispute resolution process for contract disputes.

(a) All contract disputes arising under contracts subject to the AMS shall be resolved under this subpart.

(b) Contract disputes shall be filed with the ODRA pursuant to § 17.27.

(c) The ODRA has broad discretion to recommend remedies for a contract dispute that are consistent with the AMS and applicable law, including such equitable remedies or other remedies as it deems appropriate.

§ 17.27 Filing a contract dispute.

(a) Contract disputes must be in writing and should contain:

(1) The contractor's name, address, telephone and Fax numbers and the name, address, telephone and Fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds underlying the contract dispute, broken down by individual claim item, citing to relevant contract provisions and attaching copies of the contract and other relevant documents;

(4) Information establishing the ODRA's jurisdiction and the timeliness of the contract dispute;

(5) A request for a specific remedy, and the amount, if known, of any monetary remedy requested, together with pertinent cost information and documentation (*e.g.*, invoices and cancelled checks). Supporting documentation should be broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(b) Contract disputes shall be filed at the following address: ODRA, AGC–70, Federal Aviation Administration, 800 Independence Avenue, SW., Room 323, Washington, DC 20591; Telephone: (202) 267–3290, Fax: (202) 267–3720.

(c) A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years of the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA, which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA contract disputes related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA contract disputes against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA contract disputes against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(d) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is received by the ODRA.

(e) With the exception of the time limitations established herein for the

filing of contract disputes, the ODRA retains the discretion to modify any timeframe established herein in connection with contract disputes.

§ 17.29 Informal resolution period.

(a) The ODRA process for contract disputes includes an informal resolution period of twenty (20) business days from the date of filing in order for the parties to attempt to informally resolve the contract dispute either through direct negotiation or with the assistance of the ODRA. The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud.

(b) During the informal resolution period, if the parties request it, the ODRA will appoint a DRO for ADR who will discuss ADR options with the parties, offer his or her services as a potential neutral, and assist the parties to enter into an agreement for a formal ADR process. A person serving as a neutral in an ADR effort in a matter shall not serve as an adjudicating DRO or Special Master for that matter.

(c) The informal resolution period may be extended at the request of the parties for good cause.

(d) If the matter has not been resolved informally, the parties shall file joint or separate statements with the ODRA no later than twenty (20) business days after the filing of the contract dispute. The ODRA may extend this time, pursuant to § 17.27(e). The statement(s) shall include either:

(1) A joint request for ADR, or an executed ADR agreement, pursuant to § 17.37(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Adjudicative Process will be needed.

(e) If the contract dispute is not completely resolved during the informal resolution period, the ODRA's Adjudicative Process will commence unless the parties have reached an agreement to attempt a formal ADR effort. As part of such an ADR agreement the parties, with the concurrence of the ODRA, may agree to defer commencement of the adjudication process pending completion of the ADR or that the ADR and adjudication process will run concurrently. If a formal ADR is attempted but does not completely resolve the contract dispute, the Adjudicative Process will commence.

(f) The ODRA shall hold a status conference with the parties within ten (10) business days, or as soon thereafter as is practicable, of the ODRA's receipt of a written notification that ADR proceedings will not be used, or have not fully resolved the Contract Dispute. The purpose of the status conference will be to commence the Adjudicative Process and establish the schedule for adjudication.

(g) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in non-binding ADR techniques during the Adjudicative Process, pursuant to subpart D of this part.

§ 17.31 Dismissal or summary decision of contract disputes.

(a) Any party may request by motion, or the ODRA on its own initiative may recommend or direct, that a contract dispute be dismissed, or that a count or portion thereof be stricken, if:

(1) It was not timely filed;

(2) It was filed by a subcontractor or other person or entity lacking standing;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the ODRA.

(b) Any party may request by motion, or the ODRA on its own initiative may recommend or direct, that a summary decision be issued with respect to a contract dispute, or any count or portion thereof if there are no material facts in dispute and a party is entitled to a summary decision as a matter of law.

(c) In connection with any potential dismissal of a contract dispute, or summary decision, the ODRA will consider any material facts in dispute in a light most favorable to the party against whom the dismissal or summary decision would be entered, and draw all factual inferences in favor of that party.

(d) At any time, whether pursuant to a motion or on its own initiative and at its discretion, the ODRA may:

(1) Dismiss or strike a count or portion of a contract dispute or enter a partial summary decision;

(2) Recommend to the Administrator that the entire contract dispute be dismissed or that a summary decision be entered; or

(3) With a delegation from the Administrator, dismiss the entire contract dispute or enter a summary decision with respect to the entire contract dispute.

(e) An order of dismissal of the entire contract dispute or summary decision with respect to the entire contract dispute, issued either by the Administrator or by the ODRA, on the grounds set forth in this section, shall constitute a final agency order. An ODRA order dismissing or striking a count or portion of a contract dispute or entering a partial summary judgment shall not constitute a final agency order, unless and until such ODRA order is incorporated or otherwise adopted in a final agency decision of the Administrator or the Administrator's delegee regarding the remainder of the dispute.

(f) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the ODRA shall afford all parties against whom the dismissal or summary decision would be entered the opportunity to respond to a proposed dismissal or summary decision.

§ 17.33 Adjudicative Process for contract disputes.

(a) The Adjudicative Process for contract disputes will be commenced by the ODRA Director upon being notified by the ADR neutral or by any party that either—

(1) The parties will not be attempting ADR; or

(2) The parties have not settled all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) In cases initiated by a contractor against the FAA, within twenty (20) business days of the commencement of the Adjudicative Process or as scheduled by the ODRA, the Product Team shall prepare and submit to the ODRA, with a copy to the contractor, a chronologically arranged and indexed substantive response, containing a legal and factual position regarding the dispute and all documents relevant to the facts and issues in dispute. The contractor will be entitled, at a specified time, to supplement the record with additional documents.

(c) In cases initiated by the FAA against a contractor, within twenty (20) business days of the commencement of the Adjudicative Process or as scheduled by the ODRA, the contractor shall prepare and submit to the ODRA, with a copy to the Product Team counsel, a chronologically arranged and indexed substantive response, containing a legal and factual position regarding the dispute and all documents relevant to the facts and issues in dispute. The Product Team will be entitled, at a specified time, to supplement the record with additional documents.

(d) Unless timely objection is made, documents properly filed with the ODRA will be deemed admitted into the administrative record. Discovery requests and responses are not part of the record and will not be filed with the ODRA, except in connection with a motion or other permissible filing.

Designated, relevant portions of such documents may be filed, with the permission of the ODRA.

(e) The Director of the ODRA shall assign a DRO or a Special Master to conduct adjudicatory proceedings, develop the administrative adjudication record and prepare findings and recommendations for the review of the ODRA Director or the Director's designee.

(f) The DRO or Special Master may conduct a status conference(s) as necessary and issue such orders or decisions as are necessary to promote the efficient resolution of the contract dispute.

(g) At any such status conference, or as necessary during the Adjudicative Process, the DRO or Special Master will:

(1) Determine the appropriate amount of discovery required;

(2) Review the need for a protective order, and if one is needed, prepare a protective order pursuant to § 17.9;

(3) Determine whether any issue can be stricken; and

(4) Prepare necessary procedural orders for the proceedings.

(h) Unless otherwise provided by the DRO or Special Master, or by agreement of the parties with the concurrence of the DRO or Special Master, responses to written discovery shall be due within thirty (30) business days from the date received.

(i) At a time or at times determined by the DRO or Special Master, and in advance of the decision of the case, the parties shall make individual final submissions to the ODRA and to the DRO or Special Master, which submissions shall include the following:

(1) A statement of the issues;

(2) A proposed statement of undisputed facts related to each issue together with citations to the administrative record or other supporting materials;

(3) Separate statements of disputed facts related to each issue, with appropriate citations to documents in the Dispute File, to pages of transcripts of any hearing or deposition, or to any affidavit or exhibit which a party may wish to submit with its statement;

(4) Separate legal analyses in support of the parties' respective positions on disputed issues.

(j) Each party shall serve a copy of its final submission on the other party by means reasonably calculated so that the other party receives such submissions on the same day it is received by the ODRA.

(k) The DRO or Special Master may decide the contract dispute on the basis of the administrative record and the submissions referenced in this section, or may, in the DRO or Special Master's discretion, direct the parties to make additional presentations in writing. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Evidentiary hearings on the record shall be conducted by the ODRA:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the contract dispute, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(l) The DRO or Special Master shall prepare findings and recommendations, which will contain findings of fact, application of the principles of the AMS and other law or authority applicable to the findings of fact, and a recommendation for a final FAA order.

(m) The DRO or Special Master shall conduct a de novo review using the preponderance of the evidence standard, unless a different standard is prescribed for a particular issue. Notwithstanding the above, allegations that government officials acted with bias or in bad faith must be established by clear and convincing evidence.

(n) The Director of the ODRA may review the status of any contract dispute in the Adjudicative Process with the DRO or Special Master.

(o) A DRO or Special Master shall submit findings and recommendations to the Director of the ODRA or the Director's designee. The findings and recommendations will be released to the parties and to the public, upon issuance of the final FAA order in the case. Should an ODRA protective order be issued in connection with the contract dispute, or should the matter involve proprietary or competition-sensitive information, a redacted version of the findings and recommendations omitting any protected information, shall be prepared wherever possible and released to the public, as soon as is practicable, along with a copy of the final FAA order. Only persons admitted by the ODRA under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations.

(p) Attorneys' fees of a qualified prevailing contractor are allowable to the extent permitted by the EAJA, 5 U.S.C. 504(a)(1). *See* 14 CFR part 14.

(q) Other than communications regarding purely procedural matters or ADR, there shall be no substantive *ex parte* communication between ODRA personnel and any principal or representative of a party concerning a pending or potentially pending matter. A potential or serving ADR neutral may communicate on an ex parte basis to establish or conduct the ADR.

Subpart D—Alternative Dispute Resolution

§ 17.35 Use of alternative dispute resolution.

(a) By statutory mandate, it is the policy of the FAA to use voluntary ADR to the maximum extent practicable to resolve matters pending at the ODRA. The ODRA therefore uses voluntary ADR as its primary means of resolving all factual, legal, and procedural controversies.

(b) The parties are encouraged to make a good faith effort to explore ADR possibilities in all cases and to employ ADR in every appropriate case. The ODRA uses ADR techniques such as mediation, neutral evaluation, binding arbitration or variations of these techniques as agreed by the parties and approved by the ODRA. At the beginning of each case, the ODRA assigns a DRO as a potential neutral to explore ADR options with the parties and to convene an ADR process. See § 17.35(b).

(c) The ODRA Adjudicative Process will be used where the parties cannot achieve agreement on the use of ADR; where ADR has been employed but has not resolved all pending issues in dispute; or where the ODRA concludes that ADR will not provide an expeditious means of resolving a particular dispute. Even where the Adjudicative Process is to be used, the ODRA, with the parties' consent, may employ informal ADR techniques concurrently with the adjudication.

§ 17.37 Election of alternative dispute resolution process.

(a) The ODRA will make its personnel available to serve as Neutrals in ADR proceedings and, upon request by the parties, will attempt to make qualified

non-FAA personnel available to serve as Neutrals through neutral-sharing programs and other similar arrangements. The parties may elect to employ a mutually acceptable compensated neutral at their expense.

(b) The parties using an ADR process to resolve a protest shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the ODRA pursuant to § 17.17(c). The ODRA may extend this time for good cause.

(c) The parties using an ADR process to resolve a contract dispute shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the ODRA pursuant to § 17.29.

(d) The parties to a protest or contract dispute who elect to use ADR must submit to the ODRA an ADR agreement setting forth:

(1) The agreed ADR procedures to be used; and

(2) The name of the neutral. If a compensated neutral is to be used, the agreement must address how the cost of the neutral's services will be reimbursed.

(e) Non-binding ADR techniques are not mutually exclusive, and may be used in combination if the parties agree that a combination is most appropriate to the dispute. The techniques to be employed must be determined in advance by the parties and shall be expressly described in their ADR agreement. The agreement may provide for the use of any fair and reasonable ADR technique that is designed to achieve a prompt resolution of the matter. An ADR agreement for non-binding ADR shall provide for a termination of ADR proceedings and the commencement of adjudication under the Adjudicative Process, upon the election of any party. Notwithstanding such termination, the parties may still engage with the ODRA in ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication.

(f) Binding arbitration is available through the ODRA, subject to the provisions of applicable law and the ODRA Binding Arbitration Guidance dated October 2001 as developed in consultation with the Department of Justice.

(g) The parties may, where appropriate in a given case, submit to the ODRA a negotiated protective order for use in ADR in accordance with the requirements of § 17.9.

§ 17.39 Confidentiality of ADR.

(a) The provisions of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.,* shall apply to ODRA ADR proceedings.

(b) The ODRA looks to the principles of Rule 408 of the Federal Rules of Evidence in deciding admissibility issues related to ADR communications.

(c) ADR communications are not part of the administrative record unless otherwise agreed by the parties.

Subpart E—Finality and Review

§ 17.41 Final orders.

All final FAA orders regarding protests or contract disputes under this part are to be issued by the FAA Administrator or by a delegee of the Administrator.

§ 17.43 Judicial review.

(a) A protester or contractor may seek review of a final FAA order, pursuant to 49 U.S.C. 46110, only after the administrative remedies of this part have been exhausted.

(b) A copy of the petition for review shall be filed with the ODRA and the FAA Chief Counsel on the date that the petition for review is filed with the appropriate circuit court of appeals.

§ 17.45 Conforming amendments.

The FAA shall amend pertinent provisions of the AMS, standard contract forms and clauses, and any guidance to contracting officials, so as to conform to the provisions of this part.

§ 17.47 Reconsideration.

The ODRA will not entertain requests for reconsideration as a routine matter, or where such requests evidence mere disagreement with a decision or restatements of previous arguments. A party seeking reconsideration must demonstrate either clear errors of fact or law in the underlying decision or previously unavailable evidence that warrants reversal or modification of the decision. In order to be considered, requests for reconsideration must be filed within ten (10) business days of the date of issuance of the public version of the subject decision or order.

Subpart F—Other Matters

§ 17.49 Sanctions.

If any party or its representative fails to comply with an Order or Directive of the ODRA, the ODRA may enter such orders and take such other actions as it deems necessary and in the interest of justice.

§ 17.51 Decorum and professional conduct.

Legal representatives are expected to conduct themselves at all times in a civil and respectful manner appropriate to an administrative forum. Additionally, counsel are expected to conduct themselves at all times in a professional manner and in accordance with all applicable rules of professional conduct.

§ 17.53 Orders and subpoenas for testimony and document production.

(a) Parties are encouraged to seek cooperative and voluntary production of documents and witnesses prior to requesting a subpoena or an order under this section.

(b) Upon request by a party, or on his or her own initiative, a DRO or Special Master may, for good cause shown, order a person to give testimony by deposition and to produce records. Section 46104(c) of Title 49 of the United States Code governs the conduct of depositions or document production.

(c) Upon request by a party, or on his or her own initiative, a DRO or Special Master may, for good cause shown, subpoena witnesses or records related to a hearing from any place in the United States to the designated place of a hearing.

(d) A subpoena or order under this section may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Product Team, money payments need not be tendered in advance of attendance. The person serving the subpoena or order shall file a declaration of service with the ODRA, executed in the form required by 28 U.S.C. 1746. The declaration of service shall be filed promptly with the ODRA, and before the date on which the person served must respond to the subpoena or order.

(e) Upon written motion by the person subpoenaed or ordered under this section, or by a party, made within ten (10) business days after service, but in any event not later than the time specified in the subpoena or order for compliance, the DRO may—

(1) Rescind or modify the subpoena or order if it is unreasonable and oppressive or for other good cause shown, or

(2) Require the party on whose behalf the subpoena or order was issued to advance the reasonable cost of producing documentary evidence. Where circumstances require, the DRO may act upon such a motion at any time

after a copy has been served upon all parties.

(f) The party that requests the DRO to issue a subpoena or order under this section shall be responsible for the payment of fees and mileage, as required by 49 U.S.C. 46104(d), for witnesses, officers who serve the order, and the officer before whom a deposition is taken.

(g) Subpoenas and orders issued under this section may be enforced in a judicial proceeding under 49 U.S.C. 46104(b).

§ 17.55 Standing orders of the ODRA Director.

The Director may issue such Standing Orders as necessary for the orderly conduct of business before the ODRA.

Subpart G—Pre-Disputes

§ 17.57 Dispute resolution process for Pre-Disputes.

(a) All potential disputes arising under contracts or solicitations with the FAA may be resolved with the consent of the parties to the dispute under this subpart.

(b) Pre-disputes shall be filed with the ODRA pursuant to § 17.59.

(c) The time limitations for the filing of Protests and Contract Disputes established in §§ 17.15(a) and 17.27(c) will not be extended by efforts to resolve the dispute under this subpart.

§ 17.59 Filing a Pre-Dispute.

(a) A Pre-dispute must be in writing, affirmatively state that it is a Pre-dispute pursuant to this subpart, and shall contain:

(1) The party's name, address, telephone and Fax numbers and the name, address, telephone and Fax numbers of the contractor's legal representative(s) (if any);

(2) The contract or solicitation number and the name of the Contracting Officer;

(3) A chronological statement of the facts and of the legal grounds for the party's positions regarding the dispute citing to relevant contract or solicitation provisions and documents and attaching copies of those provisions and documents; and

(4) The signature of a duly authorized legal representative of the initiating party.

(b) Pre-disputes shall be filed at the following address: ODRA, AGC–70, Federal Aviation Administration, 800 Independence Avenue, SW., Room 323, Washington, DC 20591; Telephone: (202) 267–3290, Fax: (202) 267–3720.

(c) Upon the filing of a Pre-dispute with the ODRA, the ODRA will contact the opposing party to offer its services pursuant to § 17.57. If the opposing party agrees, the ODRA will provide Pre-dispute services. If the opposing party does not agree, the ODRA Pre-dispute file will be closed and no service will be provided.

§ 17.61 Use of alternative dispute resolution.

(a) Only non-binding, voluntary ADR will be used to attempt to resolve a Pre-dispute pursuant to § 17.37.

(b) ADR conducted under this subpart is subject to the confidentiality requirements of § 17.39.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

A. The FAA dispute resolution procedures encourage the parties to protests and contract disputes to use ADR as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996, Public Law 104–320, 5 U.S.C. 570–579, and Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under the procedures presented in this part, the ODRA encourages parties to consider ADR techniques such as case evaluation, mediation, or arbitration.

B. ADR encompasses a number of processes and techniques for resolving protests or contract disputes. The most commonly used types include:

(1) *Mediation.* The neutral or compensated neutral ascertains the needs and interests of both parties and facilitates discussions between or among the parties and an amicable resolution of their differences, seeking approaches to bridge the gaps between the parties'' respective positions. The neutral or compensated neutral can meet with the parties separately, conduct joint meetings with the parties'' representatives, or employ both methods in appropriate cases.

(2) *Neutral Evaluation.* At any stage during the ADR process, as the parties may agree, the neutral or compensated neutral will provide a candid assessment and opinion of the strengths and weaknesses of the parties'' positions as to the facts and law, so as to facilitate further discussion and resolution.

(3) *Binding Arbitration.* The ODRA, after consultation with the United States Department of Justice in accordance with the provisions of the Administrative Disputes Resolution Act offers true binding arbitration in cases within its jurisdiction. The ODRA's Guidance for the Use of Binding Arbitration may be found on its website at: *http://www.faa.gov/go/odra.*

Issued in Washington, DC, on July 25, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–22842 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE315; Special Conditions No. 23–254–SC]

Special Conditions: Embraer S.A.; Model EMB 505; Single-Place Side-Facing Lavatory Seat Dynamic Test Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A., EMB 505 airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of a single-place side-facing seat. The applicable airworthiness regulations do not provide adequate or appropriate safety standards for this design feature. In order to provide a level of safety that is equivalent to that afforded to occupants of forward and aft facing seating, additional airworthiness standards, in the form of special conditions, are necessary.

DATES: The effective date of these special conditions is August 31, 2011. Comments must be received on or before October 7, 2011.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, *Attention:* Rules Docket, Docket No. CE315, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE315. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4140, fax 816–329–4090, e-mail *Robert.Stegeman@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instance with no substantive comments

received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On October 14, 2010, Embraer S.A. applied for a design change to Type Certificate No. A60CE for installation of a side-facing belted lavatory in the EMB–505 airplane. The belted lavatory will be used as a passenger seat during takeoff and landing; therefore, comply with the provisions of §§ 23.562 and 23.785 (in addition to the certification basis as established in type certificate A60CE) and any additional requirements the FAA determines are applicable. In this case, the approval of a side-facing seat to these provisions is considered new and novel and as such will require special conditions and specific methods of compliance to certificate.

14 CFR part 23 was amended August 8, 1988, by Amendment 23–36, to revise the emergency landing conditions that must be considered in the design of the airplane. Amendment 23–36 revised the static load conditions in § 23.561, and added a new § 23.562 that required dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 23–36 is to provide an improved level of safety for occupants on part 23 airplanes. Because most seating is forward-facing in part 23 airplanes, the pass/fail criteria developed in Amendment 23–36 focused primarily on these seats. Since the regulations do not address side-facing seats, these criteria should be documented in special conditions.

The FAA decision to review compliance with these regulations stems from the fact that the current regulations do not provide adequate and appropriate standards for the type certification of this type of seat.

These requirements are substantially similar to other single-place side-facing seat installations approved for use on several different part 25 aircraft.

Type Certification Basis

Under the provisions of § 21.101, Embraer S.A. must show that the model EMB 505 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A60CE or the applicable regulations in effect on the date of application for the change to the Embraer model 505 type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The following model is covered by this special condition:

Embraer S.A. EMB 505:

For the model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator determines that the applicable airworthiness regulations (*i.e.,* part 23 as amended) do not contain adequate or appropriate safety standards for the Embraer S.A. model EMB 505 with a side-facing seat as installed on this Embraer S.A. Aircraft model because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as appropriate, as defined in § 11.19, in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Novel or Unusual Design Features

The Embraer S.A., model EMB 505, will incorporate the following novel or unusual design feature:

A side-facing lavatory seat intended for taxi/takeoff and landing.

Discussion

The seat is to incorporate design features that reduce the potential for injury in the event of an accident. In a severe impact, the occupant will be restrained by a 2-point seatbelt and bear on an adjacent padded wall. In addition to the design features intended to minimize occupant injury during an accident sequence, the installation will also require operational procedures that will facilitate egress after an accident, including leaving the lavatory door locked open during taxi, takeoff and landing. The adjacent forward wall/bulkhead interior structure will have padding, which will provide some protection to the head of the occupant.

The Code of Federal Regulations states performance criteria for forward- and aft-facing seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning side-facing seats. Therefore, the FAA has determined that, in addition to the requirements of parts and 23, special conditions are needed to address the installation of this seat installation/restraint.

Accordingly, these special conditions are for the Embraer S.A., model EMB 505, side-facing seat location. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the EMB 505. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the

certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

The minimum acceptable standards for dynamic seat certification of the belted lavatory seat are as follows:

(a) *Existing Criteria.* As referenced by § 23.785(b), all injury protection criteria of §§ 23.562(c)(1) through (c)(7) apply to the occupants of the side-facing seats. Head injury criteria (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) *Body-to-wall/furnishing contact.* The seat must be installed aft of a structure such as an interior wall or furnishing that will contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is required that the contact surface of this structure must be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma.* Testing with a Side Impact Dummy (SID), as defined by 49 CFR part 572, Subpart F, or its equivalent, must be performed in order to establish Thoracic Trauma Index (TTI) injury criteria. TTI acquired with the SID must be less than 85, as defined in 49 CFR part 572, Subpart F. SID TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5. Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable.

(d) *Pelvis.* Pelvic lateral acceleration must not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads.* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

(f) *Compression Loads.* The compression load measured between the pelvis and the lumbar spine of the ATD may not exceed 1,500 pounds.

(g) *Emergency Evacuation.* When occupied, the lavatory door must be latched open for takeoff and landing and must remain latched under the § 23.561(b) loads. The airplane configuration must meet the emergency evaluation requirements of its certification basis with the seat occupied.

(h) *Lavatory Door Placard.* A placard specifying the lavatory door must be latched open for takeoff and landing when occupied must be displayed on the outside of the door.

(i) *Test Requirements in § 23.562 dynamic loads.* The tests in § 23.562(a), (b) and (c) must be conducted on the lavatory seat. Floor deformation is required except for a seat that is cantilevered to the bulkhead.

The following are the agreed to methods of compliance and testing requirements:

General Test Guidelines

(a) One longitudinal test with the SID ATD or its equivalent, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls) will be accomplished.

—Pass/fail injury assessments: TTI and pelvic acceleration.

(b) One longitudinal test with the Hybrid II ATD, deformed floor, with 10 degrees yaw, and with all lateral structural supports (armrests/walls) will be accomplished.

—Pass/fail injury assessments: HIC and upper torso restraint load, restraint system retention and pelvic acceleration.

(c) Vertical (15 G's) test is to be conducted with modified Hybrid II ATDs with existing pass/fail criteria.

(d) The ATD can be tethered for the floor deformation test.

(e) The seatbelt is not required to have a TSO Authorization but will need to comply with the TSO–C22g Minimum Performance Standards (MPS).

Issued in Kansas City, Missouri, on August 31, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22880 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0402; Airspace Docket No. 11–ASO–18]

Establishment of Class E Airspace; Copperhill, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Copperhill, TN, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures serving Martin Campbell Field Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

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

SUPPLEMENTARY INFORMATION:

History

On June 17, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Copperhill, TN (76 FR 35370) Docket No. FAA–2011–0402. 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 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Copperhill, TN to provide the controlled airspace required to

accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures developed for Martin Campbell Field Airport. 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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Martin Campbell Field Airport, Copperhill, TN.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

ASO TN E5 Copperhill, TN [New]

Martin Campbell Field Airport, TN
(Lat. 35°0′57″ N., long. 84°20′49″ W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of the Martin Campbell Field Airport.

Issued in College Park, Georgia, on August 19, 2011

Mark D. Ward,

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

[FR Doc. 2011–22315 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30799; Amdt. No. 3440]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 7, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 2011.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms

are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on August 19, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 22 SEP 2011

Shenandoah, IA, Shenandoah Muni, VOR/DME RWY 12, Amdt 4
McCall, ID, McCall Muni, NDB RWY 34, Orig, CANCELLED
Bedford, IN, Virgil I Grisson Muni, Takeoff Minimums and Obstacle DP, Orig
Manistee, MI, Manistee Co.-Blacker, Takeoff Minimums and Obstacle DP, Amdt 6
Miles City, MT, Frank Wiley Field, NDB RWY 4, Amdt 5A, CANCELLED
Ballinger, TX, Bruce Field, Takeoff Minimums and Obstacle DP, Orig

Effective 20 OCT 2011

Anchorage, AK, Ted Stevens Anchorage Intl, Takeoff Minimums and Obstacle DP, Amdt 6
St. Paul Island, AK, St. Paul Island, RNAV (GPS) RWY 18, Amdt 2B
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[FR Doc. 2011–22444 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30800; Amdt. No. 3441]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 7, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 2011.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this

amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on August 19, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * EFFECTIVE UPON PUBLICATION*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
22–Sep–11	CO	Denver	Denver Intl	1/1391	8/16/11	ILS OR LOC RWY 7, Amdt 2A.
22–Sep–11	CO	Denver	Denver Intl	1/1393	8/16/11	ILS RWY 26, Amdt 2.
22–Sep–11	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	1/7239	7/28/11	RNAV (RNP) Z RWY 31R, Amdt 1B.
22–Sep–11	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	1/7240	7/28/11	RNAV (RNP) Z RWY 31L, Orig-C.
22–Sep–11	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	1/7241	7/28/11	RNAV (GPS) Y RWY 31L, Orig.
22–Sep–11	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	1/7242	7/28/11	CONVERGING ILS RWY 31R, Amdt 7B.
22–Sep–11	TX	Eastland	Eastland Muni	1/7445	7/28/11	NDB RWY 35, Amdt 3.
22–Sep–11	IA	Monticello	Monticello Rgnl	1/7975	8/2/11	RNAV (GPS) RWY 15, Amdt 1.
22–Sep–11	MA	Lawrence	Lawrence Muni	1/8163	8/8/11	ILS OR LOC Z RWY 5, Orig.
22–Sep–11	TX	Houston	Houston-Southwest	1/8752	8/8/11	LOC/DME RWY 9, Amdt 3A.
22–Sep–11	WI	Oconto	Oconto/J. Douglas Bake Memorial.	1/8920	8/8/11	GPS RWY 11, Orig.
22–Sep–11	WI	Oconto	Oconto/J. Douglas Bake Memorial.	1/8922	8/8/11	GPS RWY 29, Orig-A.
22–Sep–11	KS	Harper	Harper Muni	1/9393	8/9/11	VOR OR GPS B, Amdt 1.
22–Sep–11	IL	Alton/St. Louis	St Louis Rgnl	1/9395	8/9/11	VOR A, Amdt 9.
22–Sep–11	IN	Indianapolis	Indianapolis Executive	1/9445	8/8/11	ILS OR LOC RWY 36, Amdt 5.
22–Sep–11	IN	Indianapolis	Indianapolis Executive	1/9446	8/8/11	RNAV (GPS) RWY 36, Orig-A.
22–Sep–11	IN	Marion	Marion Muni	1/9712	8/9/11	VOR RWY 15, Amdt 10A.
22–Sep–11	GA	Brunswick	Malcolm McKinnon	1/9942	8/16/11	Takeoff Minimums and Obstacle DP, Amdt 2.
22–Sep–11	WI	Milwaukee	Milwaukee/Lawrence J Timmerman.	1/9970	8/9/11	RNAV (GPS) RWY 15L, Orig.
22–Sep–11	WI	Milwaukee	Milwaukee/Lawrence J Timmerman.	1/9971	8/9/11	LOC RWY 15L, Amdt 6.
22–Sep–11	WI	Milwaukee	Milwaukee/Lawrence J Timmerman.	1/9972	8/9/11	VOR RWY 4L, Amdt 9.
22–Sep–11	WI	Milwaukee	Milwaukee/Lawrence J Timmerman.	1/9973	8/9/11	VOR RWY 15L, Amdt 14.

[FR Doc. 2011–22450 Filed 9–6–11; 8:45 am]
BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 271

[Release No. IC–29776; File No. S7–33–11]

RIN 3235–AL22

Use of Derivatives by Investment Companies Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') and its staff are reviewing the use of derivatives by management investment companies registered under the Investment Company Act of 1940 (the ''Investment Company Act'' or ''Act'') and companies that have elected to be treated as business development companies (''BDCs'') under the Act (collectively, ''funds''). To assist in this review, the Commission is issuing this concept release and request for comments on a wide range of issues relevant to the use of derivatives by funds, including the potential implications for fund leverage, diversification, exposure to certain securities-related issuers, portfolio concentration, valuation, and related matters. In addition to the specific issues highlighted for comment, the Commission invites members of the public to address any other matters that they believe are relevant to the use of derivatives by funds. The Commission intends to consider the comments to help determine whether regulatory initiatives or guidance are needed to improve the current regulatory regime for funds and, if so, the nature of any such initiatives or guidance.

DATES: Comments should be received on or before November 7, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*);
- Send an e-mail to *rule-comments@sec.gov;* or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File Number S7–33–11. This file number should be included on the subject line if comments are submitted by e-mail. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/concept.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. Therefore, you should only submit information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Edward J. Rubenstein, Senior Special Counsel, or Michael S. Didiuk, Senior Counsel, at (202) 551–6825, Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5030.

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* * * * *

I. Introduction

The activities of funds, including their use of derivatives, are regulated extensively under the Investment Company Act,[1] Commission rules, and Commission guidance.[2] Derivatives may

[1] 15 U.S.C. 80a. All statutory references to the Investment Company Act are to 15 U.S.C. 80a, and, unless otherwise stated, all references to rules under the Investment Company Act are to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270]. All references to the Securities Act of 1933 (the ''Securities Act'') are to 15 U.S.C. 77a, and, unless otherwise stated, all references to rules under the Securities Act are to Title 17, Part 230 of the Code of Federal Regulations [17 CFR 230]. All references to the Securities Exchange Act of 1934 (the ''Exchange Act'') are to 15 U.S.C. 78a, and, unless otherwise stated, all references to rules under the Exchange Act are to Title 17, Part 240 [17 CFR 240].

[2] The staff has also issued no-action and other letters that relate to fund use of derivatives. In addition to Investment Company Act provisions, funds using derivatives must comply with all other applicable statutory and regulatory requirements, such as other Federal securities law provisions, the Internal Revenue Code (the ''IRC''), Regulation T of the Federal Reserve Board (''Regulation T''), and the rules and regulations of the Commodity Futures Trading Commission (the ''CFTC''). *See also* Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (the ''Dodd-Frank Act''), *available at http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf.*

be broadly described as instruments or contracts whose value is based upon, or derived from, some other asset or metric (referred to as the ''underlier,'' ''underlying,'' or ''reference asset'').[3] As detailed below,[4] funds employ derivatives for a variety of purposes, including to increase leverage to boost returns, gain access to certain markets, achieve greater transaction efficiency, and hedge interest rate, credit, and other risks.[5] At the same time, derivatives can raise risk management issues for a fund relating, for example, to leverage, illiquidity (particularly with respect to complex OTC derivatives), and counterparty risk, among others.[6]

The dramatic growth in the volume and complexity of derivatives investments over the past two decades, and funds' increased use of derivatives,[7] have led the Commission and its staff to initiate a review of funds' use of derivatives under the Investment Company Act.[8] The staff generally has been exploring the benefits, risks, and costs associated with funds' use of derivatives. The staff also has been exploring issues relating to the use of derivatives by funds such as: whether current market practices involving derivatives are consistent with the leverage, concentration, and diversification provisions of the Investment Company Act; whether funds that rely substantially upon derivatives, particularly those that seek to provide leveraged returns, maintain and implement adequate risk management and other procedures in light of the nature and volume of their derivatives investments; whether funds' boards of directors are providing appropriate oversight of the use of derivatives by the funds; whether existing rules sufficiently address matters such as the proper procedures for a fund's pricing and liquidity determinations regarding its derivatives holdings; whether existing prospectus disclosures adequately address the particular risks created by derivatives; and whether funds' derivative activities should be subject to any special reporting requirements.

A. Purpose and Scope of the Concept Release

The goal of the Commission's and staff's review is to evaluate whether the regulatory framework, as it applies to funds' use of derivatives, continues to fulfill the purposes and policies underlying the Act and is consistent with investor protection. The purpose of this concept release is to assist with this review and solicit public comment on the current regulatory regime under the Act as it applies to funds' use of derivatives. We intend to use the comments to help determine whether regulatory initiatives or guidance are needed to improve the current regulatory regime and the specific nature of any such initiatives.[9]

A fund that invests in derivatives must take into consideration various provisions of the Investment Company Act and Commission rules under the Act. The fund must consider the leverage limitations of section 18 of the Investment Company Act, which governs the extent to which a fund may issue ''senior securities.''[10] A fund's use of derivatives also may raise issues

[3] *See, e.g., Board Oversight of Derivatives,* Independent Directors Council Task Force Report (July 2008) (''2008 IDC Report'') at 1, 3, *available at http://www.ici.org/pdf/ppr_08_derivatives.pdf. See also Mutual Funds and Derivative Instruments,* Division of Investment Management Memorandum transmitted by Chairman Levitt to Representatives Markey and Fields (Sept. 26, 1994) (''1994 Report'') at text accompanying n. 1 (''[t]he term 'derivative' is generally defined as an instrument whose value is based upon, or derived from, some underlying index, reference rate (*e.g.,* interest rates or currency exchange rates), security, commodity, or other asset.''), and at n. 2 (the ''term 'derivative' generally is used to embrace forward contracts, futures, swaps, and options''), *available at http://www.sec.gov/news/studies/deriv.txt*; John C. Hull, *Options, Futures, and Other Derivatives* (7th ed. 2009) (''Hull'') at 1, 779 (''A *derivative* can be defined as a financial instrument whose value depends on (or derives from) the values of other, more basic underlying variables,'' and a derivative is an ''instrument whose price depends on, or is derived from, the price of another asset'') (italics in original); rule 3b–13 under the Exchange Act, which defines ''eligible OTC derivative instrument,'' and rule 16a–1(c) under the Exchange Act, which defines ''derivative securities;'' section 5200(b) of the Revised Statutes of the United States [12 U.S.C. 84(b)] (as amended by section 610(a)(3) of the Dodd-Frank Act, *supra* note 2), which defines a ''derivative transaction'' to include ''any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.''

[4] For a definition, and examples of types, of derivatives, *see infra* Section I.B.

[5] *See* 2008 IDC Report, *supra* note 3, at 8–11. *See also infra* Section I.B.

[6] *See* 2008 IDC Report, *supra* note 3, at 12–13. *See also Mutual Fund Derivative Holdings: Fueling the Need for Improved Risk Management,* JPMorgan Thought Magazine (Summer 2008) (''2008 JPMorgan Article''), *available at http://www.jpmorgan.com/cm/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=11584942139648&blobheader=application%2Fpdf&blobnocache=true&blobheadername1=Content.*

[7] While complete data concerning the nature of derivatives activities of funds is unavailable, for a partial snapshot of derivatives activity by selected fund complexes *see Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,* Investment Company Institute (''ICI'') Comment Letter to the CFTC at 18 (Apr. 12, 2011), *available at http://www.ici.org/pdf/25107.pdf. See also, e.g.,* Tim Adam and Andre Guettler, *The Use of Credit Default Swaps by U.S. Fixed-Income Mutual Funds,* FDIC Ctr. for Fin. Research, Working Paper No. 2011–01, (Nov. 19, 2010) (''Adam and Guettler Article''), *available at http://www.fdic.gov/bank/analytical/cfr/2011/wp2011/CFR_WP_2011_01.pdf* (study of the use of credit default swaps (''CDS'') by the largest 100 U.S. corporate bond funds between 2004 and 2008 reflects an increase from about 20% of funds using credit default swaps in 2004 to 60% of funds using them in 2008; among CDS users, the average size of CDS positions (measured by their notional values) increased from 2% to almost 14% of a fund's NAV over the same period, with the CDS positions representing less than 10% of NAV for most funds, but with some funds exceeding this level by a wide margin, particularly in 2008; CDS are predominantly used to increase a fund's exposure to credit risks (net sellers of CDS) rather than to hedge credit risk (net buyers); the frequency of credit default swap usage by the largest bond funds is comparable to that of most hedge funds), *available at http://www.fdic.gov/bank/analytical/cfr/2011/wp2011/CFR_WP_2011_01.pdf; Assess the Risks: Key Strategies for Overseeing Derivatives,* Board IQ at 1 (Jan. 15, 2008) (''In recent years, the use of derivatives by mutual funds has soared.''), *available at http://www.interactivedata.com/uploads/BoardIQ1207.pdf*; 2008 JPMorgan Article, *supra* note 6.

[8] In a press release issued in March 2010, the Commission announced that the staff was conducting a review to evaluate the use of derivatives by mutual funds, registered exchange-traded funds (''ETFs''), and other investment companies. The press release indicated that the review would examine whether and what additional protections are necessary for those funds under the Investment Company Act. The press release further indicated that pending completion of this review, the staff would defer consideration of exemptive requests under the Act relating to ETFs that would make significant investments in derivatives. *See* SEC Press Release 2010–45, *SEC Staff Evaluating the Use of Derivatives by Funds* (Mar. 25, 2010) (''2010 Derivatives Press Release''), *available at http://www.sec.gov/news/press/2010/2010-45.htm.* As part of the staff's review to evaluate fund use of derivatives, and to further enhance its knowledge of how funds are using, and managing their use of, derivatives, the staff met with industry groups as well as with some fund complexes that use OTC derivatives. The staff also reviewed fund disclosures relating to the use of derivatives and their risks. In addition, the staff considered *The Report of the Task Force on Investment Company Use of Derivatives and Leverage,* Committee on Federal Regulation of Securities, ABA Section of Business Law (July 6, 2010) (''2010 ABA Derivatives Report''), *available at http://meetings.abanet.org/webupload/commupload/CL410061/sitesofinterest_files/DerivativesTF_July_6_2010_final.pdf.*

[9] Section 2(c) of the Investment Company Act provides that ''[w]henever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''

[10] *See* sections 18(a)(1) and 18(f)(1) of the Investment Company Act. *See also Securities Trading Practices of Registered Investment Companies,* Investment Company Act Release No. 10666 (Apr. 18, 1979) (''Release 10666'') [44 FR 25128 (Apr. 27, 1979)], and *Registered Investment Company Use of Senior Securities–Select Bibliography* (''Senior Security Bibliography''), *available at http://www.sec.gov/divisions/investment/seniorsecurities-bibliography.htm* (prepared by the staff). *See also* discussion *infra* at Section II. (Derivatives under the Senior Securities Restrictions of the Investment Company Act).

under Investment Company Act provisions governing diversification,[11] concentration,[12] investing in certain types of securities-related issuers,[13] valuation,[14] and accounting and financial statement reporting,[15] among others,[16] as well as under applicable disclosure provisions.[17]

Derivatives generally entail the potential for leveraged future gains and/or losses that may significantly impact the overall risk/reward profile of a fund. Applying the Act's provisions relating to diversification, concentration, and investments in securities-related issuers, among others, may require determining what value to assign to the derivative and which of the derivative's multiple exposures should be measured for purposes of the relevant provision. This determination may be complex because there are at least two potential measures of the ''value'' [18] of a derivative for purposes of applying various provisions of the Act: the current market value or fair value reflecting the price at which the derivative could be expected to be liquidated; and the notional amount reflecting the contract size (number of units per contract) multiplied by the current unit price of the reference asset on which payment obligations are calculated.[19] In addition, derivatives often create exposures to multiple variables, such as the credit of a counterparty as well as to a reference asset on which the derivative is based.

The Commission or its staff, over the years, has addressed a number of issues relating to derivatives on a case-by-case basis. The Commission now seeks to take a more comprehensive and systematic approach to derivatives-related issues under the Investment Company Act. In particular, in this release the Commission discusses and seeks comment on the following issues, among others, relating to funds' use of derivatives:[20]

- The attendant costs, benefits and risks;
- The application of the Act's prohibitions and restrictions on senior securities and leverage;
- The application of the Act's prohibition on investments in securities-related issuers;
- The application of the Act's provisions concerning portfolio diversification and concentration; and
- The application of the Act's provisions governing valuation of funds' assets.

In addition to the specific issues highlighted for comment, the Commission invites members of the public to address any other matters that they believe are relevant to the use of derivatives by funds.

B. Background Concerning the Use of Derivatives by Funds

As noted above, derivatives may be broadly defined to include instruments or contracts whose value is based upon, or derived from, some reference asset. Reference assets can include, for example, stocks, bonds, commodities, currencies, interest rates, market indices, currency exchange rates, or other assets or interests, in virtually endless variety.[21]

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[11] *See* sections 5(b)(1) and 13(a)(1) of the Investment Company Act. *See also infra* discussion at Section III. (Derivatives under the Investment Company Act's Diversification Requirements).

[12] *See* sections 8(b)(1)(E) and 13(a)(3) of the Investment Company Act. *See also* Form N–1A, Item 4(a), instruction 4 to Item 9(b)(1), and Item 16(c)(1)(iv); Form N–2, Item 8.2.b (2), and Item 17.2.e. *See also infra* discussion at Section V. (Portfolio Concentration).

[13] *See* section 12(d)(3) of the Investment Company Act and rule 12d3–1 thereunder. *See also infra* discussion at Section IV. (Exposure to Securities-Related Issuers Through Derivatives).

[14] *See* section 2(a)(41) of the Investment Company Act. *See also Restricted Securities,* Investment Company Act Release No. 5847 (Oct. 21, 1969) [35 FR 19989 (Dec. 31, 1970)] (''ASR 113''), *available at http://www.sec.gov/rules/interp/1969/ic-5847.pdf; Accounting for Investment Securities by Registered Investment Companies,* Investment Company Act Release No. 6295 (Dec. 23, 1970) [35 FR 19986 (Dec. 31, 1970)] (''ASR 118''), *available at http://www.sec.gov/rules/interp/1970/ic-6295.pdf. See also infra* discussion at Section VI. (Valuation of Derivatives).

[15] *See generally* section 30(e) of the Investment Company Act.

[16] *See, e.g.,* Investment Company Act provisions relating to custody (section 17(f) and related rules), and fund names (section 35(d) and rule 35d–1). Also, an open-end fund should consider the effect that the use of derivatives may have on the liquidity of the fund's portfolio. For general guidance on liquidity and open-end funds, *see, e.g., Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145,* Investment Company Act Release No. 17452 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)], *available at http://www.sec.gov/rules/final/1990/33-6862.pdf. See also Revisions of Guidelines,* Investment Company Act Release No. 18612 (Mar. 12, 1992) [57 FR 9828 (Mar. 20, 1992)], *available at http://www.sec.gov/rules/other/1992/33-6927.pdf.*

[17] *See, e.g.,* section 8(b) of the Investment Company Act, and Items 4(a), 4(b), 9(b), 9(c), and 16(b) of Form N–1A. Certain derivatives-related disclosure issues were discussed in a 2010 staff letter to the ICI. *See Derivatives-Related Disclosures by Investment Companies,* Letter from Barry D. Miller, Associate Director, Division of Investment Management, U.S. Securities and Exchange Commission, to Karrie McMillan, General Counsel, ICI (July 30, 2010) (''2010 Staff Derivatives Disclosure Letter''), *available at http://www.sec.gov/divisions/investment/guidance/ici073010.pdf.*

[18] The Bank for International Settlements (the ''BIS'') reports gross market values (positive and negative) for open derivative contracts, which are defined as ''the sums of the absolute values of all open contracts with either positive or negative replacement values evaluated at market prices prevailing at the reporting date. Thus, the gross positive market value of a dealer's outstanding contracts is the sum of the replacement values of all contracts that are in a current gain position to the reporter at current market prices * * * The gross negative market value is the sum of the values of all contracts that have a negative value on the reporting date * * *.'' *Guide to the International Financial Statistics,* Bank for International Settlements (July 2009) (''BIS Guide'') at 31, *available at http://www.bis.org/statistics/intfinstatsguide.pdf. See also* Sarah Sharer Curley and Elizabeth Fella, *Where to Hide? How Valuation of Derivatives Haunts the Courts—Even After BAPCPA,* 83 Am. Bankr. L.J. 297, 298–99 (Spring 2009) (''In a simple interest rate swap * * * [t]he value of the swap is the net difference between the present value of the payments each party expects to receive and the present value of the payments each party expects to make. The value is generally zero to each party at the inception of the swap, and becomes positive to one party and negative to the other depending on what direction the interest rates move.''); *CFTC Glossary, Mark-to-Market Definition, available at http://www.cftc.gov/Consumer Protection/EducationCenter/CFTCGlossary/index.htm* (stating that marking to market is accomplished for a futures or option contract by ''calculating the gain or loss in each contract position resulting from changes in the price of the contracts at the end of each trading session. These amounts are added or subtracted to each account balance.'').

[19] The BIS describes ''notional amounts outstanding'' as ''a reference from which contractual payments are determined in derivatives markets.'' BIS Guide, *supra* note 18, at 30. ''Notional value'' can be defined as ''the value of a derivative's underlying assets at the spot price.'' In the case of an options or futures contract, the notional value is the number of units of an asset underlying the contract, multiplied by the spot price of the asset. *See http://www.investorwords.com/5930/notional-value.htm.* The ''spot price'' of a derivative's underlying asset is the asset's price for immediate delivery, *i.e.,* in the current market, in contrast with the asset's future or forward price. *See, e.g.,* Hull, *supra* note 3, at 789. ''Notional value'' is also defined as ''the underlying value (face value), normally expressed in U.S. dollars, of the financial instrument or commodity specified in a futures or options on futures contract.'' *See CME Group Glossary, available at http://www.cmegroup.com/education/glossary.html.* '' 'Notional principal' or 'notional amount' of a derivative contract is a hypothetical underlying quantity upon which interest rate or other payment obligations are computed.'' ISDA Online Product Descriptions and Frequently Asked Questions at *http://www.isda.org/educat/faqs.html#7. See also* Hull, *supra* note 3, at 786 (''Notional principal'' is the ''principal used to calculate payments in an interest rate swap. The principal is 'notional' because it is neither paid nor received''); Frank J. Fabbozzi, *et al., Introduction to Structured Finance,* at 27 (2006) (''[In an interest rate swap] [t]he dollar amount of the interest payments exchanged is based on some predetermined dollar principal, which is called the *notional amount.''*) (italics in original); 2010 ABA Derivatives Report, *supra* note 8, at n.11 (noting that the term ''notional amount'' is used differently by different people in different contexts, but is used, in the Report, to refer to ''the nominal or face amount that is used to calculate payments made on a particular instrument, without regard to whether its obligation under the instrument could be netted against the obligation of another party to pay the fund under the instrument.'').

[20] The Commission recognizes that there are other significant derivatives-related issues under the Investment Company Act that this release does not address, such as disclosure-related issues, which the Commission may consider at a later date.

[21] For example, the reference asset of a Standard & Poor's (''S&P'') 500 futures contract is the S&P

Continued

Derivatives are often characterized as either exchange-traded or OTC.[22] Exchange-traded derivatives—such as futures, certain options,[23] and options on futures [24]—are standardized contracts traded on regulated exchanges, such as the Chicago Mercantile Exchange and the Chicago Board Options Exchange. OTC derivatives—such as swaps,[25] non-exchange traded options, and combination products such as swaptions [26] and forward swaps [27]—are contracts negotiated and entered into outside of an organized exchange. Unlike exchange-traded derivatives, OTC derivatives may be significantly customized, and may not be guaranteed by a central clearing organization. OTC derivatives that are not centrally cleared, therefore, may involve greater counterparty credit risk, and may be more difficult to value, transfer, or liquidate than exchange-traded derivatives.[28] The Dodd-Frank Act and Commission rules thereunder seek to establish a comprehensive new regulatory framework for two broad categories of derivatives—swaps and security-based swaps—designed to reduce risk, increase transparency, and promote market integrity within the financial system.[29]

A common characteristic of most derivatives is that they involve leverage.[30] Certain derivatives investments entered into by a fund, such as futures contracts, swaps, and written options, create obligations, or potential indebtedness, to someone other than the fund's shareholders, and enable the fund to participate in gains and losses on an amount that exceeds the fund's initial investment.[31] Other derivatives entered into by a fund, such as purchased call options, provide the economic equivalent of leverage because they convey the right to a gain or loss on an amount in excess of the fund's investment but do not impose a payment obligation on the fund above its initial investment.[32]

Funds use derivatives to implement their investment strategies, and to manage risk.[33] A fund may use derivatives to gain, maintain, or reduce exposure to a market, sector, or security more quickly and/or with lower transaction costs and portfolio

500 index. 2008 IDC Report, *supra* note 3, at Appendix C at C5.

[22] *See, e.g.,* Robert W. Kolb & James A. Overdahl, *Financial Derivatives,* at 21 (2010) (''Kolb & Overdahl'').

[23] An option is the right to buy or sell an asset. There are two basic types of options, a ''call option'' and a ''put option.'' A call option gives the holder the right (but does not impose the obligation) to buy the underlying asset by a certain date for a certain price. The seller, or ''writer,'' of a call option has the obligation to sell the underlying asset to the holder if the holder exercises the option. A put option gives the holder the right (but does not impose the obligation) to sell the underlying asset by a certain date for a certain price. The seller, or ''writer'', of a put option has the obligation to buy from the holder the underlying asset if the holder exercises the option. The price that the option holder must pay to exercise the option is known as the ''exercise'' or ''strike'' price. The amount that the option holder pays to purchase an option is known as the ''option premium,'' ''price,'' ''cost,'' or ''fair value'' of the option. For a basic explanation of options, s*ee, e.g.,* Hull, *supra* note 3, at 6–8, 179–236, and Kolb & Overdahl, *supra* note 22, at 13–16.

[24] Options on futures generally trade on the same exchange as the relevant futures contract. When a call option on a futures contract is exercised, the holder acquires from the writer a long position in the underlying futures contract plus a cash amount equal to the excess of the futures price over the strike price. When a put option on a futures contract is exercised, the holder acquires a short position in the underlying futures contract plus a cash amount equal to the excess of the strike price over the futures price. *See, e.g.,* Hull, *supra* note 3, at 184, 341–54, and 782.

[25] A ''swap'' is generally an agreement between two counterparties to exchange periodic payments based upon the value or level of one or more rates, indices, assets, or interests of any kind. For example, counterparties may agree to exchange payments based on different currencies or interest rates. *See generally, e.g.,* Kolb & Overdahl, *supra* note 22, at 11–13; Hull, *supra* note 3, at 147–73. *See also* section 3(a)(69) of the Exchange Act for the definition of ''swap'' (using the definition in section 1a of the Commodity Exchange Act, 7 U.S.C. 1a (the ''CEA'')); section 3(a)(68) of the Exchange Act for the definition of ''security-based swap;'' section 721(a)(3) of the Dodd-Frank Act, *supra* note 2, for the definition of ''cleared swap;'' and section 721(a)(12) of the Dodd-Frank Act for the definition of ''foreign exchange swap.'' *See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Securities Act Release No. 9204 (Apr. 29, 2011) [76 FR 29818 (May 23, 2011)] (''Swap Definition Release''), *available at http://www.sec.gov/rules/proposed/2011/33-9204.pdf.*

[26] A ''swaption'' is an option to enter into an interest rate swap where a specified fixed rate is exchanged for a floating rate. *See, e.g.,* Hull, *supra* note 3, at 172, 658–62, 790.

[27] A forward swap (or deferred swap) is an agreement to enter into a swap at some time in the future. *See* Swap Definition Release, *supra* note 25, at n. 147. *See also, e.g.,* Hull, *supra* note 3, at 171, 779 (''deferred swap'').

[28] An OTC derivative may be more difficult to transfer or liquidate than an exchange-traded derivative because, for example, an OTC derivative may provide contractually for non-transferability without the consent of the counterparty, or may be sufficiently customized that its value is difficult to establish or its terms too narrowly drawn to attract transferees willing to accept assignment of the contract, unlike most exchange-traded derivatives.

[29] The Dodd-Frank Act, *supra* note 2, was signed into law on July 21, 2010. The Dodd-Frank Act mandates, among other things, substantial changes in the OTC derivatives markets, including new clearing, reporting, and trade execution mandates for swaps and security-based swaps, and both exchange-traded and OTC derivatives are contemplated under the new regime. *See* Dodd-Frank Act sections 723 (mandating clearing of swaps) and 763 (mandating clearing of security-based swaps). Some of these changes will require Commission action through rulemaking to become effective. *See Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps,* Exchange Act Release No. 64678 (June 15, 2011) [76 FR 36287 (June 22, 2011)], *available at http://www.sec.gov/rules/exorders/2011/34-64678.pdf.* For summaries of other recent, pending, and future Commission and staff initiatives relating to derivatives, *see, e.g., Testimony on Enhanced Oversight after the Financial Crisis: The Wall Street Reform Act at One-Year,* by Chairman Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, before the United States Senate Committee on Banking, Housing and Urban Affairs (July 21, 2011), *available at http://www.sec.gov/news/testimony/2011/ts072111mls.htm. See also, e.g., http://www.sec.gov/spotlight/dodd-frank/accomplishments.shtml#derivatives; http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml#07-12-12; http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml#08-12-11; http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml#01-06-12; http://www.sec.gov/news/press/2011/2011-137.htm; http://www.sec.gov/rules/other/2011/34-64926.pdf; and http://www.sec.gov/spotlight/dodd-frank/derivatives.shtml.*

[30] The Commission has stated that ''[l]everage exists when an investor achieves the right to a return on a capital base that exceeds the investment which he has personally contributed to the entity or instrument achieving a return.'' Release 10666, *supra* note 10, at n. 5.

[31] The leverage created by such an arrangement is sometimes referred to as ''indebtedness leverage.'' 1994 Report, *supra* note 3, at 22.

[32] This type of leverage is sometimes referred to as ''economic leverage.'' *See* 1994 Report, *supra* note 3, at 23 (''Other derivatives provide the economic equivalent of leverage because they display heightened price sensitivity to market fluctuations * * * such as changes in stock prices or interest rates. In essence, these derivatives magnify a fund's gain or loss from an investment in much the same way that incurring indebtedness does.''). The 1994 Report gives a leveraged inverse floating rate bond, with an interest rate that moves inversely to a benchmark rate, as another example of an instrument that displays economic leverage. *See also* 2010 ABA Derivatives Report, *supra* note 8, at 20–21 (discussion of ''implied'' or ''economic'' leverage''). For additional discussion of the leveraging effects of derivatives (not limited to ''economic leverage''), *see* 2010 ABA Derivatives Report, *supra* note 8, at 8–9. *See also* 2008 IDC Report, *supra* note 3, at 3 (''Market participants are able to acquire exposure (either long or short) to a large dollar amount of an asset (the notional value) with only a small down payment, enabling parties to shift risk more efficiently and with lower costs. The leverage inherent in these instruments magnifies the effect of changes in the value of the underlying asset on the initial amount of capital invested. For example, an initial 5% collateral deposit on the total value of the commodity would result in 20:1 leverage, with a potential 80% loss (or gain) of the collateral in response to a 4% movement in the market price of the underlying commodity.'').

[33] 2008 IDC Report, *supra* note 3, at 7–11. A fund may also use derivatives to hedge current portfolio exposures (for example, when a fund's portfolio is structured to reflect the fund's long-term investment strategy and its investment adviser's forecasts, interim events may cause the fund's investment adviser to seek to temporarily hedge a portion of the portfolio's broad market, sector, and/or security exposures). Industry participants believe that derivatives may also provide a more efficient hedging tool than reducing exposure by selling individual securities, offering greater liquidity, lower round-trip transaction costs, lower taxes, and reduced disruption to the portfolio's longer-term positioning. *See id.* at 11.

disruption than investing directly through the securities markets. At the same time, use of derivatives may entail risks relating, for example, to leverage, illiquidity (particularly with respect to complex OTC derivatives), and counterparty risk, among others.[34] A fund's use of derivatives presents challenges for its investment adviser and board of directors to ensure that the derivatives are employed in a manner consistent with the fund's investment objectives, policies, and restrictions, its risk profile, and relevant regulatory requirements, including those under Federal securities laws. With respect to some primary types of reference assets, funds may use derivatives for the following purposes, among others:

• *Currency derivatives.*[35] A fund may use currency derivatives to increase or decrease exposure to specific currencies, to hedge against adverse impacts on the fund's portfolio caused by currency fluctuations, and to seek additional returns. For example, currency derivatives can provide a hedge against the risk that a fund's investment in a foreign debt security will decline in value because of a decline in the value of the foreign currency in which the foreign debt security is denominated.[36] Funds also may use currency derivatives to hedge against a rise in the value of a foreign currency, or may use ''cross-currency'' hedging or ''proxy'' hedging when, for instance, it is difficult or expensive to hedge a particular currency against the U.S. dollar.[37] Apart from hedging, funds may use currency derivatives to seek returns on the basis of anticipated changes in the relative values of two currencies.[38]

• *Interest rate derivatives.*[39] A fund may use interest rate derivatives to modify its exposure to the gains or losses arising from changes in interest rates and to seek enhanced returns. For example, a fund may use an interest rate swap to hedge against the risk of a decline in the prices of bonds owned by a fund due to rising interest rates. Similarly, a fund could shorten the duration of its portfolio by selling futures contracts on U.S. Treasury bonds or notes, or Eurodollar futures. Apart from hedging, a fund might use interest rate derivatives to seek to enhance its returns based on its investment adviser's views concerning future movements in interest rates or changes in the shape of the yield curve.[40]

• *Credit Derivatives.*[41] Credit derivatives allow a fund to assume an investment position concerning the likelihood that a particular bond, or a group of bonds, will be repaid in full upon maturity. When a fund purchases credit protection, it pays a premium to a counterparty in return for which the counterparty promises to pay the fund if a bond or bonds default or experience some other adverse credit event. When a fund sells (or writes) credit protection, the fund agrees to pay a counterparty if a bond or bonds default or experience some other adverse credit event, in exchange for the receipt of a premium from the protection purchaser. A fund may purchase credit protection using credit derivatives to hedge against particular risks that are associated with a bond that it owns, such as the risk that the bond issuer will default, a rating agency will downgrade the bond or the credit of the counterparty, or the risk that credit ''spread'' will increase.[42] A fund may sell (or write) credit protection to enhance its income and return by the amount of the payment that it receives for providing such protection, or to obtain some investment exposure to the reference asset (that is, the underlying bond), without owning the bond. The Commission understands that selling protection may be more cost effective than an outright purchase of a bond.[43]

• *Equity Derivatives.*[44] Funds may use equity derivatives to enhance investment opportunities (for example, by using foreign index futures to obtain exposure to a foreign equity market). Equity derivatives also can be used by funds as an income-producing strategy by, for example, selling equity call options on a particular security owned by the fund.[45] A fund also may use equity derivatives (usually stock index futures) to ''equitize'' cash.[46]

C. Request for Comment

The Commission generally requests data and comment on the types of derivatives used by funds, the purposes for which funds use derivatives, and whether funds' use of derivatives has undergone or may be undergoing changes and, if so, the nature of such changes. The Commission specifically requests comment on the following:

• What are the costs and benefits to funds from the use of derivatives? What are the factors that influence those costs and benefits? What are the risks to funds

[34] *See, e.g.,* 2008 IDC Report, *supra* note 3, at 12–13. *See also* 2008 JPMorgan Article, *supra* note 6.

[35] *See* Swap Definition Release, *supra* note 25, at II.C.1, for a description of certain currency derivatives (foreign exchange swaps, foreign exchange forwards, foreign currency options, non-deliverable forwards, currency swaps, and cross-currency swaps). The 2010 ABA Derivatives Report, *supra* note 8 at 6–7, gives as examples of currency derivatives forward currency contracts, currency futures contracts, currency swaps, and options on currency futures contracts. As a general matter, futures, forwards, swaps, and options can all be used to increase or decrease exposures to reference currencies. A fund's investment adviser selects the particular instrument based on the level and type of exposure the adviser seeks to obtain and the costs that are associated with the particular instrument.

[36] For example, if a fund enters into a short currency forward (which obligates the fund to sell the currency at a future date, at a predetermined price, and in the currency in which the foreign debt security is denominated), the fund's exposure to a decline in the value of the currency is reduced. *See* 2010 ABA Derivatives Report, *supra* note 8, at 6.

[37] For example, a fund may use a forward contract on one foreign currency (or a basket of foreign currencies) to hedge against adverse changes in the value of another foreign currency (or basket of currencies). *See id.*

[38] *Id.* at 7.

[39] Interest rate derivatives include interest rate or bond futures, Eurodollar futures, caps, floors, overnight indexed swaps, interest rate swaps, and options on futures and swaps. *See, e.g., id. See also* Swap Definition Release, *supra* note 25, at III.B.1 (briefly describing interest and other monetary rate swaps, and discussing that when payments exchanged under a Title VII (of the Dodd-Frank Act) instrument are based solely on the levels of certain interest rates or other monetary rates that are not themselves based on securities, the instrument would be a swap but not a security-based swap).

[40] For example, if a fund's investment adviser believes that the London Interbank Offered Rate (''LIBOR'') will decrease compared to a Federal funds rate, the adviser could enter into an interest rate swap whereby the fund would be obligated to make payments based upon the application of LIBOR to an agreed notional amount in exchange for payments from the counterparty based upon the application of the Federal funds rate to the notional amount. 2010 ABA Derivatives Report, *supra* note 8, at 7.

[41] Credit derivatives include single-name and index-linked (or basket) credit default swaps. *See, e.g., id.* at 7–8. For additional description of CDS, *see* Swap Definition Release, *supra* note 25, at III.G.3.

[42] *See* 2010 ABA Derivatives Report, *supra* note 8, at 7.

[43] *See id.* at 8. The 2010 ABA Derivatives Report, *supra* note 8, at 8, also observes that ''a fund could write a CDS, offering credit protection to its counterparty. In doing so the fund gains the economic equivalent of owning the security on which it wrote the CDS, while avoiding the transaction costs that would have been associated with the purchase of the security.''

[44] Equity derivatives include equity futures contracts, options on equity futures contracts, equity options, and various kinds of equity-related swaps (such as a total return swap on an equity security). *See, e.g., id.* at 8.

[45] By selling the options, a fund can earn income (in the form of the premium received for writing the option) while at the same time permitting the fund to sell the underlying equity securities at a targeted price set by the fund's investment adviser. *See, e.g., id.*

[46] As an example of ''equitizing'' cash, the 2010 ABA Derivatives Report, *supra* note 8, at 8, states that:

[W]hen a fund has a large cash position for a short amount of time, the fund can acquire long futures contracts to retain (or gain) exposure to the relevant equity market. When the futures contracts are liquid (as is typically the case for broad market indices), the fund can eliminate the position quickly and frequently at lower costs than had the fund actually purchased the reference equity securities.

from investing in derivatives? What role does or could collateral used in derivatives transactions play in mitigating the concerns relating to the use of derivatives? Please be specific and provide data or statistics, if possible.

• Do different types of funds use different types of derivatives or use derivatives for different purposes? If so, what are the differences in the types of funds that account for the differences in their use of derivatives? For example, do BDCs use derivatives in a manner different from other funds and, if so, how and what are the differences?

• How do ETFs use derivatives? Do they use derivatives for the same purposes that other open-end funds use them? Does an ETF's use of derivatives raise unique investor protection concerns under the Investment Company Act?

II. Derivatives under the Senior Securities Restrictions of the Investment Company Act

In this section, the Commission discusses the limitations on senior securities imposed by section 18 of the Investment Company Act, summarizes related Commission and staff guidance, discusses certain alternative approaches, and highlights issues for comment.

A. Purpose, Scope, and Application of the Act's Senior Securities Limitations

1. Statutory Restrictions on Senior Securities and Related Commission Guidance

The protection of investors against the potentially adverse effects of a fund's issuance of ''senior securities'' [47] is a core purpose of the Investment Company Act.[48] Congress' concerns underlying the limitations in section 18 included, among others: (i) Potential abuse of the purchasers of senior securities; [49] (ii) excessive borrowing and the issuance of excessive amounts of senior securities by funds which increased unduly the speculative character of their junior securities; [50] and (iii) funds operating without adequate assets and reserves.[51] To address these concerns, section 18(f)(1) of the Investment Company Act prohibits an open-end fund [52] from issuing or selling any ''senior security'' other than borrowing from a bank, and unless it maintains 300% ''asset coverage.'' [53] Section 18(a)(1) of the Investment Company Act prohibits a closed-end fund [54] from issuing or selling any ''senior security that represents an indebtedness'' unless it has at least 300% ''asset coverage.'' [55]

In a 1979 General Statement of Policy (Release 10666), the Commission considered the application of section 18's restrictions on the issuance of senior securities to reverse repurchase agreements, firm commitment agreements, and standby commitment agreements.[56] The Commission concluded that such agreements, while not securities for all purposes,[57] may involve the issuance of senior securities and ''fall within the functional meaning of the term 'evidence of indebtedness' for purposes of section 18 of the Act,'' which generally would include ''all contractual obligations to pay in the future for consideration presently received.'' [58] Further, the Commission stated that ''trading practices involving the use by investment companies of such agreements for speculative purposes or to accomplish leveraging fall within the legislative purposes of Section 18.'' [59] The Commission also explained that:

> [l]everage exists when an investor achieves the right to a return on a capital base that exceeds the investment which he has personally contributed to the entity or instrument achieving a return* * *. Through a reverse repurchase agreement, an investment company can achieve a return on a very large capital base relative to its cash contribution. Therefore, the reverse repurchase agreement is a highly leveraged transaction.[60]

Leveraging of a fund's portfolio through the issuance of senior securities ''magnifies the potential for gain or loss on monies invested and, therefore, results in an increase in the speculative character of the investment company's outstanding securities.'' [61] Each of the agreements discussed by the Commission in Release 10666—the reverse repurchase agreement, the firm commitment agreement, and the standby commitment agreement—''may be a substantially higher risk investment'' than direct investment in

[47] Section 18(g) of the Investment Company Act defines ''senior security,'' in part, as ''any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness,'' and ''any stock of a class having priority over any other class as to the distribution of assets or payment of dividends.'' The definition excludes certain limited temporary borrowings.

[48] *See, e.g.,* Investment Company Act sections 1(b)(7), 1(b)(8), 18(a), and 18(f). *See also, e.g.,* 1994 Report, *supra* note 3, at 20–22.

[49] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess., pt. 1, 265–78 (1940) (''Senate Hearings''). *See also* 1994 Report, *supra* note 3, at 21 (describing the practices in the 1920s and 1930s that gave rise to section 18's limitations on leverage, and specifically discussing the potential abuse of senior security holders).

[50] *See* section 1(b)(7) of the Investment Company Act. *See also, e.g.,* Release 10666, *supra* note 10, at n. 8.

[51] *See* section 1(b)(8) of the Investment Company Act; Release 10666, *supra* note 10, at n. 8.

[52] Section 5(a)(1) of the Investment Company Act defines ''open-end company'' as ''a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.''

[53] ''Asset coverage'' of a class of securities representing indebtedness of an issuer generally is defined in section 18(h) of the Investment Company Act as ''the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer.''

[54] Section 5(a)(2) of the Investment Company Act defines ''closed-end company'' as ''any management company other than an open-end company.''

[55] Section 18(a)(1)(A). A BDC is also subject to the limitations of section 18(a)(1)(A) to the same extent as if it were a closed-end investment company except that the applicable asset coverage amount is 200%. *See* Investment Company Act section 61(a)(1).

[56] As described in Release 10666, *supra* note 10, in a typical reverse repurchase agreement, the fund transfers possession of a debt security, often to a broker-dealer or a bank, in return for a percentage of the market value of the security (''proceeds''), but retains record ownership of, and the right to receive interest and principal payments on, the security. At a stated future date, the fund repurchases the security and remits to the counterparty the proceeds plus interest. *Id.* at nn. 2–3 and accompanying text. A firm commitment agreement (also known as a ''when-issued security'' or a ''forward contract'') is a buy order for delayed delivery in which a fund agrees to purchase a debt security from a seller (usually a broker-dealer) at a stated future date, price, and fixed yield. *Id.* at text accompanying n. 12. A standby commitment agreement is a delayed delivery agreement in which a fund contractually binds itself to accept delivery of a debt security with a stated price and fixed yield upon the exercise of an option held by the counterparty to the agreement at a stated future date. *Id.* at discussion of ''Standby Commitment Agreements.''

[57] Release 10666, *supra* note 10, at ''The Agreements as Securities'' discussion. The Commission notes, however, that the Investment Company Act's definition of the term ''security'' is broader than the term's definition in other Federal securities laws. *Compare* section 2(a)(36) of the Investment Company Act with sections 2(a)(1) and 2A of the Securities Act and sections 3(a)(10) and 3A of the Exchange Act. For example, the definition of ''security'' in the Investment Company Act includes any ''evidence of indebtedness,'' which is not included in the definition of ''security'' in section 3(a)(10) of the Exchange Act. Further, the Commission has interpreted the term ''security'' in light of the policies and purposes underlying the Act. For example, the brief for the United States as Amicus Curiae in *Marine Bank* v. *Weaver,* No. 80–1562, 1980 U.S. Briefs 1562 (Oct. Term, 1980) (July 29, 1981) (''Marine Bank v. Weaver Amicus Brief'') stated that the issue of whether a particular instrument is a ''security'' depends on the context, including the statute being applied, and further stated that the Investment Company Act ''presents a significantly different context'' (*i.e.,* the regulation of the operation and management of investment companies) than the context of the Securities Act and the Exchange Act (*i.e.,* the issuance or trading of such securities). Marine Bank v. Weaver Amicus Brief at 38, 40.

[58] Release 10666, *supra* note 10, at ''The Agreements as Securities'' discussion.

[59] *Id.*

[60] *Id.* at n. 5 (citation omitted).

[61] *Id.* at text accompanying n. 5.

the underlying securities ''because of the additional risk of loss created by the substantial leveraging in each agreement, and in light of the volatility of interest rates in the marketplace.'' [62]

In Release 10666, the Commission further stated that, although reverse repurchase agreements, firm commitment agreements, and standby commitment agreements are functionally equivalent to senior securities, these and similar arrangements nonetheless could be used by funds in a manner that would not warrant application of the section 18 restrictions. The Commission noted that in circumstances involving similar economic effects, such as short sales of securities by funds, our staff had determined that the issue of section 18 compliance would not be raised if funds ''cover'' senior securities by maintaining ''segregated accounts.'' [63] The Commission stated that the use of segregated accounts ''if properly created and maintained, would limit the investment company's risk of loss.'' [64] To avail itself of the segregated account approach, a fund could establish and maintain with the fund's custodian a segregated account containing liquid assets, such as cash, U.S. government securities, or other appropriate high-grade debt obligations, equal to the indebtedness incurred by the fund in connection with the senior security (''segregated account approach'').[65] The amount of assets to be segregated with respect to reverse repurchase agreements lacking a specified repurchase price would be the value of the proceeds received plus accrued interest; for reverse repurchase agreements with a specified repurchase price, the amount of assets to be segregated would be the repurchase price; and for firm and standby commitment agreements, the amount of assets to be segregated would be the purchase price.[66] As the Commission stated in Release 10666, the segregated account functions as ''a practical limit on the amount of leverage which the investment company may undertake and on the potential increase in the speculative character of its outstanding common stock,'' and ''will assure the availability of adequate funds to meet the obligations arising from such activities.'' [67]

2. Staff No-Action Letters Concerning the Segregated Account Approach [68]

Following the Commission's issuance of Release 10666, the Commission staff issued more than twenty no-action letters to funds concerning the maintenance of segregated accounts or otherwise ''covering'' their obligations in connection with certain senior securities, primarily interest rate futures, stock index futures, and related options.[69]

In a 1987 no-action letter issued to two Dreyfus funds, the staff summarized and expanded upon the methods by which, in its view, obligations could be covered by funds transacting in futures, forwards, written options, and short sales.[70] The staff provided no-action assurance that the Dreyfus funds could:

- Cover a long position in a futures or forward contract, or a written put option, by establishing a segregated account (not with a futures commission merchant or broker) containing cash or certain liquid assets equal to the purchase price of the contract or the strike price of the put option (less any margin on deposit); and
- Cover short positions in futures or forward contracts, sales of call options, and short sales of securities by establishing a segregated account (not with a futures commission merchant or broker) with cash or certain liquid assets that, when added to the amounts deposited with a futures commission merchant or a broker as margin, equal the market value of the instruments or currency underlying the futures or forward contracts, call options, and short sales (but are not less than the strike price of the call option or the market price at which the short positions or short sales were established).[71]

The staff also provided no-action assurance that the Dreyfus funds could cover these transactions by owning, or holding the right to obtain, the instrument or cash that the fund has obligated itself to deliver. For example:

- A fund could cover a long position in a futures or forward contract by purchasing a put option on the same futures or forward contract with a strike price as high or higher than the price of the contract held by the fund; and
- A fund could cover a written put option by selling short the instruments or currency underlying the put option at the same or higher price than the strike price of the put option or, alternatively, by purchasing a put option with the strike price the same or higher than the strike price of the put option written by the fund.

The Commission staff has also discussed the types of assets that may be segregated and the manner in which, in the staff's view, segregation may be effected. In Release 10666, the Commission stated that the assets eligible to be included in segregated accounts should be ''liquid assets,'' such as cash, U.S. government securities, or

[62] *Id.* at discussion of ''The Agreements as Securities.'' The Commission also stated that, ''[t]he gains and losses from the transactions can be extremely large relative to invested capital; for this reason, each agreement has speculative aspects. Therefore, it would appear that the independent investment decisions involved in entering into such agreements, which focus on their distinct risk/return characteristics, indicate that, economically as well as legally, the agreements should be treated as securities separate from the underlying Ginnie Maes for purposes of Section 18 of the Act.'' *Id.*

[63] Release 10666, *supra* note 10, at text accompanying n. 15.

[64] *Id.* at discussion of ''Segregated Account.''

[65] The Commission stated that, under the segregated account approach, the value of the assets in the segregated account should be marked to the market daily, additional assets should be placed in the segregated account whenever the total value of the account falls below the amount of the fund's obligation, and assets in the segregated account should be deemed frozen and unavailable for sale or other disposition. *See id.* The Commission also cautioned that as the percentage of a fund's portfolio assets that are segregated increases, the fund's ability to meet current obligations, to honor requests for redemption, and to manage properly the investment portfolio in a manner consistent with stated its investment objective may become impaired. *Id.*

[66] *Id.*

[67] *Id.*

[68] This release includes extensive discussion of staff no-action letters; accordingly the Commission notes that its discussion of staff statements is provided solely for background and to facilitate comment on issues that the Commission might address. The discussion is in no way intended to suggest that the Commission has adopted the analysis, conclusions or any other portion of the staff statements discussed here. Staff no-action letters are issued by the Commission staff in response to written requests regarding the application of the Federal securities laws to proposed transactions. Many of the staff no-action letters are ''enforcement-only'' letters, in which the staff states whether it will recommend enforcement action to the Commission if the proposed transaction proceeds in accordance with the facts, circumstances and representations set forth in the requester's letter. Other staff no-action letters provide the staff's interpretation of a specific statute, rule or regulation in the context of a specific situation. *See Informal Guidance Program for Small Entities,* Investment Company Act Release No. 22587 (Mar. 27, 1997).

[69] *See* ''No-Action Letters and Releases from 1982–1985 Regarding Covering Futures and Options'' at Senior Security Bibliography, *supra* note 10. (Certain of these letters also addressed the use of when-issued bonds, currency forwards, and other senior securities).

[70] Dreyfus Strategic Investing and Dreyfus Strategic Income, SEC Staff No-Action Letter (June 22, 1987) (''Dreyfus no-action letter'' or ''Dreyfus Letter''), *available at http://www.sec.gov/divisions/investment/seniorsecurities-bibliography.htm.*

[71] *But see* Robertson Stephens Investment Trust, SEC Staff No-Action Letter (Aug. 24, 1995), *available at http://www.sec.gov/divisions/investment/seniorsecurities-bibliography.htm* (the staff agreed not to recommend enforcement action where the value of the segregated account, to cover a short position in a security, was equal to the daily (fluctuating) market price of the security sold short (less certain amounts pledged with the broker as collateral), even if the value of the segregated account was less than the price at which the short position was established).

other appropriate high grade debt obligations. In a 1996 staff no-action letter issued to Merrill Lynch Asset Management, the staff took the position that a fund could cover its derivatives-related obligations by depositing any liquid asset, including equity securities and non-investment grade debt securities, in a segregated account.[72] In the Merrill Lynch no-action letter, the staff explained that, in the staff's view, segregating any type of liquid asset would be consistent with the purposes underlying the asset segregation approach because it would place a practical limit on the amount of leverage that a fund may undertake and on the potential increase in the speculative character of its outstanding shares.[73] With respect to the manner in which segregation may be effected, the Commission staff took the position that a fund could segregate assets by designating such assets on its books, rather than establishing a segregated account at its custodian.[74]

Asset segregation practices with respect to other derivatives investments have not been addressed by the Commission, or by the staff in no-action letters.[75] Certain swaps, for example, that settle in cash on a net basis, appear to be treated by many funds as requiring segregation of an amount of assets equal to the fund's daily mark-to-market liability, if any.[76] Similarly, some funds have disclosed that they segregate only their daily, mark-to-market liability, if any, with respect to futures and forward contracts that are contractually required to cash-settle.[77]

B. Alternative Approaches to the Regulation of Portfolio Leverage

1. The Current Asset Segregation Approach

As noted above, the segregated account approach serves both to limit a fund's potential leverage and to provide a source of payment of future obligations arising from the leveraged transaction. In determining the amount of assets required to be segregated to cover a particular instrument, the Commission and its staff have generally looked to the purchase or exercise price of the contract (less margin on deposit) for long positions and the market value of the security or other asset underlying the agreement for short positions, measured by the full amount of the reference asset, *i.e.,* the notional amount of the transaction rather than the unrealized gain or loss on the transaction, *i.e.,* its current mark-to-market value.[78]

The segregated account approach has drawn criticism on several grounds. For example, we understand that some industry participants argue that the segregated account approach calls for an instrument-by-instrument assessment of the amount of cover required, further arguing that this may create uncertainty about the treatment of new products, and that new product development will inevitably lead to circumstances in which available guidance does not specifically address each new instrument subject to section 18 constraints. Other industry participants have argued that the staff's application of the segregated account approach results in differing treatment of arguably equivalent products.[79]

Others have argued that, with respect to the amount to be segregated, both notional amount and a mark-to-market amount have their limitations.[80] For example, for many futures contracts, the notional amount may, as a practical matter, exceed the maximum loss or total risk on the contract.[81] Consequently, it is argued with respect to such derivatives that segregation of assets equal to the notional amount may limit the use of such derivative products and strategies that could potentially benefit funds and their investors. Conversely, it is argued that segregation of an amount equal to only the daily, mark-to-market liability, if any, with respect to cash-settled derivatives,[82] may fail to take into account potential future losses on such instruments. Consequently, it is argued that segregation of this amount may understate the risk of loss to the fund, permit the fund to engage in excessive leveraging, fail to adequately set aside sufficient assets to cover the fund's ultimate exposure, and, therefore, perhaps not adequately fulfill the purposes underlying the segregated account approach and section 18.[83]

The significant disparity between these two widely recognized measures—notional amount and mark-to-market amount—is illustrated by data relevant to actual swap positions held by funds. A recent study of the use of credit default swaps (''CDS'') by a group of the 100 largest U.S. corporate bond funds analyzed data relevant to the notional amount and ''book value,'' *i.e.,* unrealized gains and losses, of the funds' CDS positions during the period 2004 through 2008.[84] Among the 65 funds in the sample group that used CDS sometime between 2004 and 2008, the total notional amount of CDS positions increased from an average of $103 million per fund in 2004 to an

[72] Merrill Lynch Asset Management, L.P., SEC Staff No-Action Letter (July 2, 1996) (''Merrill Lynch no-action letter'' or ''Merrill Lynch Letter''), *available at http://www.sec.gov/divisions/investment/seniorsecurities-bibliography.htm.*

[73] *Id.* The staff noted that ''the type of asset placed in the segregated account would have no effect on the maximum amount of leverage that a fund can assume.''

[74] *See* Dear Chief Financial Officer Letter from Lawrence A. Friend, Chief Accountant, Division of Investment Management (Nov. 7, 1997), *available at http://www.sec.gov/divisions/investment/seniorsecurities-bibliography.htm.*

[75] Our discussion of current and past industry practices is not intended to indicate any Commission approval or disapproval of those practices.

[76] *See, e.g.,* 2010 ABA Derivatives Report, *supra* note 8, at 13–14.

[77] For a discussion of asset segregation practices involving futures and forwards that are contractually required to cash-settle, *see, e.g., id.* at 14–15.

[78] *See* Release 10666, *supra* note 10, at discussion of ''Segregated Account'' (with regard to each reverse repurchase agreement that lacks a specified repurchase price, the fund should maintain in a segregated account ''liquid assets equal in value to the proceeds received on any sale subject to repurchase plus accrued interest. If the reverse repurchase agreement has a specified repurchase price, the investment company should maintain in the segregated account an amount equal to the repurchase price, which price will already include interest charges.'' With regard to each firm commitment agreement, the fund should maintain in a segregated account ''liquid assets equal in value to the purchase price due on the settlement date under the * * * agreement.'' With regard to each standby commitment agreement, the fund should maintain in a segregated account ''liquid assets equal in value to the purchase price under the * * * agreement.'').

[79] They argue, for example, that a physically-settled and a cash-settled future or forward are equivalent products, and that segregation of the delivery obligation amount for a physically-settled future or forward, and segregation of the generally smaller mark-to-market liability amount for a cash-settled future or forward, constitutes different treatment of equivalent products. *See* the 2010 ABA Derivatives Report, *supra* note 8, at 14–15 for a discussion of cash-settled futures and forwards and the asset segregation treatment of those products.

[80] *Id.* at 16–17.

[81] *See* BIS Guide, *supra* note 18, at 30, commenting in the context of OTC derivatives that ''[n]ominal or notional amounts outstanding provide a measure of market size and a reference from which contractual payments are determined in derivatives markets. However, with the partial exception of credit default swaps, such amounts are generally not those truly at risk. The amounts at risk in derivatives contracts are a function of the price level and/or volatility of the financial reference index used in the determination of contract payments, the duration and liquidity of contracts and the creditworthiness of counterparties.''

[82] This is also a concern with respect to the coverage of short sales.

[83] *See* 2010 ABA Derivatives Report, *supra* note 8, at 15 (''reducing the amount of assets subject to segregation increased the practical ability of funds to engage in derivatives on an increasing scale''), and at 16 (where only the mark-to-market liability, if any, is segregated, ''a fund's exposure under a derivative contract could increase significantly on an intraday basis, resulting in the segregated assets being worth less than the fund's obligations (until the fund is able to place additional assets in the segregated account * * *.). To the extent that a fund relying on the Merrill Lynch Letter segregates assets whose prices are somewhat volatile, this 'shortfall' could be magnified.'').

[84] Adam and Guettler Article, *supra* note 7.

average of $632 million in 2008. The mean total notional amount of a fund's CDS positions relative to its net asset value (''NAV'') increased from 2% to almost 14%.[85] At three funds, the notional amounts of CDS positions held in 2008 exceeded those funds' NAVs. During the same period, reported CDS book losses (*i.e.,* unrealized losses) remained, on average, less than 1% of a fund's NAV.[86]

Critics of the notional and mark-to-market standards often advocate use of a more complex analysis of the risk of a fund's investments, including its derivatives positions, such as Value at Risk (''VaR'') or another methodology for assessing the probability of portfolio losses.[87] VaR and other alternative approaches are discussed in the following section.

2. Other Approaches

The 2010 ABA Derivatives Report observed that the ''the basic framework as articulated in Release 10666 has worked very well'' as applied to funds' derivatives investments,[88] but ''there are open issues and inconsistencies in the current [Commission] and staff guidance regarding the application of Section 18 of the 1940 Act to transactions in derivatives.'' [89] Accordingly, the 2010 ABA Derivatives Report states that the Commission ''should issue revised guidance in this area, which would set forth an approach to segregation that would cover all types of derivative instruments in a comprehensive manner.'' [90] The 2010 ABA Derivatives Report, however, considers comprehensive guidance unlikely to be achievable, given that any generalized approach will likely fail to take into account significant variations in individual transactions. Consequently, in lieu of comprehensive guidance concerning the asset segregation approach, the 2010 ABA Derivatives Report proposes an alternative approach pursuant to which individual funds would establish their own asset segregation standards for derivative instruments that involve leverage within the meaning of Release 10666. Under this approach, each fund would be required to adopt policies and procedures that would include, among other things, minimum asset segregation requirements for each type of derivative instrument, taking into account relevant factors such as the specific context of the transaction. In developing these standards, fund investment advisers could take into account a variety of risk measures, including VaR and other quantitative measures of portfolio risk, and would not be limited to the notional amount or mark-to-market standards. These minimum ''Risk Adjusted Segregated Amounts'' would be reflected in policies and procedures that would be subject to approval by the fund's board of directors and disclosed (including the principles underlying the Risk Adjusted Segregated Amounts for different types of derivatives) in the fund's statement of additional information.[91]

The challenge of designing a regulatory standard by which leverage can be measured and limited effectively also has drawn the attention of regulators in jurisdictions around the globe. Internationally, limitations on leveraged exposure take a variety of forms, including maximum exposure limitations, asset segregation requirements, and other measures. In the context of maximum exposure or leverage limitations, the notional or principal amount of the reference asset underlying the derivative has commonly been used as a conservative measure of the exposure created by derivatives. In addition to limitations on aggregate positions or leveraged exposure, some regulatory frameworks include restrictions on concentrated exposures to individual counterparties and some provide for specialized funds that may assume derivatives exposure exceeding otherwise applicable limits.

The Committee of European Securities Regulators (''CESR'') (which, as of January 1, 2011, became the European Securities and Markets Authority, or ''ESMA''), conducted an extensive review and consultation concerning exposure measures for derivatives used by Undertakings for Collective Investment in Transferable Securities (''UCITS''), investment vehicles authorized for sale to retail investors. In 2010, CESR's Global Exposure Guidelines for UCITS were issued,[92] addressing implementation of the European Commission's 2009 revised UCITS Directive.[93] Under the revised UCITS Directive, UCITS are permitted to engage in derivatives investments subject to a ''global exposure'' limitation, under which the derivatives exposure of a UCITS may not exceed the total net value of the UCITS' portfolio.[94] CESR's Global Exposure Guidelines extensively address the calculation of derivatives exposure under the ''global exposure'' limit and define two permissible, alternative methods for this purpose: (i) The ''commitment'' approach; and (ii) the advanced risk measurement method to measure maximum potential loss, such as the VaR approach.[95]

The commitment approach is a method for standard derivatives that uses the market value of the equivalent position in the underlying asset but may be ''replaced by the notional value or the price of the futures contract where this is more conservative.'' [96] CESR's Global Exposure Guidelines incorporates a schedule of derivative investments and their corresponding conversion methods to be used in calculating global exposure.[97] The conversion method to be used depends on the derivative.[98]

[85] *Id.* at 12.

[86] *Id.* at 13.

[87] *See, e.g.,* 2010 ABA Derivatives Report, *supra* note 8, at 18. As discussed *infra,* some non-U.S. regulatory schemes have incorporated VaR or comparable methodologies in their approach to derivatives. *See, e.g., CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS,* Committee of European Securities Regulators (July 28, 2010) (''CESR's Global Exposure Guidelines''), *available at http://www.esma.europa.eu/popup2.php?id=7000. See also* Henry T.C. Hu, *The New Portfolio Society, SEC Mutual Fund Disclosure, and the Public Corporation Model,* 60 BUS. LAW. 1303 (2005) (advocating disclosure by funds of VaR data). We note that the Commission has permitted VaR to be used by certain registrants in other circumstances. For example, the Commission permits certain registered broker-dealers to use VaR models to compute net capital charges. *See, e.g.,* Exchange Act rule 15c3–1f.

[88] 2010 ABA Derivatives Report, *supra* note 8, at 16.

[89] *Id.* at 15.

[90] *Id.* at 17.

[91] *Id.* at 18.

[92] *See supra* note 87. In order for CESR's Global Exposure Guidelines to be binding and operational in a particular EU Member State, the Member State must adopt them. To date, it appears that a few EU Member States, *e.g.,* Ireland and Luxembourg, have adopted them.

[93] *See* Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (''2009 Directive''), *available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF.*

[94] *Id.* at Article 51(3) at 62 (''The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions'').

[95] *See* CESR's Global Exposure Guidelines, *supra* note 87. The CESR's Global Exposure Guidelines note that the ''use of a commitment approach or VaR approach or any other methodology to calculate global exposure does not exempt UCITS from the requirement to establish appropriate internal risk management measures and limits.'' *Id.* at 5. In addition, with respect to the selection of the methodology used to measure global exposure, CESR's Global Exposure Guidelines note that the ''commitment approach should not be applied to UCITS using, to a large extent and in a systematic way, financial derivative instruments as part of complex investment strategies.'' *Id.* at 6.

[96] *See id.* at 7.

[97] *See id.* at 7–12.

[98] *Id.* at 8. For example, for bond futures, the applicable conversion method is the number of contracts multiplied by the notional contract size

Continued

The second method is VaR or a comparably sophisticated risk measurement method, designed to measure the maximum potential loss due to market risk rather than leverage.[99] When using the VaR approach to calculate global exposure, either the relative VaR approach or the absolute VaR approach may be used.[100] Under the relative VaR approach, the VaR of the portfolio cannot be greater than twice the VaR of an unleveraged reference portfolio.[101] The absolute VaR approach limits the maximum VaR that a UCITS can have relative to its NAV, and as a general matter, the absolute VaR is limited to 20 percent of the UCITS NAV.[102]

In addition to the global exposure limitation, CESR's Global Exposure Guidelines subject UCITS to ''cover rules'' for investments in financial derivatives.[103] Under these cover rules, UCITS should, at any given time, be capable of meeting all its payment and delivery obligations incurred by financial derivatives' investments, and cover should form part of the UCITS' risk management process.[104] More specifically, in the case of a derivative that provides, automatically or at the counterparty's choice, for physical delivery of the underlier, the UCITS should hold: (i) the underlier in its portfolio, or, if the underlier is deemed to be sufficiently liquid, (ii) cash or other liquid assets on the condition that these other assets (after applying appropriate haircuts), held in sufficient quantities, may be used at any time to acquire the underlier that is to be delivered.[105] In the case of a derivative that provides, automatically or at the UCITSs choice, for cash settlement, the UCITS should hold enough liquid assets after appropriate haircuts to allow the UCITS to make the contractually required payments.[106]

Singapore has adopted a bifurcated approach similar to that applicable under CESR's Global Exposure Guidelines for UCITS. The Monetary Authority of Singapore (the ''MAS'') requires that the risks of derivatives used by investment companies are ''duly measured, monitored and managed on an ongoing basis.'' [107] An investment company's exposure to derivatives is limited to 100% of its NAV, and global exposure is calculated using the commitment approach as the default method. Under the commitment approach, which is similar to the commitment approach in CESR's Global Exposure Guidelines, global exposure is calculated by converting the investment company's derivatives positions into equivalent positions in the underlying assets and then is quantified as the sum of the absolute values of the individual positions.[108] The investment company's exposure to the counterparty of an OTC derivative is limited to 10% of its NAV and is measured on a maximum potential loss basis that may be incurred by the investment company if the counterparty defaults.[109] Cash or money market instruments and bonds issued by a government with a rating of AAA may be tendered as collateral to reduce counterparty exposure.[110]

Other jurisdictions have adopted approaches to investment companies' use of derivatives that limit aggregate exposure and/or require maintaining liquid assets equal to the notional or ''exercise'' value of derivatives contracts. For example, the Central Bank of Ireland, in addressing non-UCITS investment companies offered to the public generally, has issued guidelines that provide standards analogous to a 'notional amount' or commitment approach and generally limits the maximum potential exposure to 25% of the investment company's NAV.[111] Separately, the Central Bank of Ireland permits the use of techniques and instruments by investment companies for the purposes of ''efficient portfolio management,'' subject to certain conditions. These include a requirement that an investment company selling a futures contract must own the security that is the subject of the contract. Alternatively, the investment company's assets, or a proportion of its assets at least equal to the exercise value of the futures contracts sold, must reasonably be expected to behave in terms of price movement in the same manner as the futures contract.[112]

A similar approach is followed by the Canadian Securities Administrators, which permits investment companies sold to the general public to use derivatives for hedging and non-hedging purposes but limits the derivatives exposure and requires certain ''cash cover'' intended to limit leverage.[113] For

multiplied by the market price of the cheapest-to-deliver reference bond. For plain vanilla fixed/floating interest rate and inflation swaps, the applicable conversion method is the market value of the underlier (though the notional value of the fixed leg may also be applied). *Id.* For foreign exchange forwards, the prescribed conversion method is the notional value of the currency leg(s). *Id.* at 9. With respect to non-standard derivatives, where it is not possible to convert the derivative into the market value or notional value of the equivalent underlying asset, CESR's Global Exposure Guidelines note that ''an alternative approach may be used provided that the total amount of the derivatives represent a negligible portion of the UCITS portfolio.'' *Id.* at 7.

[99] *Id.* at 22 (''More particularly, the VaR approach measures the maximum potential loss at a given confidence level (probability) over a specific time period under normal market conditions.'').

[100] *Id.* at 23. A global exposure calculation using the VaR approach should consider all the positions in the UCITS' portfolio. *Id.* at 22. The VaR approach measures the probability of risk of loss rather than the amount of leverage in portfolio. *Id.* at 22. The absolute VaR of a UCITS cannot be greater than 20% of its NAV. *Id.* at 26. For both VaR approaches, the calculation must have a ''one-tailed confidence interval of 99%,'' a holding period of one month (20 business days), an observation period of risk factors of at least one year (unless a shorter observation period is justified by a significant increase in price volatility), at least quarterly updates, and at least daily calculation. *Id.* at 26. UCITS employing the VaR approach are required to conduct a ''rigorous, comprehensive and risk-adequate stress testing program.'' *Id.* at 30–34.

[101] CESR's Global Exposure Guidelines note that the relative VaR approach does not measure leverage of the UCITS' strategies but instead allows the UCITS to double the risk of loss under a given VaR model. *Id.* at 24.

[102] *Id.* at 25–26.

[103] *Id.* at 40.

[104] *Id.*

[105] *Id.*

[106] *Id.* On April 14, 2011, ESMA published a final report on the guidelines on risk measurement and the calculation of the global exposure for certain types of structured UCITS. *See Guidelines to Competent Authorities and UCITS Management Companies on Risk Measurement and the Calculation of Global Exposure for Certain Types of Structured UCITS* (final report) (Apr. 14, 2011) (ref.: ESMA/2011/112), *available at http://www.esma.europa.eu/popup2.php?id=7542* (these guidelines, which will need to be adopted and implemented by Member States, propose for certain types of structured UCITS, an optional regime for the calculation of the global exposure).

[107] The Monetary Authority of Singapore, *Code on Collective Investment Schemes,* Chapter 3, section 3.1(f) (April 2011) at 7, *available at http://www.mas.gov.sg/resource/legislation_guidelines/securities_futures/sub_legislation/110408%20Revised%20Code_8%20April_final.pdf.*

[108] MAS allows for the use of a VaR approach, with prior approval and submission of specific information on the investment company manager's risk management process. *Id.* at Appendix 1, section 3.2(b).

[109] *Id.* at Appendix 1, sections 5.2 and 5.4.

[110] *Id.* at Appendix 1, sections 5.7 and 5.8.

[111] Central Bank of Ireland, NU SERIES OF NOTICES: *Conditions Imposed in Relation to Collective Investment Schemes Other than UCITS* (July 2011) at 13.12, *available at http://www.centralbank.ie/regulation/industry-sectors/funds/non-ucits/Documents/Non%20UCITS%20Notices.pdf*

[112] *Id.* at 16.10. In addition, certain requirements are imposed on the use of OTC derivatives. *Id.* at 16.10.

[113] National Instrument 81–102 *Mutual Funds* (Jan. 2011) at sections 2.7 and 2.8, *available at http://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy8/81-102%20Mutual%20Funds%20%5BNI%5D%20Jan-1-11.pdf.* In addition, for periods when the investment company would be required to make payments under the swap, the investment company is required to hold an equivalent quantity of the reference asset of the swap, a right or obligation to acquire an equivalent quantity of the reference asset of the swap and cash cover that, together with the margin on account for the swap, have a value at least equal to the aggregate amount of the obligations of the investment company under the swap, or a combination of the positions, without recourse to other assets of the investment company,

example, an investment company may enter into a swap if, among other things, the investment company holds cash cover in an amount that, together with margin on account for the swap and the market value of the swap, is not less than the underlying market exposure of the swap.[114]

The Hong Kong Securities and Futures Commission (the ''SFC'') applies a differentiated approach, limiting investment companies generally to the use of derivatives for non-hedging positions that are capped at 15% of NAV for options and warrants and 20% for futures.[115] For investment companies that may acquire financial derivative instruments extensively for investment purposes, the investment companies' global exposure relating to the financial derivative instruments should not exceed 100% of the total net asset value of the investment companies. For purposes of calculating global exposure, investment companies must use the commitment approach. This approach requires that derivative positions be converted into the equivalent position in the underlying assets of the derivative, taking into account the prevailing value of the underlying assets, counterparty risk, futures market movements, and the time available to liquidate the positions. There are also requirements for: (a) the over-the-counter derivative counterparties (or their guarantors, if applicable) of these investment companies to be substantial financial institutions (as defined in the Code on Unit Trusts and Mutual Funds); (b) the net exposure for these investment companies to a single over-the-counter derivative counterparty to be no greater than 10% of NAV; and (c) the acceptability criteria of collateral as provided by the over-the-counter derivative counterparties.[116]

C. Request for Comment

The Commission requests comment concerning the current approach to the application of the senior securities limitations of section 18 of the Act to funds' use of derivatives. The Commission seeks views concerning the appropriateness and effectiveness of the asset segregation approach as a basis for section 18 compliance, and ways in which the approach might be improved to better serve the statutory purposes and protect investors. The Commission also seeks views concerning potential alternative approaches under which funds could capture the benefits of using derivatives that would meet these same important goals. Commenters are requested to consider these broad questions as well as the specific questions that follow:

1. Issues Concerning the Current Asset Segregation Approach

• Is the definition of leverage articulated by the Commission in Release 10666—that is, the right to a return on a capital base that exceeds a fund's investment in the instrument producing the return—sufficiently precise, and appropriate to limit the risks addressed by the senior security prohibition of section 18? Are other measures of leverage equally pertinent to, and sufficiently objective, precise, and transparent to achieve the investor protection purposes of section 18? Do funds make use of any leverage measurements as part of their own portfolio oversight procedures? Are leveraged transactions involving derivatives subject to any special approval or review procedures?

• Does the segregated account approach adequately address the investor protection purposes and concerns underlying section 18 of the Act? What are the benefits and the shortcomings of the segregated account approach? What benefits may be lost under an approach that is more restrictive than the current segregated account approach?

• Derivatives can raise risk management issues for funds, such as leverage, illiquidity (particularly with respect to complex OTC derivatives), and counterparty risk, among others.[117] The segregated account approach addresses leverage, but may not address liquidity and counterparty concerns. Should funds that use derivatives be required to consider and address these concerns? For example, should funds be required to undertake an ongoing credit analysis of their derivatives counterparties, and an ongoing analysis of the liquidity of the derivatives, and to take action should the creditworthiness of the derivatives counterparties and the liquidity of the derivatives themselves decline below a certain point? Should diversification among counterparties be a requirement? Are there other risk considerations that funds engaged in derivatives investments should be required to take into account?

• What is the optimal amount of assets that should be segregated for purposes of complying with the leverage limitations of section 18? In general, should a fund segregate assets in an amount equal to the notional amount of a derivative contract? In what situations, if any, would a lesser amount satisfy the purposes and concerns underlying section 18's leverage limitations and why? Since futures, swaps, and similar derivatives generally have zero market value at inception and subsequent mark-to-market amounts may fluctuate widely, how effectively does segregating an amount equal to the daily, mark-to-market amount serve the Act's objective of limiting leverage and assuring the availability of adequate assets to cover a fund's ultimate obligations? To what extent do funds rely upon the mark-to-market standard to determine the amount of assets to be segregated? Are CDS, or some subset thereof, generally covered based on their notional amount, their mark-to-market value, or some other measure? Does it depend on whether the CDS cash-settles or involves physical delivery of the underlier?

to enable it to satisfy its obligations under the swap. *Id.* at sections 2.7 and 2.8.

[114] *Id.* at section 2.8.

[115] Hong Kong Securities and Futures Commission, *Code on Unit Trusts and Mutual Funds* (June 2010), Chapter 7, *available at http://www.sfc.hk/sfc/doc/EN/intermediaries/products/handBooks/Eng_UT.pdf. See also* Hong Kong Securities and Futures Commission *Handbook for Unit Trusts and Mutual Funds,* Investment-Linked Assurance Schemes and Unlisted Structured Investment Products.

[116] Hong Kong Securities and Futures Commission, *Code on Unit Trusts and Mutual Funds* (June 2010), Chapter 8, *available at http://www.sfc.hk/sfc/doc/EN/intermediaries/products/handBooks/Eng_UT.pdf.*

Other requirements include a restriction on premium paid to acquire identical options exceeding 5% of the NAV of the investment company, open positions in any futures contract month or option series may not be held if the combined margin requirement represents 5% or more of the NAV of the investment company, and the investment company may not hold open positions in futures or options contracts concerning a single commodity or a single underlying financial instrument for which the combined margin requirement represents 20% or more of the NAV of the investment company. *Id.*

Futures and options investments companies are subject to still different requirements, including that at least 30% of the investment company's NAV be held on deposit in short-term debt instruments and may not be used for margin requirements and no more than 70% of the NAV of the investment company may be committed as margin for futures or option contracts and/or premium paid for options purchased. Other requirements applicable to futures and options investment companies include a restriction on premium paid to acquire options outstanding with identical characteristics exceeding 5% of the NAV of the investment company, open positions in any futures contract month or option series may not be held if the combined margin requirement represents 5% or more of the net asset value of the investment company, and the investment company may not hold open positions in futures or options contracts concerning a single commodity or a single underlying financial instrument for which the combined margin requirement represents 20% or more of the net asset value of the investment company. *Id.*

[117] *See* 2008 IDC Report, *supra* note 3, at 12–13. *See also* 2008 JPMorgan Article, *supra* note 6, at page 25.

• To what extent does the asset segregation approach cause funds to refrain from derivatives investments or strategies that could benefit investors? Please describe specific scenarios in which a fund might be deterred from engaging in derivatives activities for this reason. Does the asset segregation approach create particular impediments for certain types of funds or strategies? Please also provide any information relevant to assessing the impact upon the funds of asset segregation as contemplated by Release 10666.

• In Release 10666, the Commission stated that it believed that only liquid assets should be placed in the segregated accounts. The Commission listed cash, U.S. Government securities, or other appropriate high-grade debt obligations as examples of liquid assets that could be placed in a segregated account.[118] Subsequently, in the Merrill Lynch no-action letter, the staff took the position that ''cash or liquid securities (regardless of type)'' may be segregated for section 18 purposes. Should the Commission permit funds to segregate any liquid asset? Or should the Commission further limit the types of assets that may be placed in a segregated account? The 2010 ABA Derivatives Report has observed that the practical effect of segregating ''any liquid asset'' rather than segregating only the assets specifically noted as examples in Release 10666 ''greatly increase[s] the degree to which funds [may] * * * use derivatives.'' [119] Is segregation of ''any liquid asset'' for purposes of section 18 consistent with the purposes and concerns underlying section 18's limitations on leverage? Should any restrictions be placed on the types of liquid assets that may be used for asset cover, *e.g.,* excluding assets that replicate the fund's exposure under the covered obligation?

• What types of liquid assets are currently used by funds for asset segregation purposes? Do funds commonly include equities among the liquid assets that they segregate? If so, what types of equities?

• Is owning, or having the right to obtain, the cash or other assets that a fund obligates itself to deliver in connection with senior securities an adequate substitute for segregation of liquid assets? To what extent do funds rely on this cover approach rather than asset segregation? Are cover methods that do not involve asset segregation as effective as asset segregation in terms of limiting a fund's ability to engage in leverage, limiting a fund's risk of loss, and making sure that a fund has set aside sufficient assets to cover its obligations under derivatives and other senior securities?

• Should the Commission revise its position in Release 10666 to provide expressly for cover methods in addition to asset segregation? If so, should the Commission take the position that a fund may only enter into such non-asset segregation cover methods with the same counterparty to the senior security being covered? If so, what conditions, if any, should be imposed on such cover methods?

• The Commission also requests comment on the different treatment afforded conventional bank borrowings under section 18, which generally require 300% asset coverage, and other transactions, such as reverse repurchase agreements, that may be functionally equivalent to borrowings but, under Release 10666, may be covered by segregation of assets equal to 100% of the fund's obligations. Why, if at all, should other senior securities be treated differently from bank borrowings for purposes of the amount of cover required? Should the Commission revise its position in Release 10666 so that all borrowings and their functional equivalents are subject to the same asset segregation requirements?

2. Alternatives to the Current Asset Segregation Approach

• What alternatives to the segregated account approach, if any, should the Commission consider to fulfill the investor protection purposes of section 18 of the Act? Please identify any alternative measures that would assure adequate coverage of the fund's ongoing exposures under a derivative investment, and provide a cushion to cover future exposure.

• What benefits would be lost, and/or what costs would increase, if an alternative approach to the segregated account were to limit funds' use of derivatives?

• As discussed above, the 2010 ABA Derivatives Report recommends a more flexible approach to section 18 compliance, under which funds would specify a Risk Adjusted Segregated Amount (''RASA'') for each derivative investment used by the fund.[120] Under this recommended approach, the amount of assets to be segregated would be determined by each fund, based on the risk profiles of the derivative instruments (including issuer- and transaction-specific risk) and its assessment of risk based upon consideration of relevant risk measures, such as VaR, potentially subject to Commission guidance of a general nature.[121] What benefits would accrue to funds and investors from the ABA's RASA approach? What would be the costs of this approach? In what respects would fund-determined asset segregation policies be expected to deviate from the current segregated account approach? Would such policies be likely to incorporate VaR or other risk methodologies? Do boards, as currently constituted, have sufficient expertise to oversee an alternative approach to leverage and derivatives management such as RASA and/or VaR? If funds were permitted to determine the cover amount for their derivatives investments, should the Commission give guidance concerning minimum requirements for cover amounts or methodologies for determining cover amounts? If funds were permitted to determine the cover amount for their derivatives investments, would the result be that different funds would likely reach different determinations, resulting in different cover amounts, for the same derivatives?

• Should the Commission consider a bifurcated approach to funds' use of derivatives, similar to that set out in CESR's Global Exposure Guidelines (which provides two methodologies, the commitment approach or an advanced risk measurement method such as VaR)? If the Commission were to pursue a bifurcated approach, should funds be permitted to elect to use notional amount (or similar reference) or a quantitative risk assessment such as VaR, or should funds with different levels of derivatives activities be required to choose one or the other measure based upon their level of derivatives activities or other factors?

• If funds are permitted to choose which quantitative risk assessment approach to use, under what circumstances, if any, should they be allowed to switch to a different assessment? Should a fund's proposed change in assessment require consideration and approval of its board of directors? Should shareholder approval of a fund's proposed change in assessment be required? For what reason(s) should a fund be permitted to change assessments, if any?

• We note that bank capital standards incorporate methodologies by which the current exposure and potential future exposure created by derivative investments are calculated. The

[118] *See* Release 10666, *supra* note 10, at discussion of ''Segregated Account.''

[119] 2010 ABA Derivatives Report, *supra* note 8, at 14.

[120] 2010 ABA Derivatives Report, *supra* note 8, at 1, 17–18.

[121] *Id.* at 17.

potential future exposure calculation is based upon application of a specified multiplier, varying with the type and maturity of the derivative, to the notional amount of the investment.[122] Would a formula combining the current mark-to-market value of a fund's derivative investments with a measure of potential future exposure based upon a percentage of the notional amount of its derivative contracts provide a more robust measure of risk than the notional amount or mark-to-market value of the derivative? If so, are bank capital standards a relevant reference point for our consideration of the potential future exposure and asset segregation amount? If not, are there other preferable standards for measuring the potential future exposure of a derivative investment? How, if at all, would such an approach address the leverage concerns underlying section 18 of the Act? What would be the costs and benefits of employing an asset segregation calculation that reflects both current mark-to-market values and a potential future exposure approximation calculated by reference to notional amount? Given the purposes of section 18, should an additional cushion amount be considered in addition to current mark-to-market value and potential future exposure?

• The Commission also requests comment concerning the desirability of incorporating a VaR approach or other comparable risk measurement methodology in the segregated account approach to section 18. To what extent do funds currently employ VaR or a comparable risk measure as part of their routine portfolio oversight procedures? Would a VaR measure, potentially supplemented by stress testing and a leverage measure, provide an adequate methodology for addressing leverage risks in fund portfolios? What procedures would be required so that any VaR methodology chosen by a fund would be implemented in a way that adequately captures any additional risks associated with the use of leverage and derivatives by a fund? What other quantitative criteria might be employed in lieu of, or as a supplement to, VaR? Would adoption of VaR or a comparable risk standard require review by the Commission or Commission staff of particular risk measurement methodologies in order to establish an appropriate level of investor protection? What would be the costs and benefits of adopting a VaR standard in lieu of an asset segregation approach in addressing the treatment of derivatives under section 18?

• UCITS using VaR approaches to measure global exposure limits are required to disclose in their prospectus their expected level of leverage and the possibility of higher leverage.[123] In the event that the Commission were to accept a VaR approach in connection with funds' use of derivatives, should funds be required to disclose their expected and/or actual leverage levels?

• UCITS using VaR approaches to comply with global exposure limits are also required to maintain ''a rigorous, comprehensive and risk-adequate stress testing program.'' [124] Should a stress testing requirement be imposed upon funds that use derivatives, at least where a risk-based methodology is used to determine the required asset segregation value? What standards, if any, should the Commission establish for stress testing if such a requirement were to be imposed?

• Are there any alternative measures that would provide adequate coverage of a fund's future obligations throughout the life of a derivative instrument as well as the availability of resources to cover unanticipated price movements?

• During the recent credit crisis, did funds that used derivatives and leverage demonstrate the ability to foresee and manage the risks that manifested themselves in connection with derivatives and leverage? Are there examples during the credit crisis where funds incurred losses or experienced gains specifically attributable to their derivatives usage?

• Is it the case that most futures contracts are highly liquid, and that this facilitates rapid liquidation of a losing position, enabling funds to minimize losses? Are there futures contracts that are not highly liquid? Have there been instances where futures contracts, that may typically be considered liquid, have become less liquid, or illiquid? If so, please describe. Could there be instances in the future where derivatives that have historically been considered to be liquid become less liquid, or illiquid? If so, please describe.

3. Related Matters

• Do derivatives that create economic leverage, but that do not impose future payment obligations on funds, such as purchased options or commodity-linked notes, raise the same or similar concerns as derivatives that create indebtedness leverage? Do such derivatives present any other material concerns to funds or their investors, or raise other concerns under the Investment Company Act? If so, how should the Commission address them?

• Please comment on these, or any other, alternative approaches to the regulation of leverage under the Act. The Commission requests comment on whether any other regulatory frameworks provide relevant and useful approaches that the Commission should consider.

• Are there special considerations that need to be taken into account for smaller funds? How might taking such considerations into account impact investor protection?

III. Derivatives Under the Investment Company Act's Diversification Requirements

In this section of the release, the Commission discusses the diversification requirements of the Investment Company Act. The Commission also explores, and requests comment on, issues that arise in the course of applying those requirements to funds' use of derivatives.

A. The Diversification Requirements

Funds are required to disclose in their registration statements whether they are classified as diversified or non-diversified.[125] A fund that discloses in its registration statement that it is classified as diversified is prohibited from changing its classification to non-diversified without first obtaining shareholder approval.[126] A diversified fund is a fund that, with respect to 75% of the value of its total assets (the ''75% bucket''),[127] has (among other things) no more than 5% of the value of its total assets invested in the securities of any one issuer.[128] A non-diversified fund is

[122] *See* 12 CFR 3 at Appendix C to Part 3 (2011) (Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches).

[123] *See* CESR's Global Exposure Guidelines, *supra* note 87, at 35.

[124] *Id.* at 31.

[125] Section 8(b)(1)(A) of the Act; Form N–1A, Items 16, 4(a) and 4(b)(1); Form N–2, Item 17.

[126] Section 13(a)(1) of the Act.

[127] Rule 5b–1 under the Investment Company Act generally defines ''total assets,'' when used in computing values for purposes of sections 5 and 12 of the Act, as ''the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation.''

[128] Section 5(b)(1) of the Act. The term ''issuer'' is defined in sections 2(a) and 2(a)(22) of the Act as ''unless the context otherwise requires, * * * every person who issues or proposes to issue any security, or has outstanding any security which it has issued.'' In addition, a diversified fund, with respect to the 75% bucket, may not own more than 10% of the outstanding voting securities of any one issuer. *See* Section 5(b)(1) of the Act. A fund seeking to qualify as a ''regulated investment company'' must comply with the diversification requirements of section 851 of the IRC, even if the fund is not diversified under the Investment Company Act. The diversification requirements

Continued

any fund that does not meet these requirements.[129]

The purpose of the diversification requirements is to prevent a fund that holds itself out as diversified from being too closely tied to the success of one or a few issuers or controlling portfolio companies.[130] As one commentator has noted, the requirements are designed to ensure that investors receive a clear statement of the character of the portfolio of the fund in which they have invested,[131] and are intended to prevent any diversified fund from becoming non-diversified without the prior approval of its shareholders.[132]

For purposes of determining whether a fund is diversified or non-diversified, the value of the fund's ''total assets'' is generally determined as of the end of the fund's last preceding fiscal quarter and includes the value of derivatives held by the fund. Under the Investment Company Act's definition of ''value,'' [133] the appropriate valuation methodology to be used by a fund generally depends upon: (a) Whether market quotations for the fund's portfolio securities [134] are readily available; and (b) whether the fund owned the particular portfolio securities or other assets at the end of its last preceding fiscal quarter. Specifically, the Act states that, ''unless the context otherwise requires,'' the value of a fund's assets for purposes of the diversification requirements is as follows:

- For each portfolio security owned at the end of the fund's last preceding fiscal quarter for which market quotations are readily available, the value of the security is the market value of the security at the end of such quarter;
- For any other portfolio security or asset owned at the end of the fund's last preceding fiscal quarter, the value of the security or asset is the fair value of the security or asset at the end of such quarter, as determined in good faith by the fund's board of directors; and
- For any security or asset acquired by the fund after the last preceding fiscal quarter, the cost thereof.[135]

B. Application of the Diversification Requirements to a Fund's Use of Derivatives

A diversified fund that contemplates investing in derivatives must consider how to value these instruments for purposes of calculating the 75% bucket based upon its ''total assets'' and for purposes of calculating whether the fund has invested 5% of the value of its total assets in the securities of any one ''issuer.'' In addition, the fund must determine the identity of the issuer of each such derivative.

1. Valuation of Derivatives for Purposes of Determining a Fund's Classification as Diversified or Non-Diversified

When determining the value of a fund's total assets for purposes of determining the fund's classification as diversified or non-diversified, the fund must calculate the value of any derivative held by the fund. Under the Act, ''unless the context otherwise requires,'' derivatives (and all other assets) held by a fund must be valued for diversification purposes using market values and fair values, at the end of the fund's last preceding fiscal quarter, or, if subsequently acquired, their cost.[136]

For purposes of calculating NAV under the Act's valuation provisions, derivatives are generally valued using a ''market value'' measure for exchange-traded derivatives and a ''fair value'' measure for OTC derivatives; under either measure, the value of a derivative would appear to be the value at which the derivative could be sold or otherwise transferred at the relevant time.[137] Compliance with the valuation provisions of the Act helps to ensure, among other things, that the prices at which fund shares are purchased and redeemed are fair and do not result in dilution of shareholder interests or other harm to shareholders.[138]

The diversification requirements are designed to prevent a fund that holds itself out as diversified from having heightened exposure to one or a few issuers and help to accurately inform investors about the nature of the fund. Given that derivatives generally are designed to convey a leveraged return based on a reference asset over a period of time, their mark-to-market values at a given point do not reflect the asset base on which future gains and losses will be based or otherwise represent the potential future exposure of the fund under the derivatives investment. Use of a mark-to-market value for derivatives held by a fund could thus permit a fund to maintain an ongoing exposure to a single issuer or group of issuers in excess of 5% of the fund's assets on a notional basis, while continuing to classify itself as diversified.[139]

Should the Commission consider whether application of the diversification requirements to derivatives is a ''context [that] otherwise requires'' a different measure of value than the statutory definition of ''value?'' The value at which the derivative can be sold or otherwise transferred will reflect the gains or losses on that investment at a point in time. Would the use of the notional amount of the derivative, rather than its liquidation value, better achieve the purposes of the diversification provisions of the Act? The Commission requests comment on these issues and related questions set forth below.

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under the IRC are similar, but not identical, to the diversification requirements of the Investment Company Act. *See* 26 U.S.C. 851(b)(3)(2010).

[129] Section 5(b)(2) of the Act.

[130] Senate Hearings, *supra* note 49, at 188 (Statement of David Schenker, Chief Counsel, Investment Trust Study, SEC, commenting on a version of section 5(b)(1) that was similar, but not identical, to the current version) (''a diversified company must have at least several different securities in its portfolio, and cannot make investments which will put them in a controlling position * * *.'').

[131] *See, e.g.,* Alfred Jaretzki, Jr., *The Investment Company Act of 1940,* 26 Wash. U. L. Q. 303, 314 n. 34 (Apr. 1941) (''Jaretzki'') (the ''distinction between diversified and non-diversified companies is due in large part, it is believed, to a desire to inform stockholders of the character of the portfolio of the company in which they have invested.'')

[132] *Id.* at 316–17.

[133] ''Value'' is defined in section 2(a)(41) of the Act.

[134] Sections 2(a) and 2(a)(36) of the Act provide that, ''unless the context otherwise requires,'' the term ''security'' includes, among other things, any ''note'' or ''evidence of indebtedness.'' As discussed *supra* note 57, the definition of the term ''security'' in the Act is broader than the definitions of that term in the other Federal securities laws and the Commission has interpreted the term ''security'' in light of the policies and purposes underlying the Act. As a general matter, most derivatives appear to be notes or evidences of indebtedness and thus securities for purposes of the diversification requirements. Treating derivatives as securities for diversification classification purposes appears to be consistent with the policies and purposes underlying the diversification requirements, including the concern that funds that classify themselves as diversified indeed have diverse portfolios of investments, the performance of which is not tied too closely to the success of one or a few issuers.

[135] Sections 2(a)(41)(A)(i), (ii), and (iii) of the Act. Market value and fair value are discussed *infra* at Section VI. (Valuation of Derivatives). *See also Adoption of Rules Relating to the Classification of Management Investment Companies as either Diversified or Non-Diversified,* Investment Company Act Release No. 178 (Aug. 6, 1941) [6 FR 3966 (Aug. 8, 1941)].

[136] *See* section 2(a)(41)(A) of the Act.

[137] For additional discussion of valuation requirements and guidance, *see infra* Section VI. (Valuation of Derivatives).

[138] *Compliance Programs of Investment Companies and Investment Advisers,* Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] *available at http://www.sec.gov/rules/final/ia-2204.pdf.*

[139] For example, a fund that holds itself out as diversified may have invested four percent of its assets in securities of an issuer to which it has additional exposure through a total return swap that creates exposure equal to another four percent of its assets on a notional basis, yielding a combined exposure to the issuer of eight percent of the fund's total assets. The current mark-to-market value of the total return swap would likely be sufficiently low to enable the fund to calculate its investments in the issuer at less than five percent of its total assets, but, its total exposure to that issuer is over five percent of its total assets.

2. Identification of the Issuer of a Derivative for Purposes of Determining a Fund's Classification as Diversified or Non-Diversified

The diversification requirements restrict a fund that is classified as diversified from investing, with respect to its 75% bucket, more than 5% of the value of its total assets in the securities of any one issuer. The Act defines the term ''issuer'' as ''every person who issues or proposes to issue any security, or has outstanding any security which it has issued,'' [140] unless the context otherwise requires.[141] In general, the ''issuer'' of an OTC derivative entered into by a fund would appear to be the fund's counterparty, and the ''issuer'' of an exchange-traded derivative would appear to be the clearinghouse due to the novation.[142] However, a derivative may have a reference asset that also has an issuer, *e.g.,* a total return swap on the common stock of a corporate issuer. In such a case, the potential exposure of the fund created by the derivative is to both the counterparty to the contract and the issuer of the reference security.

C. Request for Comment

The Commission requests comment concerning the application of the Act's diversification requirements to derivatives held in fund portfolios, including the following specific issues:

• *Valuation of Derivatives for Purposes of the Diversification Requirements.* As discussed above, the diversification requirements are designed to preclude a fund that has classified itself as ''diversified'' from concentrating its portfolio investments in the securities of any single issuer. In light of this purpose, how should a derivative be valued for purposes of applying the diversification tests? Could investors be misled by a fund's disclosure that it is diversified when it has ongoing exposure to a single issuer or group of issuers in excess of 5% of the fund's assets on a notional basis? In what circumstances, if any, would mark-to-market value provide an adequate measure of a fund's exposure to an issuer such that the purposes of the diversification requirements would be fulfilled? If a current market value measure is appropriate for this purpose, should any additional safeguards be adopted to address circumstances in which a derivative's potential future exposure may materially exceed its current market value? For example, should the ''diversification'' classification be qualified or supplemented to reflect the impact on the fund's diversification of the notional exposures created by derivatives? The Commission also requests comment concerning the potential for derivatives exposures to be understated. Further, if derivatives exposures are potentially understated, how should the issue be addressed? For example, should funds be required to provide additional information to investors? Also, if mark-to-market values are ascribed to derivatives for purposes of the diversification requirements, how should negative values for derivatives be treated?

• *Alternative Diversification Standards.* Should different or additional diversification standards be developed that would better address the types of exposures attainable through derivatives?

• *Treatment of Counterparty Issues under the Diversification Requirements.* In light of the statutory purpose of preventing a fund from holding itself out as diversified even though it is dependent upon the performance of a small number of issuers, should counterparties to derivatives investments with funds be considered issuers of securities for purposes of the diversification requirements? If counterparty obligations under a derivative investment are considered securities of an issuer for purposes of the diversification requirements, how should such obligations be measured for this purpose? The 2010 ABA Derivatives Report recommends that, for purposes of determining a fund's classification as diversified or non-diversified, a fund should be able to disregard its exposures to its derivative investment counterparties and that counterparty exposures should be addressed separately under section 12(d)(3) of the Act, in part to assure that counterparty exposures would be addressed for non-diversified as well as diversified funds.[143] Would it be preferable to address counterparty exposures under section 12(d)(3)? [144] If so, should diversification issues relating to counterparties that are not securities-related issuers continue to be addressed under the Act's diversification provisions?

• *Relevance of Reference Assets Under Derivatives to Diversification Requirements.* Under the 2010 ABA Derivatives Report's suggested approach, a derivative's reference asset would be considered a security issued by an issuer for purposes of the diversification requirements, an approach that the 2010 ABA Derivatives Report indicates is already followed by many funds when calculating ''long exposures'' to the fund.[145] Should the issuer of reference assets underlying a derivative entered into by a fund be considered to be the issuer of a security for purposes of the diversification requirements in lieu of, or in addition to, the counterparty? If not, how, if at all, should exposure to the issuer of a reference asset be disclosed to investors and the potential inconsistency of such exposure with diversification categorization be addressed?

• Are there special considerations that need to be taken into account for smaller funds? How might taking such considerations into account impact investor protection?

IV. Exposure to Securities-Related Issuers Through Derivatives

Funds engaging in derivatives investments may also confront issues under the Act's restrictions upon acquisition of interests in securities-related issuers. In this section of the release, the Commission discusses the application of section 12(d)(3) and rule 12d3–1, which address a fund's exposure to securities-related issuers, to funds' use of derivatives. The Commission seeks comment on the manner in which the Act's prohibition on such acquisitions and the Commission's exemptive rule granting limited relief from that prohibition should apply in the context of derivatives.

A. Investment Company Act Limitations on Investing in Securities-Related Issuers

Under section 12(d)(3) of the Investment Company Act, funds generally may not purchase or otherwise acquire any security issued by, or any other interest in, the business of a broker, dealer, underwriter, or investment adviser (''securities-related

[140] Section 2(a)(22) of the Act.

[141] Section 2(a) of the Act.

[142] *See Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies,* Securities Act Release No. 9222 (June 9, 2011) [76 FR 34920 (June 15, 2011)] at n. 18 and accompanying text, *available at http://www.sec.gov/rules/proposed/2011/33–9222.pdf* (also describing ''novation'' as a process through which the original obligation between a buyer and seller is discharged through the substitution of the central counterparty as seller to buyer and buyer to seller, creating two new contracts).

[143] 2010 ABA Derivatives Report, *supra* note 8, at 27–28.

[144] Under section 12(d)(3) of the Investment Company Act, funds generally may not purchase or otherwise acquire any security issued by, or any other interest in, the business of a broker, dealer, underwriter, or investment adviser (''securities-related issuer''). *See infra* discussion in Section IV. (Exposure to Securities-Related Issuers Through Derivatives).

[145] 2010 ABA Derivatives Report, *supra* note 8, at 26.

issuer'').[146] There are two reasons for this prohibition. First, it limits a fund's exposure to the entrepreneurial risks of securities-related issuers, including the fund's potential inability to extricate itself from an illiquid investment in a securities-related issuer.[147] Second, it is one of several Investment Company Act provisions which, taken together, prohibit fund sponsors, which include broker-dealers, underwriters, and investment advisers, from taking advantage of the funds that they sponsor.[148] Specifically, the prohibition has the effect of limiting the possibility of abusive reciprocal practices[149] between funds and securities-related issuers.

Rule 12d3–1 under the Act provides funds with a limited exception from this prohibition. Under the rule, a fund may acquire securities of any person that (a) derives 15 percent or less of its gross revenues from ''securities related activities,''[150] as long as the fund does not control such person after the acquisition, or (b) derives more than 15 percent of its gross revenues from ''securities related activities,'' subject to limits on the percentage of the issuer's securities that may be acquired by a fund.[151] The rule does not permit a fund to acquire a general partnership interest in a securities-related issuer.[152]

B. Counterparty to a Derivatives Investment

When a fund invests in an OTC derivative, the fund receives the obligation of its counterparty to perform under the contract. If the counterparty is a securities-related issuer, a fund's acquisition of that obligation may constitute an acquisition of a security or another interest in a securities-related issuer within the scope of section 12(d)(3) of the Investment Company Act.[153] As noted above, in the case of exchange-traded derivatives that are cleared, the issuer of the derivative typically is the clearinghouse. In a no-action letter, the staff did not object to the assertion that, in acquiring an exchange-traded option, a fund generally would not appear to be acquiring securities issued by, or an interest in, a securities-related issuer.[154] In the case of OTC derivatives, if a fund's counterparty is a securities-related issuer, the fund's transaction with the counterparty may represent the acquisition of a security issued by, or an interest in, that issuer.[155]

If an OTC derivative with a securities-related issuer as the counterparty is a security issued by that counterparty, then the fund may be able to rely on rule 12d3–1 to engage in the transaction.[156] If such a derivative is not a security issued by the counterparty, but the transaction may be deemed to be the fund's acquisition of ''an interest in'' a securities-related issuer (the counterparty), then rule 12d3–1 would not be available because it exempts only acquisitions of securities, and the transaction would be prohibited under the Investment Company Act. There is no bright-line test distinguishing transactions that may or may not

[146] Section 12(d)(3) of the Act. *See also Statement of the Commission Advising All Registered Investment Companies to Divest Themselves of Interest and Securities Acquired in Contravention of the Provisions of Section 12(d)(3) of the Investment Company Act of 1940 within a Reasonable Period of Time,* Investment Company Act Release No. 3542 (Sept. 21, 1962) [27 FR 9652 (Sept. 29, 1962)] (''1962 Statement'') (stating that ''prohibited purchases or acquisitions occur not only when a security or interest is originally purchased or acquired, but also when investment companies * * * hold an interest in a portfolio company which thereafter by merger, consolidation, reorganization * * * or otherwise, acquires an interest in a dealer, broker, underwriter or investment adviser''); *Exemption for Acquisition by Registered Investment Companies of Securities Issued by Persons Engaged Directly or Indirectly in Securities Related Businesses,* Investment Company Act Release No. 13725 (Jan. 17, 1984) [49 FR 2912 (Jan. 24, 1984)] (''1984 Proposing Release'') at n.2 and accompanying text (discussing the 1962 Statement).

[147] *See* 1984 Proposing Release, *supra* note 146, at n. 7 and accompanying text (discussing that ''[i]n 1940, securities related businesses, for the most part, were organized as private partnerships. By investing in such businesses, investment companies would expose their shareholders to potential losses which were not present in other types of investments; if the business failed, the investment company as a general partner would be held accountable for the partnership's liabilities; if the business floundered, the investment company would be locked into its investment.''). Rule 12d3–1 under the Act has, since 1984, provided a limited exemption from section 12(d)(3) for acquisitions of certain securities and, until 1993, addressed the liquidity concern underlying section 12(d)(3) by limiting the equity securities of a securities-related issuer that a fund may acquire to ''margin securities,'' as defined in Regulation T of the Board of Governors of the Federal Reserve System, and generally limiting the permissible debt securities to ''investment grade securities,'' as determined by at least one nationally recognized statistical rating organization. *See, e.g.,* 1984 Proposing Release, *supra* note 146, at nn. 24–25 and accompanying text. The rule has never permitted a fund to acquire a general partnership interest in a securities-related business.

[148] *See id.* at n. 8 and accompanying text.

[149] *See, e.g., id.* at n. 9 and accompanying text (''Such reciprocal practices include the possibility that an investment company might purchase securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Similarly, the staff has expressed concern that an investment company might direct brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution.'')

[150] The rule defines ''securities related activities'' as ''activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company.''

[151] Under these limits, a fund may not acquire more than 5% of that class of the issuer's outstanding equity securities or more than 10% of the outstanding principal amount of the issuer's debt securities, and may not have more than 5% of the value of the fund's total assets invested in the securities of the issuer. Rule 12d3–1 defines ''equity security'' in accordance with rule 3a11–1 under the Exchange Act, which in turn includes ''any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.'' Rule 12d3–1 under the Act defines ''debt security'' as ''all securities other than equity securities.''

[152] Rule 12d3–1 also does not permit the acquisition of a security issued by the fund's promoter, principal underwriter, or investment adviser, or an affiliated person of the promoter, principal underwriter, or investment adviser, subject to an exception for certain subadvisory relationships.

[153] If the counterparty is not a securities-related issuer, the fund may enter into the transaction without being limited by section 12(d)(3). The fund will need to monitor the status of its counterparty during the term of the transaction to ensure that the counterparty remains a non-securities-related issuer. *See* 1962 Statement, *supra* note 146.

[154] *See, e.g.,* Institutional Equity Fund, SEC Staff No-Action Letter (Feb. 27, 1984).

[155] The Commission has stated, for example, that in entering into a repurchase agreement, a fund may be acquiring an interest in the counterparty that is prohibited by section 12(d)(3). *See, e.g., Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities,* Investment Company Act Release No. 25058 (July 5, 2001) at n. 5 and accompanying text [66 FR 36156 at note 5 (July 11, 2001)].

[156] A derivative is likely to be categorized as a debt security subject to the 10% limitation of rule 12d3–1. Rule 12d3–1 defines ''debt security'' as ''all securities other than equity securities.'' The Commission also by order has exempted certain transactions from section 12(d)(3) that may have involved a fund's acquisition of a security from a securities-related issuer. *See, e.g.,* the following orders issued by the Commission involving principal-protected funds: AIG SunAmerica Asset Management Corp., *et al.,* Investment Company Act Release Nos. 26725 (notice) (Jan. 21, 2005) [70 FR 3946 (Jan. 27, 2005)] and 26760 (Feb. 16, 2005) (order) (by virtue of entering into a protection arrangement with an AIG affiliate that is a broker, dealer, underwriter, investment adviser to a registered investment company, or an investment adviser registered under the Investment Advisers Act, a fund may be deemed to have acquired a security from the AGI affiliate); Merrill Lynch Principal Protected Trust, *et al.,* Investment Company Act Release Nos. 26164 (Aug. 20, 2003) (notice) [68 FR 51602 (Aug. 27, 2003)] and 26180 (Sept. 16, 2003) (order) (by virtue of entering into a protection arrangement with a Merrill Lynch affiliate that is a broker, dealer, underwriter, investment adviser to a registered investment company, or an investment adviser registered under the Investment Advisers Act of 1940, a fund may be deemed to have acquired a security from the Merrill Lynch affiliate).

constitute a fund's acquisition of an ''interest in'' a securities-related issuer. However, a fund's acquisition of a general partnership interest in a securities-related issuer, whether or not the interest is a security, is not permitted by rule 12d3–1.[157]

C. Exposure to Other Securities-Related Issuers Through Derivatives

The issue of whether an OTC derivative transaction is prohibited under the Investment Company Act as an impermissible acquisition of a security issued by, or an interest in, a securities-related issuer, also may require analysis of a fund's exposure to a reference asset underlying the derivative. If the derivative transaction is based upon the price or value of securities issued by, or interests in, a securities-related issuer, the fund's relationship to the issuer of the reference asset may raise both of the concerns underlying section 12(d)(3)—the fund's exposure to the risks of that securities-related issuer and the potential for reciprocal practices. For example, if the issuer of the reference asset is a broker-dealer, and the fund's position in the derivative transaction benefits from increases in the market price of the reference asset, the fund might direct brokerage or other business to that broker-dealer to enhance the broker-dealer's profitability. Consequently, the fund could be considered to have assumed an exposure to a securities-related issuer that is in violation of section 12(d)(3). In that event, the fund would need to consider the availability and conditions of rule 12d3–1 with respect to that entity before determining whether the fund may, and if so, to what extent, enter into the derivative transaction.

Certain OTC derivative transactions involve credit support providers or entities performing similar roles. These entities also may be securities-related issuers. In that case, the fund would need to determine whether the provision of credit support or similar protection for the fund's benefit in the derivative transaction constitutes the fund's acquisition of a security issued by, or an interest in, the credit support provider that is a securities-related issuer.[158] If it does, then the fund would need to analyze the derivative transaction under section 12(d)(3) with respect to the credit support provider as well.

D. Valuation of Derivatives for Purposes of Rule 12d3–1 Under the Investment Company Act

As noted above, if a derivative transaction involves an acquisition by the fund of a security issued by a securities-related issuer, the fund may be able to rely on rule 12d3–1 under the Investment Company Act, which provides a conditional exemption to the prohibition in section 12(d)(3). For purposes of the conditions of rule 12d3–1, if the securities-related issuer, in its most recent fiscal year, derived more than 15% of its gross revenues from securities-related activities, as defined in the rule, the fund would need to determine whether such derivative is an equity or debt security and apply the percentage limitations in the rule accordingly.[159] Among other things, the fund would need to determine whether, immediately after the acquisition of such derivative, the fund has invested not more than five percent of the value of its total assets in the securities of the issuer. For purposes of this calculation, the exposure of the fund to its counterparty or its exposure to the issuer of a reference security may be understated were the current market or fair value of the derivative the appropriate measure. The potential future exposure of the fund to the securities-related issuer is, in each case, likely to be unaccounted for by a current mark-to-market standard. Neither the Commission nor the staff has addressed this point. The Commission understands that many funds perform the calculation under rule 12d3–1 based upon the notional amounts of derivatives transactions, although this practice is not uniform.

E. Request for Comment

The Commission asks for comment on all aspects of the application of section 12(d)(3) and rule 12d3–1 to funds' derivative transactions.

- Do commenters believe that OTC derivative transactions between funds and securities-related issuers implicate the purposes of section 12(d)(3), *i.e.,* protection against the entrepreneurial risks of securities-related issuers and the potential for reciprocal practices that disadvantage fund investors? If so, in what respects? If not, on what basis should a fund's exposure to a securities-related issuer in a derivatives transaction be distinguished from other types of investments to which section 12(d)(3) applies?
- Do commenters believe that a fund's exposure to price movements or performance of a reference security issued by a securities-related issuer implicates the purposes of section 12(d)(3)? If not, on what basis would such exposure be distinguished from other types of investments subject to section 12(d)(3)?
- Should the extent to which the securities-related issuer's obligations are secured by collateral provided by the issuer affect this analysis? If so, what specific effect should collateral arrangements be accorded and by what criteria should qualifying collateral arrangements be defined?
- The 2010 ABA Derivatives Report suggests that section 12(d)(3) ''provides an appropriate framework for dealing with fund counterparty exposures.''[160] The 2010 ABA Derivatives Report states that the counterparties to fund derivative transactions generally fall within the categories of securities-related issuers addressed by section 12(d)(3) and that, unlike the diversification requirements discussed above, section 12(d)(3) applies to all registered investment companies, regardless of diversification status. The 2010 ABA Derivatives Report also suggests that the Commission or the staff issue guidance concerning the manner in which the various provisions of rule 12d3–1 under the Act should apply to derivatives.[161] Is rule 12d3–1 the appropriate framework for exempting certain derivatives transactions from section 12(d)(3)? Are the existing percentage limitations in rule 12d3–1 appropriate in the context of derivatives? Should there be additional limitations or conditions to an exemption from section 12(d)(3) for derivative transactions? If so, what types of conditions or limitations? The Commission also asks commenters to identify and discuss the interpretive issues that may arise when rule 12d3–1 is applied to funds' use of derivatives.

[157] In addition, section 12(d)(3) of the Act prohibits a fund's acquisition of any security issued by ''or any other interest in'' a securities-related issuer. The Commission has noted that, in enacting section 12(d)(3), Congress was particularly concerned with funds investing as general partners in securities-related issuers. *See Exemption of Acquisitions of Securities Issued by Persons Engaged in Securities-Related Business,* Investment Company Act Release No. 19204 (Jan. 4, 1993) [58 FR 3243 (Jan. 8, 1993)] at n. 10 and accompanying text. Rule 12d3–1(c) provides that ''this section does not exempt the acquisition of: (1) a general partnership interest[.]''

[158] *See* rule 12d3–1(d)(7)(v) under the Act, deeming an acquisition of demand features or guarantees as not being the acquisition of securities of a securities-related issuer provided certain conditions are met.

[159] *See supra* discussion at note 151.

[160] 2010 ABA Derivatives Report, *supra* note 8, at 33. The Report states that ''counterparty exposure'' presents ''the concern that a counterparty cannot pay a fund the amount that the fund is due under the derivative instrument * * *.'' *Id.*

[161] *Id.* at 34–35.

V. Portfolio Concentration

In this section, the Commission discusses the Investment Company Act's provisions regarding portfolio ''concentration'' and the application of these provisions to a fund's use of derivatives.

A. Investment Company Act Provisions Regarding Portfolio Concentration

Funds are required to disclose in their registration statements their policy concerning ''concentrating investments in a particular industry or group of industries.'' [162] This requirement reflects the view that such a policy is likely to be central to a fund's ability to achieve its investment objectives, and that a fund that concentrates its investments will be subject to greater risks than funds that do not follow the policy.[163] The concentration requirements also are intended to prevent funds from substantially changing the nature and character of their businesses without shareholder approval.[164] Funds are prohibited from deviating from their policy concerning ''concentration of investments in any particular industry or groups of industries'' as recited in their registration statements without obtaining shareholder approval.[165] The Investment Company Act does not include definitions of the terms ''concentration'' and ''industry or groups of industries.'' The Commission has stated generally that a fund is concentrated in a particular industry or group of industries if the fund invests or proposes to invest more than 25% of the value of its net assets in a particular industry or group of industries.[166] The Commission also has stated that, in determining industry classifications, a fund may select its own industry classifications, but such classifications must be reasonable and should not be so broad that the primary economic characteristics of the companies in a single class are materially different.[167]

B. Issues Relating to the Application of the Act's Concentration Provisions to a Fund's Use of Derivatives

When a fund enters into a derivatives transaction, the fund may gain exposure to more than one industry or group of industries. For example, if a fund and a bank enter into a total return swap on stock issued by a corporation in the pharmaceuticals industry, the fund will have gained exposure to the banking industry (*i.e.,* the industry associated with the fund's counterparty) as well as exposure to the pharmaceuticals industry (*i.e.,* the industry associated with the issuer of the reference asset). As noted above, the Commission has stated that generally a fund is concentrated in a particular industry or group of industries if the fund invests or proposes to invest more than 25% of the value of its net assets in a particular industry or group of industries. This standard does not, by its terms, address derivative transactions by which a fund obtains exposure to a particular industry or group of industries, whether through exposure to the counterparty to the transaction or through its contractual exposure to a reference asset.

Another issue relevant to determining industry concentration is whether a fund values its derivatives using notional amount or market value. The 2010 ABA Derivatives Report states that ''using the notional value, rather than the market value, of a derivative instrument may inflate an industry position relative to the fund's current economic exposure.'' [168] The 2010 ABA Derivatives Report further states that ''funds typically comply with their concentration policies by looking to the reference asset and not any counterparty to the derivative instrument. Funds typically use market values for these calculations * * *.'' [169]

C. Request for Comment

The Commission requests comment on the application of concentration requirements to funds' investments in derivatives, including the following questions.

- How do funds apply the concentration requirements to their investments in derivatives? Do they consider current market value or the notional amount of a derivative (or some other measure) for purposes of determining whether they have invested 25% or more of the value of their net assets in a particular industry or group of industries? Do funds focus solely upon the exposures to the industries with which their derivatives counterparties are associated, or do they also take into account their exposures to the industry or industries (if any) of the reference assets underlying those derivatives?
- Is it consistent with the policies and purposes underlying the concentration requirements for funds to focus on the industry of the issuer of the reference asset and disregard the exposure to the industry or industries with which the derivatives counterparty is associated? Should this depend on the level of collateral (if any) posted by the counterparty?
- Should the Commission provide guidance to funds on how they should comply with the concentration requirements when they use derivatives? If so, what should that guidance entail?
- Are there special considerations that need to be taken into consideration for smaller funds? How might taking such considerations into account impact investor protection?

VI. Valuation of Derivatives

In this section, the Commission discusses, and requests comment on, the valuation of derivatives used by funds for purposes of applying the various provisions of the Investment Company Act.

A. Investment Company Act Valuation Requirements

When calculating their NAVs, funds must determine the value of their assets, including the value of the derivatives that they hold. The Investment Company Act specifies how funds must determine the value of their assets.

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[162] *See* Section 8(b)(1)(E) of the Act; Form N–1A, Items 4, 9 (instruction 4) and 16(c)(1)(iv); and Form N–2, Items 8.2.b(2) and 17.2.e.

[163] *Registration Form Used by Open-End Management Investment Companies,* Investment Company Act Release No. 23064 (Mar. 13, 1998) (''Release 23064'') [63 FR 13916 (Mar. 23, 1998)] at nn. 98–99 and accompanying text.

[164] *See* Jaretzki, *supra* note 131, at 317. The concentration requirements focus on all of the funds' investments, and not solely on their investments in securities.

[165] Section 13(a)(3) of the Act. *See also* Securities and Exchange Commission's Brief Amicus Curiae dated March 25, 2010, *In re: Charles Schwab Corp. Securities Litigation,* Master File No. C–08–01510–WHA (N.D. Cal.) (''SEC Schwab Amicus Brief'') at 2–3; *In re: Charles Schwab Corp. Securities Litigation,* No. C 08–01510 WHA, 2010 U.S. Dist. LEXIS 32113 (N.D. Cal. Mar. 30, 2010) (''Schwab Opinion'') at *3–*4.

[166] *See also* Form N–1A, Item 9, instruction 4 (defining industry concentration for Form N–1A disclosure purposes as ''investing more than 25% of a Fund's net assets in a particular industry or group of industries''); *but compare* Form N–2, Item 8.2.b (instruction) (defining industry concentration for Form N–2 purposes as ''25 percent or more of the value of Registrant's total assets invested or proposed to be invested in a particular industry or group of industries''). *See also, e.g.,* Release No. 23064, *supra* note 163, (''The Commission's staff has taken the position for purposes of the concentration disclosure requirement that a fund investing more than 25% of its assets in an industry is concentrating in that industry.'').

[167] *See* SEC Schwab Amicus Brief, *supra* note 165, at 8 and 9. *See also* Schwab Opinion, *supra* note 165, at *20 (''This order agrees * * * that a promoter is free to define an industry in any reasonable way when it establishes a fund and assumes for sake of argument that the promoter may unilaterally, even after the fund is up and running, clarify in a reasonable way a definitional line that may otherwise be vague. But once the promoter has drawn a clear line and thereafter gathers in the savings of investors, the promoter must adhere to the stated limitation unless and until changed by a stockholder vote.'')

[168] 2010 ABA Derivatives Report, *supra* note 8, at n. 57.

[169] *Id.* at 29.

Under the Act, all funds (other than money market funds),[170] whether open-end or closed-end, must calculate their NAVs by using the market values of their portfolio securities when market quotations for those securities are ''readily available.'' [171] When market quotations for a fund's portfolio securities or other assets are not readily available, the fund must calculate its NAV by using the fair value of those securities or assets, as determined in good faith by the fund's board of directors.[172]

There is no single methodology for determining the fair value of a security or other asset because fair value depends upon the facts and circumstances of each situation.[173] As a general principle, however, the fair value of a security or other asset held by a fund would be the amount that the fund might reasonably expect to receive for the security or other asset upon its current sale.[174] When determining the fair value of a security or other asset held by a fund, all indications of value that are available must be taken into account.[175]

B. Application of the Valuation Requirements to a Fund's Use of Derivatives

For many derivatives that are securities, such as exchange-traded options, market quotations typically are readily available. As a result, a fund generally must use market values to value such derivatives. For many other derivatives, however, market quotations are not readily available, and a fund that holds such derivatives is required to value those derivatives at their fair values as determined by the fund's board of directors.

Valuation of some derivatives may present special challenges for funds. Some derivatives may have customized terms, including contractual restrictions on their transferability. Some derivatives also may restrict a fund's ability to close out the contract or to enter into an offsetting transaction. For some derivatives, there may be no quotations available from independent sources, and for some derivatives the fund's counterparty may be the only available source of pricing information.

C. Request for Comment

The Commission requests comment on funds' valuation of derivatives, including the following questions:

- How do funds determine the fair values of derivatives that they hold? To what extent do valuation determinations depend upon the type of derivative, reference asset, trading venue, and other factors?
- How do funds, when fair valuing derivatives, assess the accuracy and reliability of pricing information that is obtained from their counterparties or from other sources?
- How do funds take into account, when valuing derivatives, contractual restrictions on transferability, and restrictions on their ability to close out the transactions or to enter into offsetting transactions?
- Some derivatives held by funds may have negative values due to, among other things, changes in the value of the reference assets underlying the derivatives. Do funds calculate the values of such derivatives in the same manner as they value derivatives that have positive values? If not, why not?
- Should the Commission issue guidance on the fair valuation of derivatives under the Investment Company Act? If so, what issues should be addressed by that guidance?
- Are there special considerations that need to be taken into consideration for smaller funds? How might taking such considerations into account impact investor protection?

VII. General Request for Comment

In addition to the specific issues highlighted for comment, the Commission invites members of the public to address any other matters that they believe are relevant to the use of derivatives by funds.

Dated: August 31, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22724 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[170] Money market funds that comply with the provisions of rule 2a–7 under the Act [17 CFR 270.2a–7], however, may value their portfolio securities on the basis of amortized cost. In addition, under certain circumstances, open-end funds may value certain of their portfolio securities on the basis of amortized cost. *See Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies,* Investment Company Act Release No. 9786 (May 31, 1977) [42 FR 28999 (June 7, 1977)], *available at http://www.sec.gov/rules/interp/1977/ic-9786.pdf.*

[171] Section 2(a)(41)(B) of the Act. *See also* ASR 118 and ASR 113, *supra* note 14. ''Readily available'' refers to public market quotations that are current, *i.e.,* ''[r]eadily available market quotations refers to reports of current public quotations for securities similar in all respects to the securities in question.'' ASR 113, *supra* note 14, at 2.

[172] ASR 113, *supra* note 14.

[173] ASR 118, *supra* note 14.

[174] ASR 113 and ASR 118, *supra* note 14.

[175] ASR 118, *supra* note 14.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9546]

RIN 1545–BD04

Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9546) that were published in the **Federal Register** on Friday, August 19, 2011, on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities.

DATES: This correction is effective on September 7, 2011 and is applicable beginning October 18, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Jones, (202) 622–3980 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 142 of the Internal Revenue Code.

Need for Correction

As published August 19, 2011 (76 FR 51879), the final regulations (TD 9546) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 1.142(a)(6)–1 is amended by revising paragraph (c)(2)(v), and the first sentence of paragraph (h), *Example 9* (ii) to read as follows:

§ 1.142(a)(6)–1 Exempt facility bonds: solid waste disposal facilities.

* * * * *

(c) * * *

(2) * * *

(v) *Radioactive material.* Solid waste excludes any radioactive material subject to regulation under the Nuclear Regulatory Act (10 CFR 1.1 *et seq.*), as in effect on the issue date of the bonds.

* * * * *

(h) * * *

Example 9 * * *

(ii) The facts are the same as in paragraph (i) of this *Example 9,* except that the stripped bark represents only 55 percent by weight and volume of the materials that are transported by the conveyor belt. * * *

* * * * *

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–22738 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9546]

RIN 1545–BD04

Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9546) that were published in the **Federal Register** on Friday, August 19, 2011, on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities.

DATES: This correction is effective September 7, 2011 and is applicable beginning October 18, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Jones, (202) 622–3980 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9546) that are the subject of this correction are under section 142 of the Internal Revenue Code.

Need for Correction

As published August 19, 2001 (76 FR 51879), the final regulations (TD 9546) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9546), that are the subject of FR Doc. 2011–21154, are corrected as follows:

1. On page 51879, column 3, in the preamble, under the paragraph heading ''Explanation of Provisions'', line 11 from the bottom of the second paragraph, the language '''''that has no market or other value at the place where the property is located'''' is corrected to read ''that has no market or other value at the place where the property is located''.

2. On page 51880, column 2, in the preamble, under the paragraph heading ''Explanation of Provisions'', line 8 of the column, the language ''Regulations but recommended removing'' is corrected to read ''Regulations, but recommended removing''.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–22739 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9550]

RIN 1545–BF61

Section 6707A and the Failure To Include on Any Return or Statement Any Information Required To Be Disclosed Under Section 6011 With Respect to a Reportable Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance regarding section 6707A of the Internal Revenue Code (Code) with respect to the penalties applicable to the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. These final regulations reflect amendments under the Small Business Jobs Act of 2010 that revise the penalty calculation.

DATES: *Effective Date:* These regulations are effective on September 7, 2011.

Applicability Date: For dates of applicability, see § 301.6707A–1(f).

FOR FURTHER INFORMATION CONTACT: Spence Hanemann, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 under section 6707A of the Code. On September 11, 2008, temporary regulations (TD 9425) relating to the penalty under section 6707A for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction were published in the **Federal Register** (73 FR 52784). A notice of proposed rulemaking (REG–160868–04) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (73 FR 52805). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received from the public. This comment was considered and is available for public inspection at *http://www.regulations.gov* or upon request. Upon due consideration, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

1. 2010 Amendments to Section 6707A

On September 27, 2010, the President signed into law the Small Business Jobs Act of 2010, Public Law 111–240 (124 Stat. 2504), section 2041 of which amended section 6707A of the Code. The amendments revise the amount of the penalty to make the penalty proportionate to the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from the reportable transaction if it were respected for Federal tax purposes). The amendments also establish maximum and minimum penalty amounts. The amended penalty calculation was made retroactive to penalties assessed after December 31, 2006. To account for the change in the law, these final regulations conform to the statutory language of section 6707A, as amended. These changes are reflected in §§ 301.6707A–1(a) and 301.6707A–1(e). These final regulations follow the amended statutory language regarding

the amount of the penalty enacted in the Small Business Jobs Act of 2010, but do not give further guidance on how the amount of the penalty is computed. The Treasury Department and the IRS are aware that questions have been raised regarding the 2010 amendments to section 6707A and expect to issue regulations that will provide guidance on the computation of the amount of the penalty, as amended, at a later time. Interested persons may submit comments regarding the 2010 amendments to section 6707A relating to the computation of the penalty, including how to determine the decrease in tax shown on the return and application of the maximum penalty. For information on how to submit comments, see the section on ''Comments on Future Notice of Proposed Rulemaking'' in this preamble.

The proposed regulations included factors the Commissioner would consider and weigh in determining whether to grant a request for rescission of the section 6707A penalty associated with a nonlisted reportable transaction. Under the law in effect at the time the proposed regulations were issued, the section 6707A penalty amount was a fixed dollar amount that did not account for the tax benefit associated with the reportable transaction. The proposed regulations included consideration of whether the penalty assessed was disproportionately larger than the tax benefit received among the factors in the Commissioner's determination. Because the 2010 amendments to section 6707A provide that the penalty is a percentage of the tax benefit associated with the reportable transaction subject to maximum and minimum limitations on the penalty amounts, consideration of whether the penalty assessed is disproportionately larger than the tax benefit received for purposes of rescission was eliminated.

Also, at the time the proposed regulations were issued, the section 6707A(e) penalty for failing to disclose the requirement to pay certain penalties in certain Securities and Exchange Commission (SEC) filings was treated in the same way as the penalty for failure to disclose a listed transaction as required under section 6011. Because a penalty for failing to disclose a listed transaction is not subject to rescission, the proposed regulations stated that the section 6707A(e) penalty for failing to make a disclosure in an SEC filing also was not subject to rescission. As a result of the 2010 amendments to section 6707A, the penalty for failure to make a disclosure in an SEC filing is no longer treated exclusively like a section 6707A penalty for failure to disclose a listed transaction as required by section 6011. These final regulations adopt the rule that the section 6707A(e) penalty for failing to disclose certain penalties in SEC filings will be rescinded if the IRS rescinds in full the section 6707A penalty for failing to disclose under section 6011 the reportable transaction that underlies the section 6707A(e) penalty.

2. Clarifying Changes

The final regulations clarify where a late Form 8886 should be filed in order for the late submission to weigh in favor of rescinding the penalty for not filing the form as required by § 1.6011–4. These final regulations generally state that, if a taxpayer inadvertently fails to file a Form 8886 as required by § 1.6011–4 and, upon becoming aware of the failure, files an untimely but otherwise complete and proper Form 8886, the filing of the untimely disclosure statement will weigh in favor of rescission. Under § 1.6011–4, a taxpayer who has participated in a reportable transaction must file a disclosure statement, Form 8886, ''Reportable Transaction Disclosure Statement,'' providing detailed information about the transaction and its expected tax treatment and all potential tax benefits. The taxpayer must attach a Form 8886 to any tax return (including any amended return or application for tentative refund) that reflects participation in a reportable transaction. At the same time that the Form 8886 is first filed by the taxpayer pertaining to a particular reportable transaction, the taxpayer also must send a copy of the Form 8886 to the Office of Tax Shelter Analysis (OTSA). These final regulations generally provide that, in order to weigh in favor of rescission, an untimely disclosure statement should be filed with the office or offices where the disclosure statement should have been filed in the first instance. If the taxpayer failed to file a disclosure statement with a return (including an amended return or application for tentative refund), the taxpayer must file an amended return with the disclosure statement so that the service center can associate the untimely disclosure statement with the proper return. The amended return accompanying the untimely disclosure statement must make no amendments to the original return other than the inclusion of the untimely disclosure statement. Additionally, the taxpayer must state in the space provided for an explanation of changes on the amended return that it is filing the amended return solely because it failed to disclose a reportable transaction on its original return. An example was added to the final regulation to illustrate these rules.

A clarifying change was also made with respect to § 1.6707A–1(d)(5) relating to rescission. Reasonable cause and good faith is a factor that may weigh in favor of rescission. Part of a determination whether reasonable cause and good faith exist may depend upon whether a taxpayer reasonably believed that the Code did not require disclosure or disclosure was adequately made. To acknowledge that these are appropriate considerations, a statement was added to the regulation that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith. Otherwise, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for the penalties in determining whether to grant rescission.

In addition to the changes described in this preamble, these final regulations clarify the language of the proposed regulations in a few other ways not intended to be substantive.

3. Clarification of Section 6011 References

A commenter suggested that references to section 6011 be revised to reference either § 1.6011–4 or the other Code provisions that deal specifically with reportable transactions. In response to this comment pinpoint citations to the regulations under section 6011 were added in some examples. The language used in section 6707A refers to the general provision of section 6011 rather than to a specific regulatory section under section 6011. These regulations include language that mirrors the language used in section 6707A, but also include appropriate citations to regulations under section 6011 to add clarity to the scope of these regulations.

4. Comments on Future Notice of Proposed Rulemaking

As discussed in this preamble, interested persons may submit comments on the future Notice of Proposed Rulemaking regarding the 2010 amendments to section 6707A relating to the computation of the penalty under section 6707A. Comments should be submitted in writing and can be mailed to Office of Associate Chief Counsel (Procedure and Administration), Re: REG–103033–11, CC:PA:B02, Room 5135, 1111 Constitution Avenue, NW., Washington, DC 20224.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 these 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, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Spence Hanemann of the Office of the Associate Chief Counsel (Procedure and Administration) and Adrienne Mikolashek, formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6707A–1 is added to read as follows:

§ 301.6707A–1 Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

(a) *In general.* Any person who fails to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction may be subject to a monetary penalty. Subject to maximum and minimum limits, the penalty for failure to include information with respect to any reportable transaction is 75 percent of the decrease in tax shown on the return as a result of the transaction or the decrease that would have resulted from the transaction if it were respected for Federal tax purposes. The penalty for failure to include information with respect to a listed transaction shall not exceed $100,000 for a natural person and $200,000 for all other persons. The penalty for failure to include information with respect to any other reportable transaction shall not exceed $10,000 for a natural person and $50,000 for all other persons. The penalty with respect to any reportable transaction shall not be less than $5,000 for a natural person and $10,000 for all other persons. The section 6707A penalty is in addition to any other penalty that may be imposed.

(b) *Definitions*—(1) *Reportable transaction.* The term ''reportable transaction'' is defined in section 6707A(c)(1) of the Code and § 1.6011–4(b)(1) of this chapter.

(2) *Listed transaction.* The term ''listed transaction'' is defined in section 6707A(c)(2) of the Code and § 1.6011–4(b)(2) of this chapter.

(c) *Assessment of the penalty*—(1) *In general.* The Internal Revenue Service may assess a penalty under section 6707A with respect to each failure to disclose a reportable transaction within the time and in the form and manner provided by §§ 1.6011–4(d) and 1.6011–4(e) of this chapter or pursuant to the time, form, and manner stated in other published guidance. Section 1.6011–4(e) provides, in part, that a taxpayer must attach a disclosure statement to the taxpayer's return for each taxable year for which the taxpayer participates in a reportable transaction. A taxpayer also must attach a disclosure statement to each amended return that reflects the taxpayer's participation in a reportable transaction and, if a reportable transaction results in a loss that is carried back to a prior year, a taxpayer must attach a disclosure statement to the taxpayer's application for tentative refund or amended return for that prior year. In addition, a copy of the disclosure statement must be sent to the IRS Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. Nonetheless, a taxpayer who is required to disclose a transaction by filing Form 8886, ''Reportable Transaction Disclosure Statement,'' (or successor form) with a return (including an amended return or application for tentative refund) and who is also required to disclose the transaction by filing that form with OTSA, is subject to only a single section 6707A penalty for failure to make either one or both of those disclosures. If section 6011 and the regulations thereunder require a disclosure statement to be filed at the time that a return is filed, the disclosure statement is considered to be timely filed if it is filed at the same time as the return, even if the return is filed untimely after its due date (including extensions).

(2) *Examples.* The rules of paragraph (c)(1) of this section are illustrated by the following examples:

Example 1. Taxpayer T is required to attach a Form 8886 to its return for the 2008 taxable year and to send a copy of the Form 8886 to OTSA at the time it files its return. Taxpayer T fails to attach the Form 8886 to its return and fails to send a copy of the Form 8886 to OTSA. Taxpayer T is subject to a single penalty under section 6707A for failure to disclose because Taxpayer T failed to comply with the disclosure requirements of section 6011 as described in §§ 1.6011–4(d) and 1.6011–4(e) of this chapter. A penalty under section 6707A also would apply if Taxpayer T had failed to comply with only one of the two requirements.

Example 2. Same as *Example 1,* except that Taxpayer T also subsequently files an amended return for 2008 that reflects Taxpayer T's participation in the reportable transaction described in *Example 1.* Taxpayer T fails to attach a Form 8886 to the amended return as required by § 1.6011–4(e)(1) of this chapter. Taxpayer T is subject to an additional penalty under section 6707A for failing to disclose a reportable transaction on the amended return for 2008.

Example 3. In November 2009, Taxpayer U participates in a reportable transaction resulting in a loss. On March 15, 2010, Taxpayer U files its 2009 return, on which it reports the loss and to which it fails to attach a Form 8886. One month later, Taxpayer U files an amended return for 2008, on which it carries back the loss and to which it fails to attach a Form 8886. Section 1.6011–4(e)(1) of this chapter requires Taxpayer U to attach a Form 8886 to its amended return for the 2008 taxable year. Taxpayer U is subject to two penalties under section 6707A: one for the failure to attach Form 8886 to its amended return for 2008 and another for the failure to attach Form 8886 to its 2009 return.

Example 4. Taxpayer V participates in a nonlisted reportable transaction and is required to attach a Form 8886 to its return for the 2009 taxable year that is due on March 15, 2010. Taxpayer V timely files its return but fails to attach the Form 8886 to its return. After the due date of Taxpayer V's return and without an extension of time to file, Taxpayer V files an amended return relating to the 2009 taxable year to which Taxpayer V attaches the Form 8886. Taxpayer V is subject to a penalty under section 6707A for failure to disclose because Taxpayer V failed to comply with the disclosure requirements of section 6011 (described in § 1.6011–4(e)(1) of this chapter) by not attaching a Form 8886 to its original return for the 2009 taxable year that was timely filed on or before the due date of March 15, 2010. An additional penalty under section 6707A would apply if Taxpayer V

had failed to attach a Form 8886 to its amended return.

Example 5. Shareholder W, a shareholder in an S Corporation, receives a timely Schedule K–1, ''Shareholder's Share of Income, Deductions, Credits, *etc.,''* on April 10, 2009, and determines that she is required to attach a Form 8886 to her individual income tax return for the 2008 taxable year. Shareholder W fails to attach the Form 8886 to her 2008 individual income tax return but files a proper and complete Form 8886 with OTSA on June 12, 2009. Section 1.6011–4(e)(1) of this chapter provides that if a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K–1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K–1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). Accordingly, Shareholder W is not subject to a penalty under section 6707A for failure to disclose.

Example 6. In July 2008, Taxpayer X participates in Transaction Z, a transaction that is not reportable as of April 15, 2009, the date Taxpayer X files his individual income tax return for 2008. On July 15, 2009, Transaction Z is identified as a transaction of interest. Section 1.6011–4(e)(2)(i) of this chapter provides that if a transaction that is not otherwise a reportable transaction becomes a listed transaction or a transaction of interest after the taxpayer has filed a tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or transaction of interest, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest. Taxpayer X fails to file a Form 8886 with OTSA by October 13, 2009, 90 calendar days after the date that the transaction was identified as a transaction of interest. Accordingly, Taxpayer X is subject to a penalty under section 6707A.

Example 7. Taxpayer Y is required to attach a Form 8886 to its return for the 2008 taxable year with respect to participation in a listed transaction. Taxpayer Y attaches the Form 8886 to its timely filed return. The Form 8886, however, does not describe all of the potential tax benefits expected to result from this transaction and states that information will be provided upon request. Because the Form 8886 does not describe all of the potential tax benefits expected to result from the transaction and merely provides that the information will be provided upon request, the Form 8886 filed by Taxpayer Y is incomplete and does not satisfy the requirements set forth in § 1.6011–4(d) of this chapter. Taxpayer Y is subject to a penalty under section 6707A for failure to disclose in the appropriate manner.

(d) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707A penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction; and

(ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a taxpayer to request rescission of a section 6707A penalty with respect to a reportable transaction other than a listed transaction by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Internal Revenue Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The taxpayer, upon becoming aware that it failed, in whole or in part, to disclose a reportable transaction in accordance with the requirements of § 1.6011–4 of this chapter, filed a complete and proper, albeit untimely, Form 8886 (or successor form), as required by § 1.6011–4. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with a return (including an amended return or application for tentative refund), in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file an amended return with the appropriate Service Center and attach a complete and proper Form 8886 (or successor form) to that amended return. The amended return filed with the untimely Form 8886 (or successor form) must not reflect any other changes to the return (including an amended return or application for tentative refund) that it amends, and the taxpayer must, in the space provided for an explanation of changes on the amended return, state the reason for filing the amended return. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with OTSA, in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file a complete and proper Form 8886 (or successor form) with OTSA. If the taxpayer fails to file a complete and proper Form 8886 (or successor form) with the return (including an amended return or application for tentative refund) and also fails to file a copy of the complete and proper Form 8886 (or successor form) with OTSA, incurring one penalty for both failures, then the taxpayer must, in the manner prescribed in this paragraph (d)(3)(i), file complete and proper Forms 8886 with both the Service Center and OTSA in order for the untimely disclosures to weigh in favor of rescission. This factor will weigh heavily in favor of rescission provided that—

(A) The taxpayer files the Form 8886 prior to the date the IRS first contacts the taxpayer (including contacts by the IRS with any partnership in which the taxpayer is a partner, any S corporation in which the taxpayer is a shareholder, or any trust in which the taxpayer is a beneficiary) concerning a tax examination for the tax period in which the taxpayer participated in the reportable transaction; and

(B) Other circumstances suggest that the taxpayer did not delay filing an untimely but properly completed Form 8886 until after the IRS had taken steps to identify the taxpayer's participation in the reportable transaction in question.

(ii) The failure, in whole or in part, to disclose in accordance with the requirements of § 1.6011–4 of this chapter was due to an unintentional mistake of fact that existed despite the taxpayer's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The taxpayer has an established history of properly disclosing other reportable transactions and complying with other tax laws.

(iv) The taxpayer demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6011 arose from events beyond the taxpayer's control.

(v) The taxpayer cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a taxpayer cooperates with the IRS, the Commissioner (or the Commissioner's

delegate) will take into account whether the taxpayer meets the deadlines described in Rev. Proc. 2007–21 (2007–1 CB 613) (or successor document) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the taxpayer demonstrates that there was reasonable cause for, and the taxpayer acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6011. An important factor in determining reasonable cause and good faith is the extent of the taxpayer's efforts to ensure that persons who prepared the taxpayer's return were informed of the taxpayer's participation in the reportable transactions; this factor will be disregarded, however, if the persons who prepared the taxpayer's return were material advisors with respect to the reportable transaction. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (d)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider collectability of, or doubt as to liability for, the penalties (except that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).

(6) *Example.* The following example illustrates the rules of paragraph (d)(3) of this section:

Example. In 2008, Taxpayer Z participated in a nonlisted reportable transaction for the first time. Under § 1.6011–4(e)(1) of this chapter, he was required to attach a complete and proper Form 8886 to his 2008 return, due on April 15, 2009, and to file a copy of the Form 8886 with OTSA. Taxpayer Z timely filed his 2008 return but failed to attach a Form 8886 to his return or file a Form 8886 with OTSA. On June 1, 2009, Taxpayer Z discovered his error. On June 8, 2009, Taxpayer Z filed an amended return for tax year 2008 and attached a complete and proper Form 8886 that disclosed his participation in the reportable transaction. The amended return reflected no changes from the original return and explained that the sole purpose of the amended return was to correct Taxpayer Z's failure to file a Form 8886 with his original return. On June 8, 2009, Taxpayer Z also filed a copy of the complete and proper Form 8886 with OTSA. The IRS later notified Taxpayer Z that he was subject to a penalty under section 6707A because he failed to comply with the disclosure requirements of section 6011 by not attaching Form 8886 to his return for the 2008 taxable year. The IRS properly assessed the penalty under section 6707A and, on October 15, 2010, issued notice and demand. On November 1, 2010, in accordance with Rev. Proc. 2007–21, Taxpayer Z submitted a written request for rescission of the assessed penalty. The fact that Taxpayer Z filed an untimely Form 8886 shortly after discovery of his error but before the IRS first contacted him concerning his return for the 2008 taxable year will weigh heavily in favor of rescission.

(e) *Reports to the Securities and Exchange Commission (SEC)*—(1) *In general.* Under section 6707A(e), a taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to be consolidated with another person for purposes of these reports) must disclose in certain reports, as provided in revenue procedures or other guidance published pursuant to paragraph (e)(2) of this section, the requirement to pay each of the following penalties:

(i) The penalty imposed by section 6707A(a) for failure to disclose a listed transaction.

(ii) The accuracy-related penalty imposed by section 6662A(a) at the 30-percent rate determined under section 6662A(c) for a reportable transaction understatement with respect to which the relevant facts affecting the tax treatment of the reportable transaction were not adequately disclosed in accordance with regulations prescribed under section 6011.

(iii) The accuracy-related penalty imposed by section 6662(a) at the 40-percent rate determined under section 6662(h) for a gross valuation misstatement, if the taxpayer (but for the exclusionary rule of section 6662A(e)(2)(C)(ii)) would have been subject to the accuracy-related penalty under section 6662A(a) at the 30-percent rate determined under section 6662A(c).

(iv) The penalty described in paragraph (e)(3) of this section for failure to disclose in periodic reports filed with the SEC the requirement to pay any of the penalties described in paragraphs (e)(1)(i) through (e)(1)(iii) or paragraph (e)(3) of this section.

(2) *Manner and content of disclosure.* The Secretary may, by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin, prescribe the manner in which the disclosure under paragraph (e)(1) of this section must be made, including identification of the specific SEC form and section thereof in which the taxpayer must make the disclosure as well as specification of the timing and contents of the disclosure.

(3) *Penalty for failure to disclose in SEC filings.* Any taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to file consolidated reports with another person) may be subject to a penalty under section 6707A(b) for each failure to disclose the requirement to pay a penalty identified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The taxpayer also may be subject to an additional penalty under section 6707A(b) for each failure to disclose a penalty arising under this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The penalty provided by this paragraph (e)(3) will be rescinded if the IRS rescinds in full the penalty for failing to disclose under section 6011 the reportable transaction underlying the penalty provided by this section. Otherwise, the penalty provided by this paragraph (e)(3) is not subject to rescission.

(f) *Effective/applicability date.* (1) The rules of this section apply to disclosure statements that are due after September 11, 2008.

(2) The penalty calculations set forth in paragraph (a) of this section apply to penalties assessed after December 31, 2006.

§ 301.6707A–1T [Removed]

■ **Par. 3.** Section 301.6707A–1T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 19, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–22853 Filed 9–1–11; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–USCG–2010–1063]

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for annual firework displays in the Captain of the Port, Puget Sound area of responsibility on September 10, 2011 for the Mukilteo Lighthouse Festival in Possession Sound, WA and on December 3, 2011 for Chimes and Lights in Port Orchard, WA. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced from 5 p.m. on September 10, 2011 through 1 a.m. on September 11, 2011 and from 5 p.m. on December 3, 2011 through 1 a.m. on December 4, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail ENS Anthony P. LaBoy, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6323, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones established for Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility in 33 CFR 165.1332 during the dates and times noted below.

The following safety zone will be enforced from 5 p.m. on September 10, 2011 through 1 a.m. on September 11, 2011:

Event name	Location	Latitude	Longitude	Radius
Mukilteo Lighthouse Festival	Possession Sound	47°56.9′ N	122°18.6′ W	300

The following safety zone will be enforced from 5 p.m. on December 3, 2011 through 1 a.m. on December 4, 2011:

Event name	Location	Latitude	Longitude	Radius
Chimes and Lights	Port Orchard	47°32.75′ N	122°38.033′ W	300

All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1332 and 5 U.S.C. 552(a). In addition to this notice, the Coast Guard will provide the maritime community with extensive advanced notification of the safety zones via the Local Notice to Mariners and marine information broadcasts on the day of the events.

Dated: August 18, 2011.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–22769 Filed 9–6–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0690]

RIN 1625–AA00

Safety Zone; Corporate Party on Hornblower Yacht, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters near pier 48 in the San Francisco Bay, San Francisco, California in support of the Corporate Party on Hornblower Yacht. This temporary safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 11 a.m. through 9 p.m. on September 17, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0690 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2011–0690 in the Docket ID box, pressing Enter, and then clicking the item in the Docket ID column. 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 Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or e-mail at *D11-PF-MarineEvents@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 it would be impracticable to delay this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during 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**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Basis and Purpose

Hornblower Cruises and Events will sponsor the Corporate Party on Hornblower Yacht on September 17, 2011, in the navigable waters near pier 48 of the San Francisco Bay, off of San Francisco, CA. This safety zone establishes a temporary restricted area on the waters 100 feet around the fireworks barge during the loading of the barge and transit of the barge to the launch site. During the fireworks display the safety zone will extend to 1,000 feet around the launch site. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks barge during the loading, transit, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

From 11 a.m. until 4 p.m. on September 17, 2011, pyrotechnics will be loaded onto a barge at Pier 50 near position 37°46′28″ N, 122°23′06″ W (NAD 83). From 7:45 until 7:55 p.m. the loaded barge will transit from Pier 50 to the launch site located at position 37°46′38.46″ N, 122°23′01.67″ W (NAD 83). The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50 to position 37°46′38.46″ N, 122°23′01.67″ W (NAD 83). The fireworks display will occur from 8:45 until 8:55 p.m. on September 17, 2011, during which the safety zone will extend 1,000 feet from the nearest point of the barge at position 37°46′38.46″ N, 122°23′01.67″ W (NAD 83). At 9 p.m. on September 17, 2011 the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance from the fireworks display to ensure the safety of participants, spectators, and transiting vessels.

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 and executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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 may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 temporary § 165–T11–438 to read as follows:

§ 165–T11–438 Safety zone; corporate party on Hornblower yacht, San Francisco, CA.

(a) *Location.* This temporary safety zone is established for the specified waters near pier 48, in San Francisco Bay, San Francisco, California. The temporary safety zone applies to the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50, San Francisco, California to the fireworks launch site located at position 37°46′38.46″ N, 122°23′01.67″ W (NAD 83). From 11 a.m. until 4 p.m. on September 17, 2011, pyrotechnics will be loaded onto a barge at Pier 50 near position 37°46′28″ N, 122°23′06″ W (NAD 83). From 7:45 p.m. until 7:55 p.m., the loaded barge will transit from Pier 50 to the launch site located at position 37°46′38.46″ N, 122°23′01.67″ W (NAD 83). The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50 to position 37°46′38.46″ N, 122°23′01.67″ W (NAD 83). From 8:45 p.m. until 8:55 p.m. on September 17, 2011, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must

contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 11 a.m. through 9 p.m. on September 17, 2011.

Dated: August 19, 2011.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2011–22773 Filed 9–6–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0271; FRL: 8882–4]

Lipase, Triacylglycerol; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of lipase, triacylglycerol (CAS Reg. No. 9001–62–1) when used as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum level in the end-use concentration of 500 parts per million (ppm). Novozymes North America, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of lipase, triacylglycerol.

DATES: This regulation is effective September 7, 2011. Objections and requests for hearings must be received on or before November 7, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0271 All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0271 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 7, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0271, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of February 25, 2011 (76 FR 1058) (FRL–8863–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 0E7697) by Novozymes North America, Inc., P.O. Box 576, 77

Perry Chapel Church Road, Franklinton, NC 27525. The petition requested that 40 CFR 180.950 be amended by establishing an exemption from the requirement of a tolerance for residues of lipase, triacylglycerol (CAS Reg. No. 9001–62–(1), Hereafter referred to as triacylglycerol lipase, when used as an inert ingredient as an aid in the removal of lipids in antimicrobial pesticide formulations applied to food contact surfaces. That notice referenced a summary of the petition prepared by Novozymes North America, Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the exemption requested by establishing an exemption from the requirement under 40 CFR 180.940(a) with a limitation of triacylglycerol lipase of 500 ppm in final pesticide formulations. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document ''PC Code 908800: Lipase, triacylglycerol lipase (CAS Reg. No. 9001–62–1); Human Health Risk Assessment and Ecological Effects Assessment to the Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations'' in docket ID number EPA–HQ–OPP–2010–0271.

III. Inert Ingredient Definition

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

IV. Aggregate Risk Assessment and Determination of Safety

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

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

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

A. Toxicological Profile

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

The toxicology database is adequate to support the use of triacylglycerol lipase as a component of food contact sanitizing solutions. Triacylglycerol lipases are a class of lipase enzymes that catalyze the hydrolysis of fatty acid ester bonds in the triacylglycerol molecule in aqueous solutions. Like other enzymes, triacylglycerol lipase is a protein that acts as a catalyst to increase the rate of chemical reactions and is produced by all living cells.

The acute toxicity studies of triacylglycerol lipase show low toxicity. The test material is not acutely toxic by the oral or inhalation routes. It is also not a dermal irritant, eye irritant or dermal sensitizer.

Triacylglycerol lipase was also not toxic in short-term studies. In a 2 week study, Sprague-Dawley rats were dosed once daily by gavage at dose levels of 0, 0.2, 2 or 10 grams kilogram day (g/kg/day) and in a second 13 week study, Sprague-Dawley rats were administered the same test material at dose levels of 0, 0.2, 1 and 5 g/kg/day. There were no treatment related clinical signs, nor any toxicity seen in either study.

In a 2-generation reproductive toxicity study in Sprague-Dawley rats, triacylglycerol lipase was administered orally to 5 treatment groups of rats. Each group contained 24 males and 24 females and received diets containing 0, 0.5, 1.5 or 5.0% of the test material by weight in the diet (equivalent to 0, 500, 1,500 or 5,000 milligrams kilogram body weight day (mg/kg/bw/day). There were no effects of treatment with the test material on either F_0 or F_1 fertility, general reproductive performance and systemic toxicity at exposure levels of up to 5,000 mg/kg/bw/day. No treatment related effects were observed on the developmental parameters evaluated in this study at doses up to and including 5,000 mg/kg/day.

As with other proteins, inhalation exposure to lipases may lead to potential respiratory (Type 1) allergy.

Specific information on the studies received and the nature of the adverse effects caused by triacylglycerol lipase as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''PC Code 908800: Lipase, triacylglycerol (CAS Reg. No. 9001–62–1); Human Health Risk Assessment and Ecological Effects Assessment to the Support Proposed Exemption from the Requirement of a Tolerance When Used

as an Inert Ingredient in Pesticide Formulations,'' p. 7 in docket ID number EPA–HQ–OPP–2010–0271.

B. Toxicological Points of Departure/ Levels of Concern

Triacylglycerol lipase is not toxic by the oral or dermal routes. No toxicity endpoint of concern was identified in the available toxicity studies. There were also no adverse effects observed in acute toxicity studies and short-term toxicity studies at doses up to 10 kg/ day. No toxicity was observed in a 2-generation reproductive toxicity study in rats at doses up to 5% (equivalent to 5,000 mg/kg/bw/day). A quantitative risk assessment for the dietary and residential exposure from the oral and dermal routes is not necessary since no endpoint of concern was identified in the available database. Inhalation exposure to enzymes, including triacylglycerol lipase, may lead to potential respiratory (Type 1) allergy.

C. Exposure Assessment

Lipases are necessary for lipid metabolism and are found in almost all living organisms, as well as being regularly consumed in foods. As with other enzymes, lipases are common in fresh and processed foods and are consumed by humans every day.

No hazard endpoint of concern was identified for the acute and chronic dietary assessment (food and drinking water), or for the short, intermediate, and long term dermal residential assessments, therefore, acute and chronic dietary and short-, intermediate-, and long-term dermal residential exposure assessments were not performed.

Residential (dermal and inhalation) exposures to triacylglycerol lipase from home uses, such as components of laundry detergents and food contact surface sanitizing solutions, are also possible. The limitation of 500 ppm for tricylglycerol lipase in final pesticide formulations will result in exposures several orders of magnitude at or below 1 nanogram per cubic meter (ng/m^3), the common level at which allergic symptoms have not been observed.

D. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

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

E. Safety Factor for Infants and Children

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

No developmental toxicity studies are available in the database. However, there were no adverse effects in a 2-generation reproductive toxicity study in rats at doses up to 5% (equivalent to 5,000 mg/kg/bw/day). Also no systemic toxicity was observed at doses up to 10 g/kg/day in a 2-week, sub-acute oral toxicity study in rats and no systemic toxicity observed at 5 g/kg/day in a 13-week oral toxicity study in rats. No systemic toxicity was observed in laboratory animals at high doses, indicating relatively low hazard potential. There was no evidence of clinical signs of neurotoxicity; therefore, developmental neurotoxicity study is not required. In addition, no evidence of immunotoxicity was seen in the database; therefore, an immunotoxicity study is not required. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity. Based on this information, there is no concern at this time for increased sensitivity to infants and children to triacylglycerol lipase when used as an inert ingredient in pesticide formulations and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

F. Aggregate Risks and Determination of Safety

Given the lack of concern for hazard posed by triacylglycerol lipase, EPA concludes that there are no dietary or aggregate dietary/non-dietary risks of concern as a result of exposure to triacylglycerol lipase in food and water or from residential exposure. Residues of concern are not anticipated for dietary exposure (food and drinking water) or for residential exposure (dermal) from the use of triacylglycerol lipase as an inert ingredient in pesticide products. As discussed in this unit, EPA expects aggregate exposure to triacylglycerol lipase to pose no appreciable dietary risk given that the data show a lack of systemic toxicity at doses up to 5,000 mg/kg/day and a lack of any apparent developmental effects. Inhalation exposure to enzymes, including triacylglycerol lipase, may lead to potential respiratory (Type 1) allergy. Although there is no well-defined threshold for the induction of sensitization to the potential allergic effects from exposure to enzymes such as triacylglycerol lipase, allergic symptoms have not been observed when inhalation exposure levels are at or below 1 ng/m^3. A limitation of 500 ppm of triacylglycerol lipase in final pesticide formulations will result in exposures several orders of magnitude below 1 ng/m^3. This limitation will ensure that inhalation exposures to triacylglycerol lipase will be below the threshold for adverse respiratory effects and is protective of any potential respiratory allergy concerns.

Taking into consideration all available information on triacylglycerol lipase at a maximum of 500 ppm in final pesticide formulations, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to triacylglycerol lipase under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.940(a) for residues of triacylglycerol lipase when used as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum level in the end-use concentration of 500 ppm is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of triacylglycerol lipase in or on any food commodities. EPA is establishing a limitation on the amount of triacylglycerol lipase that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution for which the final end use concentration of triacylglcyerol lipase in antimicrobial, food contact surface sanitizing solutions would exceed 500 ppm.

B. International Residue Limits

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

The Codex has not established a MRL for triacylglycerol lipase.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for residues of lipase, triacylglycerol (CAS Reg. No 9001–62–1) when used as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum level in the end-use concentration of 500 ppm.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 26, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.940(a), the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
Lipase, triacylglycerol	9001–62–1	When ready for use, the end-use concentration is not to exceed 500 ppm.
* * *	*	* * *

* * * * *

[FR Doc. 2011–22844 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0054; FRL–8887–4]

Chromobacterium subtsugae Strain PRAA4–1^T; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Chromobacterium subtsugae* strain PRAA4–1^T in or on all food commodities when applied as an insecticide or miticide and used in accordance with good agricultural practices. Marrone Bio Innovations, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Chromobacterium subtsugae* strain PRAA4–1^T under the FFDCA.

DATES: This regulation is effective September 7, 2011. Objections and requests for hearings must be received on or before November 7, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0054. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8920; *e-mail address: kausch.jeannine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0054 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 7, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0054, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 10, 2010 (75 FR 11171) (FRL–8810–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7674) by Marrone Bio Innovations, Inc., 2121 Second Street, Suite B–107, Davis, CA 95618. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Chromobacterium subtsugae* strain PRAA4–1^T. This notice referenced a summary of the petition prepared by the petitioner, Marrone Bio Innovations, Inc., which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' Additionally, section 408(b)(2)(D) of FFDCA requires that the EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview of Chromobacterium subtsugae Strain PRAA4–1^T

Chromobacterium subtsugae strain PRAA4–1^T is a naturally occurring, gram-negative, violet-pigmented bacterium that was isolated from soil under an eastern hemlock (*Tsuga canadensis*) in the Catoctin Mountain region of central Maryland. The United States Department of Agriculture found this isolate of *Chromobacterium subtsugae* to be orally toxic to Colorado potato beetle (*Leptinotarsa decemlineata*) larvae, small hive beetle (*Aethina tumida*) larvae, southern corn rootworm (*Diabrotica undecimpunctata*) larvae and adults, and southern green stink bug (*Nezara viridula*) adults. Additional testing has shown that *Chromobacterium subtsugae* strain PRAA4–1^T-treated diet resulted in reduced feeding in beet armyworm (*Spodoptera exigua*), cabbage looper (*Trichoplusia ni*), tobacco budworm (*Heliothis virescens*), diamondback moth (*Plutella xylostella*), and southern corn rootworm, suggesting this microbe's insecticidal activity is due to reduction in weight or inhibition of feeding. In light of the demonstrated insecticidal and miticidal capabilities of *Chromobacterium subtsugae* strain PRAA4–1^T, Marrone Bio Innovations, Inc. has proposed to register pesticide products that could be applied to agricultural and greenhouse crops, including vegetables, fruit, flowers, bedding plants, ornamentals, and turf, to control certain insect and mite pests.

B. Microbial Pesticide Toxicology Data Requirements

All mammalian toxicology data requirements supporting the request for an exemption from the requirement of a tolerance for residues of *Chromobacterium subtsugae* strain PRAA4–1^T in or on all food commodities have been fulfilled with data submitted by the petitioner or data waiver requests that have been granted by EPA. The toxicity tests (acute oral, dermal, and inhalation toxicity) and irritation tests (acute eye and primary dermal irritation), which addressed potential routes of exposure to the active ingredient, were all classified in Toxicity Category IV (see 40 CFR 156.62). Moreover, an acute injection toxicity/pathogenicity test indicated that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic, infective, and/or pathogenic via the intravenous route of exposure, a worst-case scenario whereby the skin is bypassed as a barrier. Finally, *Chromobacterium subtsugae* strain PRAA4–1^T is not recognized as a dermal sensitizer, and the petitioner has reported that no hypersensitivity incidents occurred during development and testing of this bacterium. The overall conclusions from all toxicological information submitted by the petitioner are described below, while more in-depth synopses of the study results can be found in the associated Biopesticides Registration Action Document provided as a reference in Unit IX. (Ref. 1).

1. *Acute oral toxicity—rat (Harmonized Guideline 870.1100; Master Record Identification Number (MRID No.) 479450–03*). An acceptable acute oral toxicity study demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic to female rats when dosed at 5,000 milligrams per kilogram (mg/kg). The median lethal dose (LD_{50}) (*i.e.,* a statistically derived single dose that can be expected to cause death in 50% of test animals) was greater than 5,000 mg/kg (Toxicity Category IV).

2. *Acute oral toxicity/pathogenicity (Harmonized Guideline 885.3050; MRID No. 479450–23*). Upon consideration of results of other definitive toxicological data submitted by the petitioner, EPA waived acute oral toxicity/pathogenicity testing for *Chromobacterium subtsugae* strain PRAA4–1^T. An acute oral toxicity study conducted on rats (MRID No. 479450–03) demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic (LD_{50} greater than 5,000 mg/kg; Toxicity Category IV), while an acute injection toxicity/pathogenicity study conducted on rats (MRID No. 479450–11) showed that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic, infective, and/or pathogenic when the skin was bypassed as a barrier. EPA believes these data, when taken together, clearly

indicate that this bacterium would not be toxic, infective, and/or pathogenic through the oral route of exposure and that further testing is not necessary.

3. *Acute inhalation toxicity—rat (Harmonized Guideline 870.1300; MRID No. 479450–05*). An acceptable acute inhalation toxicity study demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic to male and female rats when exposed to 2.12 milligrams per liter (mg/L). The median lethal concentration (LC_{50}) (*i.e.,* a statistically derived concentration of a substance that can be expected to cause death in 50% of test animals) was greater than 2.12 mg/L (Toxicity Category IV).

4. *Acute pulmonary toxicity/pathogenicity (Harmonized Guideline 885.3150; MRID No. 479450–23).* Upon consideration of results of other definitive toxicological data submitted by the petitioner, EPA waived acute pulmonary toxicity/pathogenicity testing for *Chromobacterium subtsugae* strain PRAA4–1^T. An acute inhalation toxicity study conducted on rats (MRID No. 479450–05) demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic (LC_{50} greater than 2.12 mg/L; Toxicity Category IV), while an acute injection toxicity/pathogenicity study conducted on rats (MRID No. 479450–11) showed that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic, infective, and/or pathogenic when the skin was bypassed as a barrier. EPA believes these data, when taken together, clearly indicate that this bacterium would not be toxic, infective, and/or pathogenic through the inhalation route of exposure and that further testing is not necessary.

5. *Acute injection toxicity/pathogenicity (intravenous)—rat (Harmonized Guideline 885.3200; MRID No. 479450–11).* An acceptable acute injection toxicity and pathogenicity (intravenous) demonstrated that Chromobacterium subtsugae strain PRAA4–1^T was not toxic, infective, and/or pathogenic to rats when dosed intravenously at 3.1×10^6 colony-forming units per animal.

6. *Acute dermal toxicity—rat (Harmonized Guideline 870.1200; MRID No. 479450–04).* An acceptable acute dermal toxicity study demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was not toxic to rats when dosed at 5,050 mg/kg. The LD_{50} was greater than 5,050 mg/kg (Toxicity Category IV).

7. *Acute eye irritation—rabbit (Harmonized Guideline 870.2400; MRID No. 479450–06).* An acceptable acute eye irritation study demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was minimally irritating to the eyes of rabbits (irritation symptoms cleared by 24 hours; Toxicity Category IV).

8. *Primary dermal irritation—rabbit (Harmonized Guideline 870.2500; MRID No. 479450–07).* An acceptable primary dermal irritation study demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was slightly irritating to the skin of rabbits (irritation symptoms cleared by 24 hours; Toxicity Category IV).

9. *Dermal sensitization—guinea pig (Harmonized Guideline 870.2600; MRID No. 479450–08).* An acceptable dermal sensitization study demonstrated that *Chromobacterium subtsugae* strain PRAA4–1^T was not a dermal sensitizer to guinea pigs.

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Dietary exposure to this microbial pesticide may occur (more likely through food than drinking water); however, the lack of acute oral toxicity, as exhibited in a toxicology test on rats, and the rationales justifying the waiver of acute oral toxicity/pathogenicity testing (see Unit III.B.), support the establishment of a tolerance exemption for residues of *Chromobacterium subtsugae* strain PRAA4–1^T.

1. *Food exposure.* Any exposure to this naturally occurring soil bacterium is anticipated to be negligible. Although *Chromobacterium subtsugae* strain PRAA4–1^T may be applied directly to food, it is not expected to persist or accumulate in any reservoirs on plants or food commodities (the phyllosphere) because, as a soil microorganism, it is best adapted to more favorable conditions underground. Rather, after application, it likely will degrade due to predation by other biological organisms (*e.g.,* protists) and exposure to particular environmental factors (*e.g.,* sunlight and varying temperatures) (Refs. 2 and 3). Should this microbial pesticide be present on food, the acute oral toxicity and pathogenicity data/information demonstrated no toxicity, infectivity and/or pathogenicity is likely to occur with any exposure level of *Chromobacterium subtsugae* strain PRAA4–1^T (see additional discussion in Unit III.B.).

2. *Drinking water exposure.* Exposure of humans to residues of *Chromobacterium subtsugae* strain PRAA4–1^T in consumed drinking water is unlikely. The proposed use patterns for *Chromobacterium subtsugae* strain PRAA4–1^T do not include direct application to aquatic environments, thereby limiting contact with surface water. Furthermore, ground water is not expected to have significant exposure to *Chromobacterium subtsugae* strain PRAA4–1^T since, like other microorganisms, this bacterium would likely be filtered out by the particulate nature of many soil types (Refs. 4, 5, and 6) and is not known to survive in water or deep soil. If *Chromobacterium subtsugae* strain PRAA4–1^T were to be transferred to surface or ground waters that are intended for eventual human consumption (*e.g.,* through spray drift or runoff) and directed to wastewater treatment systems or drinking water facilities, it likely would not survive the conditions water is subjected to in such systems or facilities, including high temperatures, chlorination, pH adjustments, and/or filtration (Refs. 7 and 8). In the remote likelihood that this microbial pesticide is present in drinking water (*e.g.,* in water not subject to treatment systems or facilities), the acute oral toxicity and pathogenicity data/information demonstrated no toxicity, infectivity and/or pathogenicity is likely to occur with any exposure level of *Chromobacterium subtsugae* strain PRAA4–1^T (see additional discussion in Unit III.B.).

B. Other Non-Occupational Exposure

Dermal and inhalation non-occupational exposure to *Chromobacterium subtsugae* strain PRAA4–1^T is not expected as all proposed pesticide applications will take place in distinct agricultural settings. Even if dermal and inhalation non-occupational exposures were to occur, such exposures would not exceed EPA's level of concern given testing that indicated that *Chromobacterium subtsugae* strain PRAA4–1^T is not toxic (acute inhalation and dermal toxicity), is only slightly irritating (primary dermal irritation), is not a sensitizer (dermal sensitization), and is not pathogenic or infective (acute injection toxicity/pathogenicity) (see additional discussion in Unit III.B.).

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a

tolerance exemption, EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA has not found *Chromobacterium subtsugae* strain PRAA4–1^T to share a common mechanism of toxicity with any other substances, and *Chromobacterium subtsugae* strain PRAA4–1^T does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that *Chromobacterium subtsugae* strain PRAA4–1^T does not have a common mechanism of toxicity with other substances. Following from this, therefore, EPA concludes that there are no cumulative effects associated with *Chromobacterium subtsugae* strain PRAA4–1^T that need to be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on the acute toxicity and pathogenicity data/information discussed in Unit III.B., EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Chromobacterium subtsugae* strain PRAA4–1^T. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the data (*e.g.,* lack of toxicity noted for oral, dermal, and inhalation routes of exposure) available on *Chromobacterium subtsugae* strain PRAA4–1^T do not demonstrate toxic, pathogenic, and/or infective potential to sensitive populations from exposure to this microbial pest control agent. Thus, there are no threshold effects of concern and, as a result, an additional margin of safety is not necessary.

VII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

The Codex has not established a MRL for *Chromobacterium subtsugae* strain PRAA4–1^T.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Chromobacterium subtsugae* strain PRAA4–1^T. Therefore, an exemption from the requirement of a tolerance is established for residues of *Chromobacterium subtsugae* strain PRAA4–1^T in or on all food commodities when applied as an insecticide or miticide and used in accordance with good agricultural practices.

IX. References

1. U.S. EPA. 2011. *Chromobacterium subtsugae* strain PRAA4–1^T Biopesticides Registration Action Document dated July 2011 (available as ''Supporting & Related Material'' within docket ID number EPA–HQ–OPP–2010–0058 at *http://www.regulations.gov*).
2. U.S. EPA. 1996. Microbial Pesticide Test Guidelines—Background for Residue Analysis of Microbial Pest Control Agents (OPPTS 885.2000). Available from *http://www.epa.gov/ocspp/pubs/frs/publications/Test_Guidelines/series885.htm.*
3. Lindow SE, Brandl MT. 2003. Microbiology of the phyllosphere. *Applied and Environmental Microbiology* 69:1875–1883.
4. Pang L, McLeod M, Aislabie J, Šimůnek J, Close M, Hector R. 2008. Modeling transport of microbes in ten undisturbed soils under effluent irrigation. *Vadose Zone Journal* 7:97–111.
5. Aislabie J, Smith JJ, Fraser R, McLeod M. 2001. Leaching of bacterial indicators of faecal contamination through four New Zealand soils. *Australian Journal of Soil Research* 39:1397–1406.
6. DeFelice K, Wollenhaupt N, Buchholz D. 1993. Aquifers and Soil Filter Effect. Available from *http://extension.missouri.edu/p/WQ24.*
7. U.S. EPA. 2004. Primer for Municipal Wastewater Treatment Systems. EPA 832–R–04–001. Available from *http://www.epa.gov/npdes/pubs/primer.pdf.*
8. Centers for Disease Control and Prevention. 2009. Drinking Water—Water Treatment. Available from *http://www.cdc.gov/healthywater/drinking/public/water_treatment.html.*

X. Statutory and Executive Order Reviews

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

Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 26, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.1305 is added to subpart D to read as follows:

§ 180.1305 Chromobacterium subtsugae strain PRAA4–1^T; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Chromobacterium subtsugae* strain PRAA4–1^T in or on all food commodities when applied as an insecticide or miticide and used in accordance with good agricultural practices.

[FR Doc. 2011–22868 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0099; FRL–8870–8]

Flubendiamide; Pesticide Tolerances; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document is being issued to correctly revise tolerance levels, for the pesticide, flubendiamide in or on the meat and meat byproducts of cattle, goat, hog, horse, and sheep. The tolerance levels were inadvertently transcribed incorrectly in a final rule printed in the **Federal Register** on March 23, 2011.

DATES: This final rule is effective September 7, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0099. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–0029; e-mail address: *rodia.carmen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What does this technical amendment do?

In the **Federal Register** of March 23, 2011 (75 FR 16301) (FRL–8863–8), EPA issued a final rule establishing new tolerances and revising existing tolerances for residues of flubendiamide (40 CFR 180.639) on certain food and livestock commodities. Inadvertently, a few of the tolerance levels were transcribed incorrectly, and consequently, 40 CFR 180.639(a)(2) provides an incorrect tolerance value for the established tolerances for cattle, meat (0.60 ppm); cattle, meat byproducts (0.08 ppm); goat, meat (0.60 ppm); goat, meat byproducts (0.08 ppm); hog, meat (0.15 ppm); hog, meat byproducts (0.03 ppm); horse, meat (0.60 ppm); horse, meat byproducts (0.08 ppm); sheep, meat (0.60 ppm); and sheep, meat byproducts (0.08 ppm). As supported by recalculated beef and dairy cattle, swine, and poultry dietary burdens, and re-evaluation of previously submitted animal feeding studies, these tolerance values should be revised to 0.08 ppm; 0.60 ppm; 0.08 ppm; 0.60

ppm; 0.03 ppm; 0.15 ppm; 0.08 ppm; 0.60 ppm; 0.08 ppm; and 0.60 ppm, respectively. This document is being issued to correct the tolerance values tolerances levels that were entered incorrectly.

III. Why is this amendment issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because this technical amendment revises a few incorrectly transcribed tolerance levels and does not otherwise change the original requirements of the final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

This technical amendment revises a number of incorrect tolerance levels and does not otherwise change the original requirements of the final rule. As a technical amendment, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Unit VI. in the **Federal Register** of March 23, 2011 (76 FR 16301) (FRL–8863–8).

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 28, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.639(a)(2) is amended by revising the entries for cattle, meat; cattle, meat byproducts; goat, meat; goat, meat byproducts; hog, meat; hog, meat byproducts; horse, meat; horse, meat byproducts; sheep, meat; and sheep, meat byproducts to read as follows:

§ 180.639 Flubendiamide; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * * * *	
Cattle, meat	0.08
Cattle, meat byproducts	0.60
* * * * * * *	
Goat, meat	0.08
Goat, meat byproducts	0.60
* * * * * * *	
Hog, meat	0.03
Hog, meat byproducts	0.15
* * * * * * *	
Horse, meat	0.08
Horse, meat byproducts	0.60
* * * * * * *	
Sheep, meat	0.08
Sheep, meat byproducts	0.60
* * * * * * *	

* * * * *

[FR Doc. 2011–22866 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 301–2, 301–10, 301–11, 301–52, 301–70, and 301–71

[FTR Amendment 2011–03; FTR Case 2011–301; Docket 2011–0018, Sequence 1]

RIN 3090–AJ11

Federal Travel Regulation; Per Diem, Miscellaneous Amendments

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Interim rule with request for comments.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) by changing, updating, and clarifying various provisions of Chapters 300 and 301 regarding temporary duty (TDY) travel. These changes include adjusting the definition of incidental expenses; clarifying necessary deduction amounts from the meals and incidental expense (M&IE) reimbursement on travel days; extending agencies the authority to issue blanket actual expense approval for TDY travel during Presidentially-Declared Disasters; and updating other miscellaneous provisions.

DATES: *Effective Date:* September 7, 2011.

Comment Due Date: Interested parties should submit written comments to the Regulatory Secretariat by November 7, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FTR case 2011–301 by any of the following methods:

- *Federal eRulemaking Portals: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FTR Case 2011–301'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FTR Case 2011–301.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FTR Case 2011–301'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FTR case 2011–301 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), 1275 First St., NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Governmentwide Policy, at (202) 219–2349. Please cite FTR Amendment 2011–03; FTR case 2011–301.

SUPPLEMENTARY INFORMATION:

A. Background

GSA reviewed the FTR for accuracy and currency and is consequently publishing this amendment to update certain sections of the regulation pertaining to definitions, Web addresses, meal deductions, miscellaneous expenses, and other travel-related clarifications and updates. This amendment also adds a section that permits agencies to issue blanket actual expense authorizations for any employee who performs TDY travel in an area subject to a Presidentially-Declared Disaster.

Accordingly, this interim rule amends the FTR by:

1. *Section 300–3.1*—Revising the term ''Incidental expenses'' under the definition for ''Per diem allowance.'' These changes permit reimbursement of fees and tips, exclude mailing costs associated with filing travel vouchers and charge card bill payments, and remove the current transportation reimbursement as this expense is reimbursable via separate provisions in FTR part 301–10.
2. *Section 301–2.5*—Referencing the new blanket actual expense authorization pursuant to § 301–70.201.
3. *Section 301–10.421*—Updating the heading to include valet parking attendants.
4. *Section 301–11.6*—Updating regulatory references and Web address information in the table pertaining to maximum per diem rates and actual expense rates.
5. *Section 301–11.7*—Changing the term ''lodging location'' to ''lodging facility'' in determining maximum per diem reimbursement rates.
6. *Section 301–11.18*—Indicating that for Government-provided meals on travel days, the entire allocated meal amount must be deducted from the decreased 75 percent rate.
7. *Section 301–11.26*—Revising to focus on how to request a review of a location's per diem rate.
8. *Section 301–11.29*—Updating the Web address for state tax exemption information.
9. *Section 301–11.30*—Referencing the new blanket actual expense authorization pursuant to § 301–70.201.
10. *Section 301–11.300*—Revising ''natural disasters'' to ''natural or manmade disasters'' and adding Presidentially-Declared Disasters to the list of special events warranting actual expense reimbursement.
11. *Section 301–11.301*—Referencing the new blanket actual expense authorization pursuant to § 301–70.201.
12. *Section 301–11.302*—Referencing the new blanket actual expense authorization pursuant to § 301–70.201.
13. *Section 301–52.4*—Removing the reference to a ''fixed reduced per diem allowance.''
14. *Section 301–70.200*—Referencing the new blanket actual expense authorization pursuant to § 301–70.201.
15. *Section 301–70.201*—Adding a new section which gives agencies the authority to issue a blanket authorization for actual expense reimbursement in the event of a Presidentially-Declared Disaster.
16. *Section 301–71.105*—Referencing the new blanket actual expense authorization pursuant to § 301–70.201.

B. 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 is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This interim rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management. However, this interim rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–3, 301–2, 301–10, 301–11, 301–52, 301–70, and 301–71

Administrative practices and procedures, Government employees, Travel and per diem expenses.

Dated: March 14, 2011.

Martha Johnson,

Administrator of General Services.

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 300–3, 301–2, 301–10, 301–11, 301–52, 301–70, and 301–71 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended; 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 under ''Per diem allowance'', by revising paragraph (c) to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Per diem allowance— * * *

* * * * *

(c) *Incidental expenses.* Fees and tips given to porters, baggage carriers, hotel staff, and staff on ships.

* * * * *

PART 301–2—GENERAL RULES

■ 3. The authority citation for 41 CFR part 301–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353; 49 U.S.C. 40118.

§ 301–2.5 [Amended]

■ 4. Amend § 301–2.5 paragraph (j) by removing ''expense;'' and adding ''expense, unless your agency has issued a blanket actual expense authorization under § 301–70.201;'' in its place.

PART 301–10—TRANSPORTATION EXPENSES

■ 5. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118, OMB Circular No. A–126, revised May 22, 1992.

■ 6. Amend § 301–10.421 by revising the heading to read as follows:

§ 301–10.421 How much will my agency reimburse me for a tip to a taxi, shuttle service, courtesy transportation driver, or valet parking attendant?

* * * * *

PART 301–11—PER DIEM EXPENSES

■ 7. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.6 [Amended]

■ 8. In § 301–11.6:

■ a. Amend the table in paragraph (a), third column, by removing ''41 CFR 301–11.303 and 301–11.305'' and adding ''41 CFR 301–11.300—301–11.306'' in its place.

■ b. Amend the table in paragraph (b), third column, by removing ''*https://secureapp2.hqda.pentagon.mil/perdiem/perdiemrates.html*'' and adding ''*http://www.defensetravel.dod.mil/site/perdiemCalc.cfm*'' in its place.

§ 301–11.7 [Amended]

■ 9–10. Amend § 301–11.7, second sentence, by removing ''location'' and adding ''facility'' in its place.

§ 301–11.18 [Amended]

■ 11. Amend § 301–11.18 paragraph (a) by adding ''For meals provided on the day of departure and the last day of travel, you must deduct the entire allocated meal cost from the decreased M&IE rate (see § 301–11.101).'' after ''OCONUS and foreign travel.''

■ 12. Amend § 301–11.26—

■ a. By revising the section heading;

■ b. By removing ''agency'' and adding ''agency's Travel Manager'' in its place whenever it appears (two times);

■ c. In the first sentence, by removing ''surveyed'' and adding ''reviewed'' in its place; and

■ d. In the second sentence, by removing ''survey'' and adding ''review'' in its place.

The revised text reads as follows:

§ 301–11.26 How do I request a review of the per diem in a location?

* * * * *

■ 13. Amend § 301–11.29 by revising the second sentence to read as follows:

§ 301–11.29 Are lodging facilities required to accept a generic federal, state or local tax exempt certificate?

* * * The GSA SmartPay® Program Support office provides more information regarding state tax exemptions on its Web site (*https://smartpay.gsa.gov/about-gsa-smartpay/tax-information/state-response-letter*) and by e-mail (*gsa_smartpay@gsa.gov*).

§ 301–11.30 [Amended]

■ 14. Amend § 301–11.30 by—

■ a. Designating the first and second paragraphs as paragraph (a) and paragraph (b) respectively; and

■ b. Adding at the end of newly-designated paragraph (b) ''Also, see § 301–70.201 for when an agency can issue a blanket actual expense authorization''.

■ 15. Amend § 301–11.300—

■ a. In paragraph (b) by adding ''or manmade'' after ''natural'';

■ b. By redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and

■ c. By adding a new paragraph (c) to read as follows:

§ 301–11.300 When is actual reimbursement warranted?

* * * * *

(c) The TDY location is subject to a Presidentially-Declared Disaster and your agency has issued a blanket actual expense authorization for the location (see § 301–70.201);

* * * * *

§ 301–11.301 [Amended]

■ 16. Amend § 301–11.301 by adding ''(see § 301–70.201 for when an agency can issue a blanket actual expense authorization)'' after ''your agency''.

§ 301–11.302 [Amended]

■ 17. Amend § 301–11.302 by adding ''Also, your agency can issue a blanket actual expense authorization under § 301–70.201.'' after the last sentence.

PART 301–52—CLAIMING REIMBURSEMENT

■ 18. The authority citation for 41 CFR part 301–52 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2., Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

■ 19. Amend § 301–52.4 by revising paragraph (b)(1) to read as follows:

§ 301–52.4 What must I provide with my travel claim?

* * * * *

(b) * * *

(1) Any lodging expense;

* * * * *

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 20. The authority citation for 41 CFR part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note), OMB Circular No. A–126, revised May 22, 1992, and OMB Circular No. A–123, Appendix B, revised January 15, 2009.

§ 301–70.200 [Amended]

■ 21. Amend § 301–70.200 paragraph (f) by removing ''actual expenses are appropriate in each individual case'' and adding ''to issue a blanket authorization for actual expenses under § 301–70.201 or when actual expenses are appropriate in individual cases'' in its place.

■ 22. Add § 301–70.201 to part 301–70, subpart C, to read as follows:

§ 301–70.201 May we issue a blanket actual expense authorization for our employees during a Presidentially-Declared Disaster?

Yes. A blanket authorization regarding actual expense reimbursement may be issued to your employees assigned to perform TDY travel in an area subject to a Presidentially-Declared Disaster. These authorizations must apply to a specific Declaration, and must end on the expiration date of the Declaration, or one year from the date the Declaration is issued, whichever is sooner. A blanket authorization issued under this section shall not apply to any travel performed pursuant to Chapter 302 of this title.

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

■ 23. The authority citation for 41 CFR part 301–71 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

§ 301–71.105 [Amended]

■ 24. Amend § 301–71.105 paragraph (j) by adding ''(see § 301–70.201 for when you may issue a blanket actual expense authorization)'' after ''expenses''.

[FR Doc. 2011–22676 Filed 9–6–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA680

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in 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 species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2011, through 1200 hrs, A.l.t., October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 11, 2011), for the period 1200 hrs, A.l.t., September 1, 2011, through 1200 hrs, A.l.t., October 1, 2011.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the fourth seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species.'' This prohibition does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason action does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central 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 the shallow-water species fishery by vessels using trawl gear in 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 August 30, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 31, 2011.

James P. Burgess,

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

[FR Doc. 2011–22709 Filed 8–31–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA683

Fisheries of the Exclusive Economic Zone Off Alaska; Octopus in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of octopus in the Bering Sea and Aleutian Islands (BSAI). This action is necessary because the 2011 total allowable catch of octopus in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2011, through 2400 hrs, A.l.t., December 31, 2011.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the 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 2011 total allowable catch (TAC) of octopus in the BSAI is 150 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011) and an apportionment from the non-specified reserve of groundfish (76 FR 17360, March 29, 2011).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2011 TAC of octopus in the BSAI has been reached. Therefore, NMFS is requiring that octopus caught in the BSAI be treated as prohibited species in accordance with § 679.21(b).

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 prohibiting the retention of octopus in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 31, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 1, 2011.

James P. Burgess,

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

[FR Doc. 2011–22846 Filed 9–1–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 173

Wednesday, September 7, 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 ENERGY

10 CFR Part 810

RIN 1994–AA02

Assistance to Foreign Atomic Energy Activities

AGENCY: National Nuclear Security Administration, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: DOE proposes to amend its regulation concerning unclassified assistance to foreign atomic energy activities. This regulation provides that persons subject to the jurisdiction of the United States who engage directly or indirectly in the production of special nuclear material outside the United States must be authorized to do so by the Secretary of Energy (Secretary). The proposed revisions update and clarify several provisions in the current regulation, and identify information applicants are required to submit in support of applications for an authorization under this part. The revisions are intended to reduce uncertainties for industry users concerning which foreign nuclear-related activities by U.S. persons are ''generally authorized'' under the regulation and which activities require a ''specific authorization'' from the Secretary. In this regard, one proposed organizational change is the listing of countries and territories for which a general authorization for foreign atomic energy activities is available. This proposed change contrasts with the current regulation, which lists those countries for which a specific authorization to conduct such activities is required. Unclassified nuclear activities are generally authorized with respect to these listed countries if they do not involve ''sensitive nuclear technology'' as defined in the regulation. Conversely, the proposed revised regulation specifically identifies those assistance activities and technologies under DOE's jurisdiction, the export of which requires a specific authorization from the Secretary. Additionally, DOE is proposing to add regulations to address ''deemed exports.'' Companies seeking to employ foreign nationals in positions involving a proposed transfer of technology are provided information on the documentation required to be submitted to request specific authorization for those transfers. Finally, DOE proposes to update its regulations in this area to reflect terminological and other changes in nuclear technology since the last major update in 1986. Finally, points of contact references have been updated to reflect the current DOE organizational structure.

DATES: Written comments must be postmarked on or before November 7, 2011 to ensure consideration.

ADDRESSES: You may submit comments, identified by RIN 1994–AA02, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *E-mail: Part810.NOPR@hq.doe.gov* Include RIN 1994–AA02 in the subject line of the message.
3. *Mail:* Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA 24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

All submissions must include the RIN for this rulemaking, RIN 1994–AA02. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA 24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–0589; Janet Barsy or Elliot Oxman, Office of the General Counsel, GC–53, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–3429 (Ms. Barsy) or 202–586–1755 (Mr. Oxman); or Katie Strangis, National Nuclear Security Administration, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–8623.

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Proposed Changes
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  C. Regulatory Flexibility Act
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V. Approval by the Office of the Secretary

I. Background

DOE's regulation in 10 CFR part 810 implements section 57b. of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C 2077(b)). The statute provides that it ''shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside of the United States except (1) As specifically authorized under an agreement for cooperation made pursuant to section 123 * * * or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States. * * *''

Part 810 regulates the export of unclassified nuclear technology and assistance, to facilitate international commerce while at the same time protecting against the spread of nuclear technologies and material that would be contrary to the nonproliferation and other national security interests of the United States. More specifically, the purposes of the part 810 regulation are: (1) To enable DOE to control the export of nuclear technologies and services while protecting the interest of, and advancing, U.S. nonproliferation and other national security objectives; (2) to facilitate such exports by identifying nuclear technology and related

assistance activities that can be ''generally authorized'' by the Secretary and thus require no further authorization under part 810; (3) to identify the specific transfers of assistance and technology which require specific authorization by the Secretary; (4) to explain how to request a specific authorization from the Secretary; and (5) to identify the reporting requirements for activities subject to part 810.

The part 810 regulation has not been comprehensively updated since 1986. Some of the terminology contained in the current regulation has become inconsistent with guidelines issued by the Nuclear Suppliers Group (NSG), an international group of nuclear supplier countries, including the United States, which seeks to promote the nonproliferation of nuclear weapons through the implementation of guidelines for nuclear exports. The existing part 810 regulation also contains certain technical references and definitions that do not reflect current science, and other terms and references whose inclusion in the regulation is no longer necessary.

II. Description of Proposed Changes

DOE is publishing this notice of proposed rulemaking (NOPR) to clarify the regulatory restrictions and requirements pertaining to unclassified atomic energy assistance, and nuclear technology transfers, to foreign destinations. The proposed changes would update some of the definitions used in the regulation; identify countries and territories as to which a ''general authorization'' applies; and identify the activities subject to a ''specific authorization''. Additionally, the proposed rule would: (1) Make clear what types of technology transfers, which can include either technical data or technical assistance, fall within the scope of the regulation; (2) provide for added technical clarity of certain terms and technology; (3) revise, delete, and add definitions for certain terms contained in the regulation; (4) identify the information required to be provided by applicants for a part 810 authorization, including requests for authorization of ''deemed exports''; and (5) update points of contact information to reflect current Departmental organizational structure and office designations.

The proposed changes to part 810 are summarized below in the order in which they appear:

1. The proposed changes to § 810.1 ''Purpose'' would state the statutory basis for the regulation and clarify the purpose and authorization requirements.

2. The proposed changes to paragraghs (a) and (b) in § 810.2 ''Scope'' are intended to state explicitly DOE's jurisdiction under section 57 b. of the Atomic Energy Act with regard to unclassified nuclear export activities by U.S. persons that include assistance and transfer of technology abroad and to foreign nationals employed by U.S. companies, whether the subject activities are conducted in the United States or abroad by U.S. persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility, or control. Proposed § 810.2(c) would retain the exemptions for all exports licensed by the Nuclear Regulatory Commission; and would exempt ''public information'' and ''basic scientific research'' as those terms are proposed to be defined in § 810.3. Additionally, proposed § 810.2(c) would make clear the exclusion from the scope of the part 810 regulation of uranium and thorium mining and milling and nuclear fusion reactors when not used in support of systems involving hydrogen isotope separation. The proposed addition of these two exemptions is intended to clarify that activities related to uranium and thorium mining and milling and nuclear fusion reactors, per se, are not within the scope of part 810.

3. In proposed § 810.3 ''Definitions'', a number of new definitions are proposed to reflect terminological changes and technological developments since the part 810 regulation was last updated (in 1986), and to provide additional clarity to certain terms currently defined and used in the regulation. For example, the definition of ''accelerator-driven subcritical assembly'' would be replaced with ''production accelerator-driven subcritical assembly system''; the terms ''non-nuclear-weapon state'', ''operational safety'' and ''subcritical assembly'' are proposed to be deleted from the current definitions. The proposed rule would also add new and revised definitions: ''basic scientific research,'' ''cooperative enrichment enterprise'', ''enrichment,'' ''fissile material'', ''production accelerator'', ''production accelerator-driven subcritical assembly system'', ''production subcritical assembly'', ''reprocessing'', ''specific authorization'', ''specifically authorized nuclear activities'', ''technology'' (including ''development'' and ''production''), ''technical assistance'', ''technical data'', and ''use''. Definitions are also proposed to be added for ''DOE'' and ''Secretary''.

4. Proposed §§ 810.4 ''Communications'' and 810.5 ''Interpretations'' would be changed to identify the responsible office under the current Departmental organizational structure to which applications, questions, or requests should be addressed. This proposed revision is intended to ensure that part 810-related correspondence will be directed appropriately and help facilitate prompt responses to those applications, questions, or other requests.

5. The current § 810.6 ''Authorization requirement'' quotes section 57 b. of the Atomic Energy Act. This notice proposes to delete the quotation, and to address the statutory basis instead in the ''Authority'' section of the preamble and proposed § 810.1 ''Purpose''.

6. Proposed § 810.6 ''Generally Authorized Activities''—currently § 810.7, re-numbered § 810.6 in the proposed rule—would identify activities that are generally authorized by the Secretary, and the countries and territories to which general authorizations apply. Section 810.6(a) would identify generally authorized activities. Section 810.6(b) would identify the countries and territories, and facilities therein, that would qualify for a general authorization. The current § 810.7 (b) ''furnishing public information'' would be deleted from the list of generally authorized activities and would be included in proposed § 810.2, as exempt from the scope of this part. Current § 810.7(c) would be deleted. The ''fast track'' safety general authorization has rarely been used, and has proved confusing to applicants. In summary, the proposed § 810.6 would identify the activities, countries, territories, destinations, and facilities to which the general authorization is applicable.

7. Proposed § 810.7 Activities requiring specific authorization. This proposed section, renumbered from § 810.8, would be modified to indicate that, unless an activity is generally authorized under proposed § 810.6, a specific authorization from the Secretary would be required before engaging directly or indirectly in the production of special nuclear material outside the United States. The current regulation in § 810.2 (a) provides a broad general authorization for all activities not requiring a specific authorization as described in § 810.8.

8. Proposed § 810.8 Restrictions on general and specific authorization. The present restrictions, currently in § 810.9, would remain unchanged.

9. Proposed § 810.9 ''Grant of specific authorization''—currently § 810.10—would add a new paragraph (b) to establish a time limit on all specific authorizations. Each specific

authorization approved by the Secretary is proposed to be limited to a period of up to five years. This proposal is intended to ensure that U.S. persons granted specific authorizations from the Secretary keep DOE informed of their activities and planned nuclear technology transfers, and to facilitate DOE's ability to confirm the adherence of those activities to U.S. nonproliferation policy. Additionally, language would be included in proposed § 810.9(b) identifying the factors, consonant with U.S. international nonproliferation commitments, considered by the Secretary in granting a specific authorization. Proposed § 810.9(c) would be expanded to provide clarity to applicants that request a specific authorization to transfer sensitive nuclear technology as defined in proposed § 810.3. In addition to the current requirements of sections 127 and 128 of the Atomic Energy Act, the proposed regulation lists criteria, relevant to U.S. nonproliferation policy and international commitments, that would be considered in determining whether to authorize an export involving sensitive nuclear technology. A new paragraph (d) is proposed to be added, concerning requests to engage in foreign atomic energy assistance activities related to the enrichment of fissile material (as defined in proposed § 810.3). The proposed provision is designed to facilitate U.S. conformity to the Nuclear Suppliers Group Guidelines.

10. The current § 810.11 is proposed as § 810.10 Revocation, suspension, or modification of authorization. Proposed § 810.10(c) would add the phrase ''or technology transfer'' after the words ''authorized assistance.''

11. The current § 810.12 is proposed as § 810.11, Information required in an application for specific authorization, and would be expanded to add more detail about the information required for DOE to process a specific authorization request, including applications for ''deemed export'' authorization. Section 810.11(a) would require the submission of the same information required by the current regulation (§ 810.12(a)). Proposed paragraph (b) would solicit any information the applicant wishes to provide concerning the factors listed in proposed § 810.9(b). Proposed paragraph (c) would address the required content for applications filed by U.S. companies seeking to employ, and to accord access to nuclear technology subject to this part by, foreign nationals with temporary, student, or immigrant visa status in the United States. This proposed section is intended to address situations comparable to those covered by the ''deemed export'' rule in 15 CFR 734.2(b)(2) of the Commerce Department's Export Administration Regulations. Under this proposal, no part 810 specific authorization would be required if the foreign national employee (or prospective employee) is lawfully admitted for permanent residence in the United States, or is a protected individual under the Immigration and Nationalization Act (8 U.S.C. 1324b(a)(3)). As proposed, the part 810 regulation would make explicit DOE's current practice of requiring an applicant to provide detailed information concerning the nationality, visa status, educational background, and employment history of each foreign national to whom the applicant seeks to grant access to technology subject to the part 810 regulation. In addition, the applicant must provide a description of the subject technology, a copy of any confidentiality agreement between the U.S. company employer and the foreign national, and written nonproliferation assurances by the foreign national. Finally, proposed paragragh (d) would identify the information required to be submitted by an applicant seeking a specific authorization to engage in foreign atomic energy assistance activities related to the enrichment of fissile material.

12. The current §§ 810.13, 810.14, and 810.15 would be renumbered as proposed § 810.12 Reports, proposed § 810.13 Additional information, and proposed § 810.14 Violations. A proposed addition in § 810.12(g) would allow DOE to require companies granted authorizations under part 810 to submit certain reports to DOE, to include information required by U.S. law concerning specific nuclear activities or specific countries exports to which require a specific authorization.

Because DOE is making changes to most sections of part 810, it is publishing the entire part 810 for public comment.

III. Public Comment Procedures

Interested persons are invited to participate by submitting data, views, or arguments. Written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments submitted in writing or in electronic form may be made available to the public in their entirety. Personal information such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission. Comments will be available for public inspection in the DOE Freedom of Information Act Reading Room (1E–190), 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Members of the public who wish to review the comments submitted should contact Alexander Morris, FOIA Officer, at (202) 586–3159. Comments made on this rulemaking will also be posted on *http://www.regulations.gov*. Written comments received by the date indicated in the **DATES** section of this notice of proposed rulemaking will be addressed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information and to treat it in accordance with its determination. See 10 CFR 1004.11.

IV. Regulatory Review

A. Executive Order 12866

This proposed rule has been determined to not be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to subpart D, 10 CFR part 1021, categorical exclusion A5, which applies to a rule or regulation that interprets or amends an ''existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.'' Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published

procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's *Web site: http://www.gc.doe.gov.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule offers clarity on regulatory restrictions and requirements pertaining to unclassified assistance to foreign atomic energy activities; it does not expand the scope of activities currently regulated under 10 CFR part 810.

The proposed changes to the preamble of part 810 and § 810.1 reposition (to the ''Authority'' section, above) and update statutory citations, and clarify the purpose statement. There is no change that will impact small businesses or the review time necessary to prepare or submit requests for authorization.

Section 810.2 is proposed to be expanded to provide further detail on the scope of activities that are subject to part 810. As a consequence, more information will be available to small businesses as they formulate their business strategies. These changes should assist small businesses to determine which nuclear export activities undertaken with foreign parties require authorization under this part. This additional information should reduce the time required to identify activities that are controlled by part 810, and also lessen the costs associated with developing documentation to support applications for authorization.

Section 810.3, Definitions, is proposed to be updated to reflect changes in technology and to provide additional clarity. Specifically, for example, the definition of ''accelerator-driven subcritical assembly'' would be replaced with ''production accelerator-driven subcritical assembly system''; and the terms ''non-nuclear-weapon state'' and ''operational safety and subcritical assembly'' would be deleted from the regulation. New and revised definitions would be added: ''basic scientific research'', ''cooperative enrichment enterprise'', ''DOE'', ''enrichment'', ''fissile material'', ''production accelerator-driven subcritical assembly system'', ''production subcritical assembly'', ''reprocessing'', ''Secretary'', ''specific authorization'', ''specifically authorized nuclear activities'', ''technology'', ''technical assistance'', ''technical data'', and ''use''. These definitional updates and additions would not change the scope of the activities controlled under this part. Rather, the new and revised definitions should provide greater clarity to small businesses, decrease the time for small businesses to evaluate activities for implications of this regulation, and also lessen the costs associated with developing documentation to support their applications for authorization.

Section 810.4 and § 810.5 are proposed to be changed to reflect the current organizational structure of the DOE office responsible for administering part 810, and should not impact small businesses. The proposed revision will help ensure that correspondence is directed appropriately and expedite application processing time. Section 810.6 would be deleted. It quotes the provisions of section 57 b. of the Atomic Energy Act of 1954 and is not required for the text of the regulation. Its deletion would require an applicant to consult a source outside part 810 to locate the statutory text of section 57 b.

Sections 810.7, Generally authorized activities, and 810.8, Activities requiring specific authorization, would be revised and renumbered as §§ 810.6 and 810.7, respectively. The revised text of § 810.6 would provide more detail concerning activities that are generally authorized by the Secretary, and identify countries and territories, and facilities therein, to which general authorizations apply. The proposed change should only impact small businesses positively. Providing this clarification concerning activities that are generally authorized would assist small businesses to determine when they need to submit a request for specific authorization, as stated in proposed § 810.7. Paragraghs (a) and (g) of current § 810.7 would be deleted because the regulation does not control public information; therefore a general authorization is not necessary. The substance of paragragh (b) of the current § 810.7 would be retained and renumbered as § 810.6(b)(2). The current § 810.7(c) would be deleted from the text. This ''fast track'' safety general authorization has been used only once, by a large corporation, to address an imminent threat to the public after an earthquake.

New § 810.8, Restrictions on general and specific authorizations, would continue the same restrictions as are contained in the current part 810, and therefore would not add any new burdens on small businesses. New § 810.9, grant of specific authorization, is proposed to outline the process for applying for a specific authorization. Paragragh (a) would provide updated information on the current DOE organizational structure. Paragragh (b) would retain identification of the other U.S. departments and agencies (the Departments of State, Defense, and Commerce, and the Nuclear Regulatory Commission) that review part 810 authorization requests; it would also include a time limit on specific authorizations, and revise and add factors DOE would consider in making an authorization determination. The five-year maximum period has been a matter of DOE practice for a number of years; it is now being proposed to be added to the regulation to provide clarity to companies applying for a specific authorization. Paragragh (b) would be expanded to provide additional information to U.S. companies that request a specific authorization to transfer sensitive nuclear technology. This change should provide useful information to applicants, but not create additional requirements or negatively impact a small business applying for a specific authorization. A new paragragh (c) is proposed, concerning activities related to the enrichment of fissile material; and has been added to facilitate U.S. conformity to the Nuclear Suppliers Group Guidelines. Although satisfaction of the requirements of this proposal would require more effort by an applicant, it is unlikely that a small business would engage in foreign atomic energy activities involving the enrichment of fissile material.

New § 810.10, Revocation, suspension, or modification of authorizations, has minimal proposed updates, and is intended to provide greater clarity. New § 810.11, Information required in an application for specific authorization, would be expanded to add more detail about the information required to process an authorization, including a ''deemed export'' authorization. The revisions to this section would provide additional, and more specific, information concerning the matters required to be addressed in an application, thus making the application process clearer to small businesses. Adoption of this proposed revision should positively impact the amount of time and resources a small business would have to devote to the application process, without adding any new requirements for small businesses and also decreasing the processing time for the application within the Department. New § 810.11 would also require an applicant to provide information concerning

activities related to the enrichment of fissile materials. As noted, it is unlikely that a small business would engage in foreign atomic energy assistance activities of this nature.

New § 810.12, Reports, would be updated with the correct DOE organizational structure, with no adverse impact on small businesses. The proposed changes to §§ 810.13 and 810.14 are minimal, and should impose no increased burden on applicants.

In practice, the requirements for small businesses exporting nuclear technology would not substantively change because the proposed revisions to this rule do not impact sections of the rule containing those requirements or add new burdens or duties to small businesses. The obligations of any person subject to the jurisdiction of the United States who engages directly or indirectly in the production of special nuclear material outside the United States would not change in a manner that would have any impact on small businesses.

Furthermore, DOE has conducted a review of the potential small businesses that may be impacted by this proposed rule. This review consisted of an analysis of the number of businesses impacted generally since 2007–2008, and a determination of which of those are considered ''small businesses'' by the Small Business Administration. Approximately 90% of the businesses impacted by this rule are not considered small businesses (out of 56 businesses examined, 5 qualify as small businesses). Additionally, the number of requests for authorization or reports of generally authorized activities from each small business on average was one or fewer per year, while larger companies had as many as 100 requests for authorization or reports of generally authorized activities per year. The latter businesses fall within two North American Industry Classification System codes, for engineering services and computer systems designs services. Often, their requests for authorization include the transfer of computer codes or other similar products. The proposed changes to this rule would not alter whether these businesses do or do not receive authorization under part 810, thus not adversely affecting their ability to conduct business in the same manner they do at present. Moreover, they will benefit from a clarified request process. Generally, small businesses reported that their initial filing of a part 810 request for authorization required up to 40 hours of legal assistance, but follow-on reporting and requests required significantly less such assistance.

On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

The proposed rule would not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

This proposed rule would not impose a Federal mandate on State, local, or tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. 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 proposed rule that may affect family well being. The proposed 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.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. 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,'' 61 FR 4729 (February 7, 1996), imposes on Executive 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. With regard to the review required by section 3(a), 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, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. 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 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 promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved the publication of this proposed rule.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 17, 2011.

Steven Chu,

Secretary of Energy.

For the reasons stated in the preamble, DOE proposes to amend title 10 of the Code of Federal Regulations by revising part 810 to read as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

Sec.

810.1 Purpose.
810.2 Scope.
810.3 Definitions.
810.4 Communications.
810.5 Interpretations.
810.6 Generally authorized activities.
810.7 Activities requiring specific authorization.
810.8 Restrictions on general and specific authorization.
810.9 Grant of specific authorization.
810.10 Revocation, suspension, or modification of authorization.
810.11 Information required in an application for specific authorization.
810.12 Reports.
810.13 Additional information.
810.14 Violations.
810.15 Effective date and savings clause.

Authority: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273); sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93–438; sec. 301, Department of Energy Organization Act, Pub. L. 95–91; National Nuclear Security Administration Act, Pub. L. 106–65, 50 U.S.C. 2401 *et seq.,* as amended.

§ 810.1 Purpose.

These regulations implement section 57 b. of the Atomic Energy Act, which empowers the Secretary, with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission (NRC), the Department of Commerce, and the Department of Defense, to authorize persons subject to the jurisdiction of the United States to engage directly or indirectly in the production of special nuclear material outside the United States. The purpose of the regulations in this part is to:

(a) Identify activities that are generally authorized by the Secretary and thus require no other authorization under this part;

(b) Identify activities that require specific authorization by the Secretary and explain how to request authorization; and

(c) Specify reporting requirements for activities subject to this part.

§ 810.2 Scope.

(a) This part applies to:

(1) All persons subject to the jurisdiction of the United States (hereinafter ''U.S. persons'') who or that engage directly or indirectly in the production of special nuclear material outside the United States, by transferring to foreign persons technology that is related to the production of special nuclear material; and

(2) Assistance and the transfer of technology by U.S. persons to foreign persons, conducted either in the United States or abroad by U.S. persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility, or control.

(b) The activities referred to in paragraph (a) of this section involve the following:

(1) Chemical conversion and purification of uranium and thorium from milling plant concentrates and in all subsequent steps in the nuclear fuel cycle;

(2) Chemical conversion and purification of plutonium and neptunium;

(3) Nuclear fuel fabrication, including preparation of fuel elements, fuel assemblies and cladding thereof;

(4) Uranium isotope separation (uranium enrichment), plutonium isotope separation, and isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(5) Nuclear reactors;

(6) Accelerator-driven subcritical assembly systems, specially designed or intended for plutonium or uranium-233 production;

(7) Hydrogen isotope separation and heavy water production;

(8) Reprocessing of irradiated nuclear materials or targets containing special nuclear material;

(9) Changes in form or content of irradiated nuclear materials containing special nuclear material, and hot cell facilities;

(10) Storage of irradiated nuclear materials;

(11) Processing of high level radioactive waste;

(12) Movement of irradiated nuclear materials, including specially designed containers therefor;

(13) The transfer of technology for the development, production, or use of equipment or material specially designed or prepared for any of the above listed activities. (*See* NRC regulations under 10 CFR part 110, Appendix A through Appendix K) for an illustrative list of items considered to be specially designed or prepared for certain listed nuclear activities.); and

(14) Other activities related to the production of special nuclear material outside the United States as the Secretary may determine, notice of which shall be published in the **Federal Register**.

(c) This part does not apply to:

(1) Exports licensed by the NRC;

(2) Public information or basic scientific research;

(3) Uranium and thorium mining and milling; and

(4) Nuclear fusion reactors per se, except for supporting systems involving hydrogen isotope separation.

§ 810.3 Definitions.

As used in this part 810:

Agreement for cooperation means an agreement with another nation or group of nations concluded under sections 123 or 124 of the Atomic Energy Act.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended.

Basic scientific research means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena and observable facts, not primarily directed towards a specific practical aim or objective.

Classified information means national security information classified under Executive Order 13526 or any predecessor or superseding order, or Restricted Data classified under the Atomic Energy Act.

Cooperative enrichment enterprise means a multi-country or multi-company (where at least two of the companies are incorporated in different countries) joint development or production effort. The term includes a consortium of countries or companies or a multi-national corporation.

DOE means the U.S. Department of Energy.

Enrichment means isotope separation of uranium or isotope separation of plutonium, regardless of the type of process or separation mechanism used.

Fissile material means isotopes that readily fission after absorbing a neutron of any energy, either fast or slow. Fissile materials are uranium-235, uranium-233, plutonium-239, and plutonium-241.

Foreign national means an individual who is not a citizen or national of the United States.

Foreign person means a person other than a U.S. person.

General authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act to provide assistance to foreign atomic energy activities subject to this part 810 and which does not require a request for, or the Secretary's issuance of, a specific authorization.

IAEA means the International Atomic Energy Agency.

NNPA means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, 22 U.S.C. 3201 *et seq.*

NPT means the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968.

Nuclear reactor means an apparatus, other than a nuclear explosive device, designed or used to sustain nuclear fission in a self-supporting chain reaction.

Open meeting means a conference, seminar, trade show, or other gathering that all technically qualified members of the public may attend and at which they may make written or other personal record of the proceedings, notwithstanding that—

(1) A reasonable registration fee may be charged; or

(2) A reasonable numerical limit exists on actual attendance.

Person means—

(1)(i) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than DOE, or any State or political entity within a State; and

(ii) Any legal successor, representative, agent, or agency of the foregoing.

(2) Persons under U.S. jurisdiction are responsible for their foreign licensees, contractors, or subsidiaries to the extent that the former have control over the activities of the latter.

Production accelerator means a particle accelerator specially designed, used, or intended for use with a production subcritical assembly.

Production accelerator-driven subcritical assembly system means a system comprised of a production subcritical assembly and a production accelerator and which is specially designed, used, or intended for the production of plutonium or uranium-233. In such a system, the production accelerator target provides a source of neutrons used to effect special nuclear material production in the production subcritical assembly.

Production reactor means a nuclear reactor specially designed or used primarily for the production of plutonium or uranium-233.

Production subcritical assembly means an apparatus that contains source material or special nuclear material to produce a nuclear fission chain reaction that is not self-sustaining and that is specially designed, used, or intended for the production of plutonium or uranium-233.

Public information means:

(1)(i) Information available in periodicals, books, or other print or electronic media for distribution to any member of the public, or to a community of persons such as those in a scientific, engineering, or educational discipline or in a particular commercial activity who are interested in a subject matter;

(ii) Information available in public libraries, public reading rooms, public document rooms, public archives, or public data banks, or in university courses;

(iii) Information that has been presented at an open meeting (see definition of ''open meeting'');

(iv) Information that has been made available internationally without restriction on its further dissemination; or

(v) Information contained in an application that has been filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184 or that has been made available under 5 U.S.C. 552, the Freedom of Information Act.

(2) Public information must be available to the public prior to, or at the same time as, it is transmitted to a foreign recipient. It does not include any technical embellishment, enhancement, explanation or interpretation that in itself is not public information, or information subject to sections 147 and 148 of the Atomic Energy Act.

Reprocessing means a process or operation, the purpose of which is to extract radioactive isotopes from irradiated source and special nuclear materials for further use.

Restricted Data means all data concerning:

(1) Design, manufacture, or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

Secretary means the Secretary of Energy.

Sensitive nuclear technology means any information (including information incorporated in a production or utilization facility or important component part thereof) that is not available to the public (*see* definition of ''public information'') which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services.

Source material means:

(1) Uranium or thorium, other than special nuclear material; or

(2) Ores that contain by weight 0.05 percent or more of uranium or thorium, or any combination of these materials.

Special nuclear material means:

(1) Plutonium;

(2) Uranium-233; or

(3) Uranium enriched above 0.711 percent by weight in the isotope uranium-235.

Specific authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act, in response to an application filed under this part, to engage in specifically authorized nuclear activities subject to this part.

Specifically authorized nuclear activities means the provision of assistance, including the transfer of technology, to foreign persons related to:

(1) Uranium isotope separation (uranium enrichment), plutonium isotope separation, or isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(2) Fabrication of nuclear fuel containing plutonium, including preparation of fuel elements, fuel assemblies, and cladding thereof;

(3) Hydrogen isotope separation and heavy water production;

(4) Production accelerator-driven subcritical assembly systems;

(5) Production reactors; and

(6) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material.

Technology means specific information required for the development, production, or use of any facility or activity listed in § 810.2(c). This information may take the form of technical data or technical assistance.

(1) *Development* is related to all phases before production such as:

(i) Design;

(ii) Design research;

(iii) Design analysis;

(iv) Design concepts;

(v) Assembly and testing of prototypes;

(vi) Pilot production schemes;

(vii) Design data;

(viii) Process of transforming design data into a product;

(ix) Configuration design;

(x) Integration design; and

(xi) Layouts.

(2) *Production* means all production phases such as:

(i) Construction;

(ii) Production engineering;

(iii) Manufacture;

(iv) Integration;

(v) Assembly or mounting;

(vi) Inspection;

(vii) Testing; and

(viii) Quality assurance.

Technical assistance means assistance in such forms as instruction, skills, training, working knowledge, consulting services, or any other assistance as determined by the Secretary. Technical assistance may involve transfer of technical data.

Technical data means data in such forms as blueprints, plans, diagrams, models, formulae, engineering designs, specifications, manuals, and instructions written or recorded on other media or devices such as disks, tapes, read-only memories, and computational methodologies, algorithms, and computer codes that can directly or indirectly affect the production of special nuclear material.

Use means operation, installation (including on-site installation), and maintenance (checking), repair, overhaul, and refurbishing.

United States, when used in a geographical sense, includes all territories and possessions of the United States.

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Senior Policy Advisor, National Nuclear Security Administration/Office of Nonproliferation and International Security (NA 24), Telephone (202) 586–0589.

(b) Communications also may be delivered to DOE's headquarters at 1000 Independence Avenue, SW., Washington, DC. All clearly marked proprietary information will be given the maximum protection allowed by law.

§ 810.5 Interpretations.

(a) The advice of the DOE Office of Nonproliferation and International Security may be requested on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.6, or requires specific authorization under § 810.7. However, unless authorized by the Secretary in writing, no interpretation of the regulations in this part other than a written interpretation by the DOE General Counsel is binding upon DOE.

(b) When advice is requested from the DOE Office of Nonproliferation and International Security, or a binding, written determination is requested from the DOE General Counsel, a response normally will be made within 30 days and, if this is not feasible, an interim response will explain the reason for the delay.

§ 810.6 Generally authorized activities.

(a) In accordance with section 57 b.(2) of the Atomic Energy Act, the Secretary has determined that activities by U.S. persons that involve engaging directly or indirectly in the production of nuclear material outside the United States, including by providing assistance or transferring technology in ways that do not involve specifically authorized nuclear activities, are generally authorized to be undertaken with respect to the IAEA and the countries and territories, and facilities therein, identified in paragraphs (b)(1) through (5) of this section, provided that no sensitive nuclear technology is transferred.

(b) The activities described in paragraph (a) of this section are generally authorized with respect to the IAEA and:

(1) The following countries and territories, and the facilities in such countries or territories:

Argentina,
Australia,
Austria,
Bangladesh,
Belgium,
Brazil,
Bulgaria,
Canada,
Colombia,
Cyprus,
Czech Republic,
Denmark,
Egypt,
Estonia,
Finland,
France,
Germany,
Greece,
Hungary,
Indonesia,
Ireland,
Italy,
Japan,

Kazakhstan,
Latvia,
Lithuania,
Luxembourg,
Malta,
Morocco,
Netherlands,
Norway,
Peru,
Poland,
Portugal,
Korea, Republic of
Romania,
Slovakia,
Slovenia,
South Africa,
Spain,
Sweden,
Switzerland,
Taiwan,
Thailand,
Turkey,
Ukraine,
United Arab Emirates,
United Kingdom.

(2) Any safeguarded facility in order to prevent or correct a current or imminent radiological emergency posing a significant danger to the health and safety of the off-site population and that cannot be met by other means, provided DOE is notified in writing in advance and does not object;

(3) Any country or territory, if carried out in the course of implementation of the Agreement between the United States of America and the IAEA for the Application of Safeguards in the United States;

(4) Any country or territory, if carried out in the course of participation in exchange programs approved by the Department of State in consultation with DOE;

(5) Any country or territory, if carried out by persons, other than experts and consultants who are full-time employees of the IAEA, whose employment is sponsored by the U.S. Government.

§ 810.7 Activities requiring specific authorization.

Unless generally authorized by § 810.6, a U.S. person requires specific authorization by the Secretary before engaging directly or indirectly in the production of special nuclear material outside the United States.

§ 810.8 Restrictions on general and specific authorization.

A general or specific authorization granted by the Secretary under this part:

(a) Is limited to activities involving only unclassified information and does not permit furnishing Restricted Data or other classified information;

(b) Does not relieve a person from complying with relevant laws or the regulations of other Government agencies applicable to exports;

(c) Does not authorize a person to engage in any activity when the person knows or has reason to know that the activity is intended to provide assistance in designing, developing, fabricating, or testing a nuclear explosive device.

§ 810.9 Grant of specific authorization.

(a) An application for authorization to provide assistance or transfer technology for which specific authorization is required under § 810.7 should be made to the U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, *Attention:* Senior Policy Advisor, Office of Nonproliferation and International Security (NA 24).

(b) The Secretary will approve an application for specific authorization if it is determined, with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense, that the activity will not be inimical to the interest of the United States. Each application approved for specific authorization generally will be for a period up to five years. In making an authorization determination, the Secretary will take into account the following factors:

(1) Whether the United States has an agreement for peaceful nuclear cooperation in force covering exports to the country, territory, or international organization involved;

(2) Whether the country or the authorities of the territory involved is/are a party to, or has/have otherwise adhered to, the NPT;

(3) Whether the country or the authorities of the territory involved is/are in good standing with its/their acknowledged nonproliferation commitments;

(4) Whether the country or the authorities of the territory involved has/have accepted IAEA safeguards obligations on all nuclear materials used for peaceful purposes and has/have them in force;

(5) Whether there exist other nonproliferation controls or conditions on the proposed activity, including that the recipient is duly authorized by the country's government or the authorities of the territory involved to receive and operate the technology sought to be transferred;

(6) Significance of the assistance or technology transfer relative to the existing nuclear capabilities of the recipient country or territory;

(7) Whether the transfer is part of an existing cooperative enrichment enterprise or the supply chain of such an enterprise;

(8) The availability of comparable assistance or technology from other sources; and

(9) Any other factors that may bear upon the political, economic, or security interests of the United States, including the obligations of the United States under treaties or other international agreements, and the obligations of the recipient country or the authorities of the territory involved under treaties or other international agreements.

(c) If the proposed assistance or technology transfer involves the export of sensitive nuclear technology as defined in § 810.3, the requirements of sections 127 and 128 of the Atomic Energy Act and of any applicable United States international commitments must also be met. For the export of sensitive nuclear technology, in addition to the factors in subparagraph (b), the Secretary will take into account:

(1) Whether the recipient country or the authorities of the recipient territory is/are a party to, or has/have adhered to, the NPT and is/are in full compliance with its/their obligations under the NPT;

(2) Whether the recipient country has signed, ratified, and is implementing a comprehensive safeguards agreement with the IAEA and has in force an Additional Protocol based on the model Additional Protocol, or, pending this, in the case of a regional accounting and control arrangement for nuclear materials, is implementing, in cooperation with the IAEA, a safeguards agreement approved by the IAEA Board of Governors prior to the publication of INFCIRC/540 (September 1997); or alternatively whether comprehensive safeguards, including the measures of the Model Additional Protocol are being applied in the recipient country or territory;

(3) Whether the recipient country or the authorities of the territory has/have not been identified in a report by the IAEA Secretariat that is under consideration by the IAEA Board of Governors, as being in breach of obligations to comply with the applicable safeguards agreement, nor continues/continue to be the subject of Board of Governors decisions calling upon it/them to take additional steps to comply with its/their safeguards obligations or to build confidence in the peaceful nature of its/their nuclear program, nor as to which the IAEA Secretariat has reported that it is unable to implement the applicable safeguards agreement. This criterion would not apply in cases where the IAEA Board of Governors or the United Nations

Security Council subsequently decides that adequate assurances exist as to the peaceful purposes of the recipient's nuclear program and its compliance with the applicable safeguards agreements. For the purposes of this paragraph, ''breach'' refers only to serious breaches of proliferation concern;

(4) Whether the recipient country or territory is adhering to the Nuclear Suppliers Group Guidelines and, where applicable, has reported to the Security Council of the United Nations that it is implementing effective export controls as identified by Security Council Resolution 1540; and

(5) Whether the recipient country or territory adheres to international safety conventions relating to nuclear or other radioactive materials or facilities.

(d) Unless otherwise prohibited by U.S. law, the Secretary may grant an application for specific authorization for activities related to the enrichment of source material and special nuclear material, provided that: the United States Government has received written assurances from the government of the country or the authorities of the territory involved—

(1) That it/they accepts/accept the sensitive enrichment equipment and enabling technologies, or an operable enrichment facility under conditions that do not permit or enable replication of the facilities;

(2) That the subject enrichment activity will not result in the production of uranium enriched to greater than 20% in the isotope uranium-235; and

(3) That there are in place appropriate security arrangements to protect the activity from use or transfer inconsistent with the country's national laws or the law applicable in the territory involved.

(e) Approximately 30 days after the Secretary's grant of a specific authorization, a copy of the Secretary's determination may be provided to any person requesting it at the Department's Public Reading Room, unless the applicant submits information demonstrating that public disclosure will cause substantial harm to its competitive position. This provision does not affect any other authority provided by law for the non-disclosure of information.

§ 810.10 Revocation, suspension, or modification of authorization.

The Secretary may revoke, suspend, or modify a general or specific authorization:

(a) For any material false statement in an application for specific authorization or in any additional information submitted in its support;

(b) For failing to provide a report or for any material false statement in a report submitted pursuant to § 810.12;

(c) If any authorized assistance or technology transfer is subsequently determined to be inimical to the interest of the United States or otherwise no longer meets the legal criteria for approval; or

(d) Pursuant to section 129 of the Atomic Energy Act.

§ 810.11 Information required in an application for specific authorization.

(a) An application letter must include the following information:

(1) The name, address, and citizenship of the applicant, and complete disclosure of all real parties in interest; if the applicant is a corporation or other legal entity, where it is incorporated or organized, the location of its principal office, and the degree of any control or ownership by any foreign person;

(2) The country or territory, or the international organization, to receive the assistance or technology; the name and location of any facility or project involved; and the name and address of the person for which the activity is to be performed;

(3) A description of the assistance or technology to be provided, including a complete description of the proposed activity, its approximate monetary value, and a detailed description of any specific project to which the activity relates; and

(4) The designation of any information that if publicly disclosed would cause substantial harm to the competitive position of the applicant.

(b) The applicant should also include, as an attachment to the application letter, any information the applicant wishes to provide concerning the factors listed in § 810.9(b) and (c).

(c) U.S. persons seeking to employ a foreign national of a country not listed in § 810.6(b) in a position that could result in the transfer or technology subject to § 810.6(a), or seeking to employ any foreign national in a position that could result in the transfer of technology subject to § 810.7, must request a specific authorization. No application for specific authorization is required if the foreign national is lawfully admitted for permanent residence in the United States, or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). The applicant must provide, with respect to each foreign national to whom the applicant seeks to release technology subject to this part:

(1) A description of the technology that will be made available to the foreign national;

(2) The purpose of the proposed release, and a description of the applicant's technology control program;

(3) A copy of any confidentiality agreement between the applicant and the foreign national;

(4) Background information about the foreign national, including the individual's citizenship, all countries or territories where the individual has resided for more than six months, the training or educational background of the individual, all work experience, any other known affiliations with persons engaged in activities subject to this part, and current immigration or visa status in the United States; and

(5) A signed undertaking by the foreign national that he/she will comply with the regulations under this part; will not disclose the applicant's technology without DOE's prior written authorization; and will not, at any time during or after his/her employment with the applicant, use the applicant's technology for any nuclear explosive device, for research on or development of any nuclear explosive device, or in furtherance of any military purpose.

(d) An applicant for a specific authorization related to the enrichment of fissile material must submit information that demonstrates that the proposed transfer will avoid, so far as practicable, the transfer of enabling design or manufacturing technology associated with such items; and that the applicant will share with the recipient only information required for the regulatory purposes of the recipient country or territory or to ensure the safe installation and operation of a resulting enrichment facility, without divulging enabling technology;

§ 810.12 Reports.

(a) Each person who has received a specific authorization shall, within 30 days after beginning the authorized activity, provide to DOE a written report containing the following information:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A copy of the DOE letter authorizing the activity.

(b) Each person carrying out a specifically authorized activity shall inform DOE, in writing within 30 days,

of completion of the activity or of its termination before completion.

(c) Each person granted a specific authorization shall inform DOE, in writing within 30 days, when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.

(d) Each person, within 30 days after beginning any generally authorized activity under § 810.6, shall provide to DOE:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) An assurance that the applicant has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization to a country or territory with respect to which the conditions in § 810.6 are not met will take place only if the applicant obtains DOE approval.

(e) Persons engaging in generally authorized activities as employees of persons required to report are not themselves required to report.

(f) Persons engaging in activities generally authorized under § 810.6(b) are not subject to reporting requirements under this section.

(g) DOE may require reports to include such additional information that may be required by applicable U.S. law, regulation, or policy with respect to the specific nuclear activity or country for which specific authorization is required.

(h) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and International Security (NA 24).

§ 810.13 Additional information.

DOE may at any time require a person engaging in any generally or specifically authorized activity to submit additional information.

§ 810.14 Violations.

(a) The Atomic Energy Act provides that:

(1) Permanent or temporary injunctions or restraining orders may be granted to prevent any person from violating any provision of the Atomic Energy Act or its implementing regulations.

(2) Any person convicted of violating or conspiring or attempting to violate any provision of section 57 of the Atomic Energy Act may be fined up to $10,000 or imprisoned up to 10 years, or both. If the offense is committed with intent to injure the United States or to aid any foreign nation, the penalty could be up to life imprisonment and a $20,000 fine.

(b) Title 18 of the United States Code, section 1001, provides that persons convicted of willfully falsifying, concealing, or covering up a material fact or making false, fictitious or fraudulent statements or representations may be fined up to $10,000 or imprisoned up to five years, or both.

§ 810.15 Effective date and savings clause.

Except for actions that may be taken by DOE pursuant to § 810.10, the regulations in this part do not affect the validity or terms of any specific authorizations granted under regulations in effect before October 7, 2011 or generally authorized activities under those regulations for which the contracts, purchase orders, or licensing arrangements were already in effect. Persons engaging in activities that were generally authorized under regulations in effect before October 7, 2011, but that require specific authorization under the regulations in this part, must request specific authorization by December 6, 2011 but may continue their activities until DOE acts on the request.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

Capital Plans; Proposed Agency Information Collection Activities: Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to its regulations, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in its regulations. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by FR Y–14A and FR Y–14Q, 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 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.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting schedules and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency

clearance officer, whose name appears below.

Cynthia Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposal to approve under OMB delegated authority the implementation of the following reports:

Report title: Capital Assessments and Stress Testing.

Agency form number: FR Y–14A and FR Y–14Q.

OMB control number: 7100- to be assigned.

Frequency: Annual and Quarterly.

Reporters: Large domestic bank holding companies (BHCs), that participated in the 2009 Supervisory Capital Assessment Program (SCAP) exercise.

Estimated annual reporting hours: FR Y–14A: Summary, 15,580 hours; Macro scenario, 589 hours; Counterparty credit risk (CCR), 2,292 hours; Basel III, 380 hours; and Regulatory capital instruments, 380 hours. FR Y–14 Q: Securities risk, 760 hours; Retail risk, 431,908 hours; Pre-provision net revenue (PPNR), 47,500 hours; Wholesale corporate loans, 3,840 hours; Wholesale commercial real estate (CRE) loans, 4,560 hours; Trading, private equity, and other fair value assets (Trading risk), 41,280 hours; Basel III, 1,520 hours; and Regulatory capital instruments, 3,040 hours.

Estimated average hours per response: FR Y–14A: Summary, 820 hours; Macro scenario, 31 hours; CCR, 382 hours; Basel III, 20 hours; and Regulatory capital instruments, 20 hours. FR Y–14 Q: Securities risk, 10 hours; Retail risk, 5,683 hours; PPNR, 625 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,720 hours; Basel III, 20 hours; and Regulatory capital instruments, 40 hours.

Number of respondents: 19.

General description of report: The FR Y–14A and Q are authorized by section 165 of the Dodd-Frank Act which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States. 12 U.S.C. 5365. Additionally, Section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs. 12 U.S.C. 1844.

As these data will be collected as part of the supervisory process, such information may be afforded confidential treatment under exemption 8 of the Freedom of Information Act. 5 U.S.C. 552(b)(8). In addition, commercial and financial information contained in these information collections may be exempt disclosure under Exemption 4. 5 U.S.C. 552(b)(4). Disclosure determinations would be made on a case-by-case basis.

Abstract: During the years leading up to the recent financial crisis, many BHCs made significant distributions of capital, in the form of stock repurchases and dividends, without due consideration of the effects that a prolonged economic downturn could have on their capital adequacy and ability to continue to operate and remain credit intermediaries during times of economic and financial stress. In 2009, the Board conducted the SCAP, a ''stress test'' of 19 large, domestic BHCs. The SCAP was focused on identifying whether large BHCs had capital sufficient to weather a more-adverse-than-anticipated economic environment while maintaining their capacity to lend. In early 2011, the Federal Reserve continued its supervisory evaluation of the resiliency and capital adequacy processes of the same 19 BHCs through the Comprehensive Capital Analysis and Review (CCAR 2011). The CCAR 2011 involved the Federal Reserve's forward-looking evaluation of the internal capital planning processes of the BHCs and their anticipated capital actions in 2011, such as increasing dividend payments or repurchasing or redeeming stock.

On June 17, 2011, the Federal Reserve published a notice of proposed rulemaking (the capital plan rule) in the **Federal Register** for public comment (76 FR 35351) that would revise the Board's Regulation Y to require large BHCs to submit capital plans to the Federal Reserve annually and to require such BHCs to provide prior notice to the Federal Reserve under certain circumstances before making a capital distribution. (The public comment period for the capital plan rule ended on August 5, 2011.) In connection with submissions of capital plans to the Federal Reserve, BHCs would be required, pursuant to proposed section 225.8(d)(3), to provide certain data to the Federal Reserve. At the time of the proposed rule, the Federal Reserve did not have sufficient detail about the data to be submitted by the BHCs under proposed § 225.8(d)(3). For this reason, the Federal Reserve is putting forth this proposal to collect the data to support the ongoing CCAR exercise, which would fulfill the data collection contemplated under proposed § 225.8(d)(3).

The FR Y–14A would collect annually BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios. One or more of the scenarios would include a market shock that the BHCs would assume when making trading and counterparty loss projections. The FR Y–14Q would collect granular data on BHCs' various asset classes and PPNR for the reporting period, which would be used to support supervisory stress test models and for continuous

monitoring efforts, on a quarterly basis. These data would be used to assess the capital adequacy of large BHCs using forward-looking projections of revenue and losses. In addition, these data would be used to help inform the Federal Reserve's operational decision making as the agency moves ahead with implementing the Capital Plan rulemaking.

Under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Federal Reserve is required to issue regulations relating to stress testing (DFAST) for certain bank holding companies and nonbank financial companies supervised by the Board. It is expected that any reporting requirements associated with DFAST would be incorporated into the new FR Y–14 information collection.

Current Actions: The Federal Reserve proposes to implement the FR Y–14A and FR Y–14Q. All respondent BHCs would be required to submit both quarterly and annual schedules for third quarter data. These BHCs would be required to complete the FR Y–14A (including the Summary, Macro Scenario, CCR, Basel III, and Regulatory Capital Instruments data schedules) and the FR Y–14Q (including the Securities Risk, Retail Risk, PPNR, Wholesale Risk, Trading, Basel III, and Regulatory Capital Instruments data schedules).

While there are more than 20 proposed schedules spanning eight risk types, the number of schedules each BHC would complete would be subject to materiality thresholds. All 19 BHCs would submit the PPNR schedule. BHCs subject to the Board's advanced approaches risk-based capital rules (12 CFR part 225, Appendix G) would submit the Operational Risk schedule. The six firms that were subject to the market shock scenario in CCAR 2011 would submit the Trading and CCR schedules. For all other annual and quarterly schedules that would be subject to materiality thresholds, material portfolios would be defined as those with asset balances greater than $5 billion or asset balances relative to Tier 1 capital greater than 5 percent on average for the four quarters preceding the reporting quarter.

For supervisory estimates to support CCAR, the Federal Reserve would assign losses to immaterial portfolios in a manner consistent with the given scenario.

Draft Excel spreadsheets that illustrate the type of data schedules the Federal Reserve is developing are available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm*

FR Y–14A (Annual Collection)

The annual collection of BHCs' quantitative projected regulatory capital ratios across a range of scenarios consists of the following five primary schedules, each with multiple supporting worksheets. The FR Y–14A would also mandate the Federal Reserve to collect qualitative information describing the methodologies used to develop internal projections of capital across scenarios.

Summary Schedule

The Summary schedule has been designed to collect information necessary for the Federal Reserve to evaluate projections of regulatory capital ratios across a range of scenarios as part of the broader CCAR initiative. This information would include projections of losses, revenues, and capital actions that are the primary determinants of projected capital ratios. By collecting these data, along with other qualitative information, the Federal Reserve would be able to assess the appropriateness and robustness of the methodologies used by the BHCs and to identify areas where improvements are necessary. This is a critical part of a forward-looking evaluation of a BHC's capital adequacy.

The Summary schedule would consist of three primary components—income statement projections, balance sheet projections, and capital-related projections. There are also a number of worksheets for the BHCs to project various data items, including charge-offs, gains or losses related to trading activities and counterparty positions, gains or losses on securities, and pre-provision net revenue. The complete Summary schedule would be submitted for each scenario evaluated by the BHC and would include nine quarters of projections.

The *Income Statement worksheet* would collect data on quarterly projections of losses and revenues. This is organized similar to, but not identical to, the mandatory Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128). For example, BHCs would report estimates of losses for all categories of loans, securities and trading assets and would include estimates of the components of BHC revenue. In addition, this worksheet would collect certain tax-related data items. The *Balance Sheet worksheet* would collect data on quarterly projections of the BHC balance sheet, which includes components of assets, liabilities, and equity capital. The *Capital worksheet* would collect data on quarterly projections of equity capital and regulatory capital. In addition, this worksheet would also collect projections of capital actions such as: common dividends and share repurchases that affect a BHC's equity capital, projections of the filters and deductions necessary to estimate regulatory capital, ancillary data on other balance sheet items and risk-weighted assets, supporting data necessary to estimate the effect of the deferred tax asset on regulatory capital, and supporting data related to discretionary capital actions.

The Summary schedule would also collect separate projection data worksheets related to various components of the income statement, including charge-offs on various loan portfolios, gains or losses related to trading activities and counterparty positions, gains or losses on securities, operational risk, and PPNR.

The *Retail Risk worksheet* would collect expected losses on the respective portfolios. The *Operational Risk worksheets* would collect the BHC's projections for operational losses. Additional detail would be requested on translating historical loss experience into operational loss projections and on any budgeting processes used to project operational losses. The *Trading Risk* and *CCR worksheets* would contain projected losses associated with a market shock.

There would be multiple worksheets related to Available-for-Sale (AFS) and Held-to-Maturity (HTM) securities (*Securities Risk worksheets*). The worksheets would request data and information such as: projected other-than-temporary impairment (OTTI) by asset class for each quarter of the forecast time horizon; methodologies and assumptions used to generate the OTTI projections for each asset class; projected stressed fair market value (FMV) for each asset class as well as qualitative information on the methodologies and assumptions used to generate the stressed market value; and actual FMVs such as the source (vendor or proprietary) as well as key assumptions used for determining market values (if using a proprietary model).

The *PPNR worksheets* would collect data related to projected net interest income and noninterest revenues and expenses under the relevant scenario. This would include projections of balances of interest-bearing assets and liabilities and the associated interest income and expense for each line item; noninterest income related to loan origination, servicing, advisory services, trading commissions and fees;

noninterest expense related to compensation, occupancy, and services; and other relevant line items.

Along with the Summary schedule, each BHC would be required to respond to a qualitative questionnaire or submit a comprehensive document explaining the methods used to develop the projections included in each of the Summary worksheets. The document should include information about how the BHC translated the macroeconomic scenarios into the various projections, including detailed descriptions of any models used. The BHCs would also be required to provide a reconciliation of their reported data with the data they report in their publicly available regulatory filings.

Macro Scenario Schedule

The Macro Scenario schedule would collect the economic variables used in the BHC-defined macroeconomic scenarios underlying the projections of loss, revenue, and capital. The schedule would include worksheets for the BHC baseline scenario, the BHC stress scenario, and any additional scenarios beyond the baseline and stressed scenarios, as well as a worksheet for collecting the scenario variable definitions (variable name and definition for each of the scenario worksheets). The variable definitions should include the units of measure (for example, percentage points and billions of dollars) and the frequency of the variable (for example, quarterly average if it is produced monthly or more often). The scenario worksheets would collect the variable name (as provided on the definition worksheet), the actual value of the variable during the 3rd quarter of the reporting year, and the projected value of the variable for nine future quarters.

Each BHC would be required to document the methods used to generate the scenarios. If the BHC uses a scenario generated by a third party, at a minimum the following should be documented: name of the vendor, date that the scenario was generated (if known), and any changes that the BHC made to the scenario. If the BHC generates the scenario, the documentation should include a detailed description of any models used and how the BHC adjusted the models to produce the various scenarios.

CCR Schedule

The CCR schedule would collect from each BHC information to identify credit valuation adjustment (CVA), exposures, and CVA sensitivities for their top counterparties along a number of dimensions, including current CVA, stressed CVA, net current exposure, and gross current exposure. BHCs would also submit aggregate CVA, exposures, and CVA sensitivities by ratings categories.

Basel III Schedule

Based on the Basel III framework that was promulgated by the Basel Committee on Bank Supervision, the Basel III schedule would collect annual forecasts of Tier 1 Common, Tier 1 Capital, Risk-Weighted Assets (RWA), and Leverage Exposures (along with granular components of those elements) through year-end 2013 (or the year by which the BHC plans to meet Basel III target capital ratios, if later than 2013) under a baseline scenario. Finally, BHCs would be required to submit the effect on Basel III measurements of any significant planned actions to be taken in response to Basel III and the Dodd-Frank Act (for example, asset sales, asset wind-downs, and data collection and modeling enhancements).

Regulatory Capital Instruments Schedule

The Regulatory Capital Instruments schedule would collect CUSIP-level [1] contractual terms of the BHC's regulatory capital instruments, as defined under the Board's current regulatory capital rules for BHCs (12 CFR part 225, Appendices A, E, and G). The data collected would support future analyses and coordinated responses to future proposed capital actions. BHCs would provide a detailed inventory of their regulatory capital instruments as of the data collection date and provide details on instruments they project to redeem or issue over a 9-quarter period.

FR Y–14Q (Quarterly Collection)

Securities Risk Schedule

The Securities Risk schedule would gather CUSIP-level and summary-level information on all positions in a BHC's AFS and HTM portfolios. The CUSIP-level position schedule would request such data as the amortized cost, market value, current face value, and original face value of each position.

Retail Risk Schedule

The Retail Risk schedule would collect information about the distribution of risk in retail portfolios across segments. Retail risk would be divided into four major categories: residential, credit card, automobile, and other consumer. For residential, credit card, and other consumer, separate retail risk schedules are proposed for the different product types within each of the major categories. For all major categories, separate segmentation schemes would be used for domestic and international loans. Residential would be divided into first lien mortgages, home equity lines of credit, and home equity loans; credit card would be split between bank and charge cards, and small business and corporate cards; and student loans would be split from the other consumer category. Within each broad product-type segment, the portfolio would be broken into a number of buckets that embody unique risk characteristics.

The modular product-type design of the Retail Risk schedules allows for a targeted collection of information from only the BHCs that have material portfolios in a given product area. This design feature is intended to limit burden while maximizing the supervisory information yielded from the collection.

The Federal Reserve requests comment on the following:

a. The effects on burden should the Federal Reserve decide to move from collecting segment-level data to collecting loan-level data for a select number of Retail Risk portfolios.

PPNR Schedule

For the PPNR schedule, each BHC would provide relevant historical data for their PPNR. PPNR is composed of three major components: net interest income, non-interest income, and non-interest expense. For both net interest income and non-interest income, BHCs would submit data based on a business line breakdown. Collection of these data in this format is based on the assumption that the revenues generated by different business lines react differently under varying scenarios and such a view would facilitate a more robust analysis of the resulting projections. BHCs would provide historical data for the first submission and quarterly revisions thereafter.

Wholesale Risk Schedule

For the Wholesale Risk schedule, each BHC would provide wholesale loan portfolio data that comprise the corporate loan and CRE loan portfolios. These data would provide critical information on the performance of the loan portfolios in order to be used to develop stress test loss estimates and other analytical purposes. Given the distinct characteristics of each portfolio, these data would be collected under two data schedules.

[1] CUSIP refers to the Committee on Uniform Security Identification Procedures. This 9-character alphanumeric code identifies any North American security for the purposes of facilitating clearing and settlement of trades.

For the corporate loan portfolio, the BHC would provide loan-level information about the characteristics of credit exposures (for example, legally binding loan commitments or credit facilities). The collection would include corporate loans, held at the BHC level, to both domestic and foreign borrowers. For purposes of this collection, applicable corporate loan portfolios include loans to large corporations, small businesses (excluding scored or delinquency managed small business loans for which a commercial internal rating is not used), foreign governments, depository and non depository financial institutions, agriculture loans, as well as other loans such as loans for purchasing or carrying securities and all other commercial loans and leases as defined by the FR Y–9C. Data items would include borrower name (individuals' names would not be collected), loan amount, loan type, maturity and internal risk rating.

For the CRE loan portfolios, the BHC would provide loan-level information about the characteristics of credit exposures for each CRE loan equal to or greater than $1 million. For purposes of this collection, applicable CRE loan portfolios include 1–4 family residential construction loans, other construction and land development loans, multifamily loans, non-farm or non-residential loans, loans to finance CRE but not secured by CRE, and international CRE loans (for example, non-domestic office loans), as each is defined in the FR Y–9C. Given the complexity of CRE portfolios, the data would include loan information (for example, borrower name [individuals' names would not be collected], loan amount, loan type, maturity and rating) and property information (for example, property type, net operating income, property value, and occupancy).

Trading Schedule

The worksheets that make up the Trading schedule would capture detailed information on the BHC's profit and loss (P/L) sensitivities to changes in equity prices, foreign exchange rates, interest rates, credit spreads, and commodity prices. Information on the trading book would be reported in the form of various spot sensitivities, as well as through multidimensional P/L sensitivity grids for products that tend to exhibit nonlinear P/L response to underlying risk factors. The worksheets in this schedule request information on both the sector (industry) and geographical compositions of exposures to such assets. Additional data would be collected for trading incremental default risk (IDR): Corporate and Sovereign Credit, and Securitized Products.

Basel III Schedule

The proposed quarterly collection would be a streamlined version of the annual schedule and would collect actual balances for Basel III Tier 1 Common, Tier 1 Capital, RWA, Leverage Exposures (including some elements of RWAs and Leverage Exposures, if available), capital instruments outstanding and proposed issuances and redemptions. These data are not available in regulatory reports, which are prepared on a Basel I or Basel II basis. Data collected would be compared against the balance projections provided annually to monitor the path of each BHC's positions. For BHCs that submitted in their annual filing planned actions to meet Basel III targets, the Federal Reserve would also request qualitative responses regarding progress in executing those actions. Combined with the collected data, this information would provide important insight into each BHC's Basel III preparedness and feasibility of the projections and plans submitted in the annual schedule.

Regulatory Capital Instruments Schedule

The proposed quarterly collection would ask BHCs to confirm the execution of proposed redemptions and issuances of specific instruments and identify any deviations from the projections submitted in the annual schedule. The quarterly monitoring effort would facilitate the maintenance and updating of the centralized Regulatory Capital Instruments data in order to support future capital requests and to produce horizontal and BHC-specific reports on the composition of Tier 1 and Tier 2 capital.

FR Y–14A/Q Instructions

The reporting instructions, to the extent appropriate, would use definitions already included in the FR Y–9C instructions, and total amounts (for example, total AFS or HTM securities), to the extent appropriate, would agree with total amounts reported on the FR Y–9C.

FR Y–14A Time Schedule. In 2011, the Federal Reserve expects to distribute schedules to the BHCs in late-November and to receive the completed data by early-January 2012. With the exception of the trading and counterparty collections, the data collected would be reported as of September 30, 2011. Due to the unique role that timing plays in any market shock exercise, the annual trading and CCR data would be collected as-of a specified date in the 3rd or 4th quarter. That as-of date would be communicated to the BHCs after it had occurred but before year-end.

Annually thereafter the Federal Reserve expects to distribute schedules to the BHCs during the fourth quarter and to receive completed data by early-January the following year, beginning in 2013. With the exception of the trading and counterparty collections, the data collected would be as of September 30. The as-of date for the trading and CCR data would be during the 3rd or 4th quarter. The as-of date would be communicated to the BHCs after it had occurred but before year-end.

FR Y–14Q Time Schedule. In 2011, the Federal Reserve expects to distribute schedules to the BHCs in late-November and to receive the completed data by mid-December 2011. With the exception of the trading collection, the data collected during this first submission would be reported as of September 30, 2011. Similar to the annual collection, as-of-date for the trading data would be during the 3rd or 4th quarter.

Quarterly thereafter the Federal Reserve expects to distribute schedules to the BHCs and to receive completed data on the same time schedule as the FR Y–9C reported data (40 calendar days after the calendar quarter-end for March, June, and September and 45 calendar days after the calendar quarter-end for December).

Beginning in 2012, the quarterly Trading schedule as-of-date for the first, second, and fourth quarters would be the same as the as-of dates for the other reported schedules. For the 3rd quarter, the BHCs would be required to report data as part of a market shock exercise. Due to the nature of a shock exercise, the Federal Reserve would communicate to the BHCs the as-of-date for trading data on a future date in the 3rd or 4th quarter. These data would be due 40 calendar days after the calendar quarter-end or 40 calendar days after the notification date (notifying respondents of the as-of-date), whichever comes later.

Board of Governors of the Federal Reserve System, September 1, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–22912 Filed 9–6–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE313; Notice No. 23–10–03–SC]

Special Conditions: Diamond Aircraft Industries, Model DA–40NG; Electronic Engine Control (EEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Diamond Aircraft Industries (DAI), model DA–40NG airplane. This airplane will have a novel or unusual design feature(s) associated with an electronic engine control (EEC), also known as a Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before October 7, 2011.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, *Attention:* Rules Docket, Docket No. CE313, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE313. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Pete Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE313.'' The postcard will be date stamped and returned to the commenter.

Background

On May 11, 2010 Diamond Aircraft Industry GmbH applied for an amendment to Type Certificate No. A47CE to include the new model DA–40NG with the Austro Engine GmbH model E4 ADE. The model DA–40NG, which is a derivative of the model DA–40 currently approved under Type Certificate No. A47CE, is a fully composite, four place, single-engine airplane with a cantilever low wing, T-tail airplane with the Austro Engine GmbH model E4 diesel engine and an increased maximum takeoff gross weight from 1150 kilograms (kg) to 1280 kg (2535 pounds (lbs) to 2816 lbs).

DAI will use an EEC instead of a traditional mechanical control system on the model DA–40NG airplane. The EEC is certified as part of the engine design certification, and the certification requirements for engine control systems are driven by 14 CFR part 33 certification requirements. The guidance for the part 33 EEC certification requirement is contained in two advisory circulars: Advisory Circular (AC) 33.28–1 and AC 33.28–2. The EEC certification, as part of the engine, addresses those aspects of the engine specifically addressed by part 33 and is not intended to address 14 CFR part 23 installation requirements. However, the guidance does highlight some of the aspects of installation that the engine applicant should consider during engine certification. The installation of an engine with an EEC system requires evaluation of environmental effects and possible effects on or by other airplane systems, including the part 23 installation aspects of the EEC functions. For example, the indirect effects of lightning, radio interference with other airplane electronic systems, and shared engine and airplane data and power sources.

The regulatory requirements in part 23 for evaluating the installation of complex electronic systems are contained in § 23.1309. However, when § 23.1309 was developed, the requirements of the rule were specifically excluded from applying to powerplant systems provided as part of the engine (reference § 23.1309(f)(1)). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the analysis would not be useful and not be complete because it would not include the effects of the aircraft supplied power and data failures on the engine control system, and the resulting effects on engine power/thrust. The integral nature of EEC installations require review of EEC functionality at the airplane level, as behavior acceptable for part 33 certification may not be acceptable for part 23 certification.

For over a decade, the Small Airplane Directorate has applied a special condition that required all EEC installations to comply with the requirements of § 23.1309(a) through (e). The rationale for applying § 23.1309 was that it was an existing rule that contained the best available requirements to apply to the installation of a complex electronic system; in this case, an EEC with aircraft interfaces. Additionally, special conditions for High Intensity Radiated Fields (HIRF) were also applied prior to the codification of § 23.1308.

There are several difficulties for propulsion systems directly complying with the requirements of § 23.1309. There are conflicts between the guidance material for § 23.1309 and propulsion system capabilities and failure susceptibilities. The following figure is an excerpt from AC 23.1309–1D.

Classification of failure conditions	No safety effect	Minor	Major	Hazardous	Catastrophic
Allowable qualitative probability	No probability requirement	Probable	Remote	Extremely remote	Extremely improbable
Effect on Airplane.	No effect on operational capabilities or safety.	Slight reduction in functional capabilities or safety margins.	Significant reduction in functional capabilities or safety margins.	Large reduction in functional capabilities or safety margins.	Normally with hull loss.
Effect on Occupants.	Inconvenience for passengers.	Physical discomfort for passengers.	Physical distress to passengers, possibly including injuries.	Serious or fatal injury to an occupant.	Multiple fatalities.
Effect on Flight Crew.	No effect on flight crew	Slight increase in workload or use of emergency procedures.	Physical discomfort or a significant increase in workload.	Physical distress or excessive workload impairs ability to perform tasks.	Fatal injury or incapacitation.
Classes of airplanes:	Allowable Quantitative Probabilities and Software (SW) and Complex Hardware (HW) DALs (Note 2).				
Class I (Typically SRE under 6,000 lbs.).	No Probability or SW & HW DALs Requirement.	$<10^{-3}$ Note 1 & 4 P=D, S=D	$<10^{-4}$ Notes 1 & 4 P=C, S=D P=D, S=D (Note 5)	$<10^{-5}$ Notes 4 P=C, S=D P=D, S=D (Note 5)	$<10^{-6}$ Note 3 P=C, S=C.
Class II (Typically MRE, STE, or MTE under 6000 lbs.).	No Probability or SW & HW DALs Requirement.	$<10^{-3}$ Note 1 & 4 P=D, S=D	$<10^{-5}$ Notes 1 & 4 P=C, S=D P=D, S=D (Note 5)	$<10^{-6}$ Notes 4 P=C, S=C P=D, S=D (Note 5)	$<10^{-7}$ Note 3 P=C, S=C.
Class III (Typically SRE, STE, MRE, & MTE equal or over 6000 lbs.).	No Probability or SW & HW DALs Requirement.	$<10^{-3}$ Note 1 & 4 P=D, S=D	$<10^{-5}$ Notes 1 & 4 P=C, S=D	$<10^{-7}$ Notes 4 P=C, S=C	$<10^{-8}$ Note 3. P=B, S=C.
Class IV (Typically Commuter Category).	No Probability or SW & HW DALs Requirement.	$<10^{-3}$ Note 1 & 4 P=D, S=D	$<10^{-5}$ Notes 1 & 4 P=C, S=D	$<10^{-7}$ Notes 4 P=B, S=C	$<10^{-9}$ Note 3 P=A, S=B.

Note 1: Numerical values indicate an order of probability range and are provided here as a reference. The applicant is usually not required to perform a quantitative analysis for minor and major failure conditions. See figure 3.

Note 2: The alphabets denote the typical SW and HW DALs for most primary system (P) and secondary system (S). For example, HW or SW DALs Level A on primary system is noted by P=A. See paragraphs 13 & 21 for more guidance.

Note 3: At airplane function level, no single failure will result in a catastrophic failure condition.

Note 4: Secondary system (S) may not be required to meet probability goals. If installed, S should meet stated criteria.

Note 5: A reduction of DALs applies only for navigation, communication, and surveillance systems if an altitude encoding altimeter transponder is installed and it provides the appropriate mitigations. See paragraphs 13 & 21 for more information.

There is a conflict between the EEC system loss-of-thrust-control (LOTC), or loss-of-power-control (LOPC), probability per hour requirements given in part 33 guidance material and the failure rate requirements associated with the hazard created by a total loss of power/thrust as given in part 23 AC 23.1309–1D guidance. The part 33 requirements for engine control LOTC/LOPC probabilities are shown below:

Engine type	Average LOTC/LOPC events per million hours	Maximum LOTC/LOPC events per million hours
Turbine Engine	10 (1 × 10–05 per hour)	100 (1 × 10–04 per hour).
Reciprocating Engine	45 (4.5 × 10–05 per hour)	450 (4.5 × 10–04 per hour).

Note: See AC 33.28–1, AC 33.28–2 and ANE–1993–33.28TLD–R1 for further guidance.

The classification of the failure condition for LOTC/LOPC event on a single engine airplane ranges from Hazardous to Catastrophic. The classification of the failure condition for a single engine LOTC/LOPC event on a multi-engine airplane ranges from Major to Catastrophic. The classification of the failure condition for a multi-engine LOTC/LOPC event on a multi-engine airplane is Catastrophic. From the AC 23.1309–1D failure probability values, it is obvious that a single engine airplane EEC system will not be able to meet the failure probabilities as shown in the guidance material for § 23.1309. As a result, applicants have elected to declare a reduced hazard severity for a failure of the EEC system. This is not the intent of § 23.1309. The greater hazard severity should be associated with lower probabilities of failure, and higher probabilities of failure should not establish the lower hazard severities. There is also a conflict between the classification of the failure condition for a failure of an EEC system and the required test levels for the effects of lightning and high intensity radiated frequency (HIRF). Testing to a level lower than required for a catastrophic failure results in a lower level of safety than the mechanical system it replaces.

This is contrary to the intent of certification requirements.

The advent of EEC also created/established the ability to dispatch with certain allowable loss of functionality and/or redundancy. This is known as Time-Limited Dispatch (TLD). The TLD allowable configurations must meet the specific risk LOTC/LOPC failure probabilities. FAA policy statement, ANE–1993–33.28TLD–R1, defines the full up and TLD allowable failure probabilities for turbine engines. The ability to use TLD is a risk management endeavor that uses a limited time period between inspection/maintenance intervals to mitigate the hazard. As such, the FAA has issued specific guidance for part 23 airplanes in addition to policy statement, ANE–1993–33.28TLD–R1, in order to adequately capture the necessary time limits between maintenance intervals. A means of compliance issue paper giving specific guidance can be generated, if desired, for the applicant.

The advent of EEC also led to incorporation of functions that, while not required by the CFRs, also introduce potentially catastrophic failure(s) and malfunction(s). Consequently, incorporation of these additional functions must be shown to retain part 23 levels of safety. These additional functions have included thrust management, portions of engine indication otherwise provided as part of the engine installation, engine speed synchronization, ignition control, auto-feather, *etc.*

The certification of an airplane to the standards of 14 CFR part 25 does not require the application of § 25.1309 via special condition to the EEC installation. In part 25, § 25.1309 is applicable to the powerplant installations in general and as a whole. The part 25 consequences differ from part 23 due to the required multi-engine configuration of part 25 airplanes. Additional applicable part 25, Subpart E requirements are those contained within § 25.901(b)(2) and (c):

Section 25.901—Installation

(b) For each powerplant—

(2) The components of the installation must be constructed, arranged, and installed so as to ensure their continued safe operation between normal inspections or overhauls;

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane except that the failure of structural elements need not be considered if the probability of such failure is extremely remote.

There is language similar to part 25, § 25.901(c) contained in part 23, § 23.1141(e):

Section 23.1141—Powerplant Controls: General

(e) For turbine engine powered airplanes, no single failure or malfunction, or probable combination thereof, in any powerplant control system may cause the failure of any powerplant function necessary for safety.

The requirements contained within § 23.1141(e) were originally intended for the mechanical control interfaces on turbine engines. The rule was first promulgated at Amendment 23–7, effective on September 14, 1969. The preamble justifying the rule change states:

''This proposal would, in effect require that the need for system redundancy, alternate devices, and duplication of functions be determined in the design of turbine powerplant control systems.''

The overall intent of the above cited rules is to provide a robust and fault tolerant engine control installation that ensures that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane.

Given the unique requirements of an EEC installation, and the lack of specific regulatory requirements, a special condition will be applied to all EEC installations in part 23 airplanes. This special condition is not applicable to the part 33 engine certification requirements, and it specifically excludes any part 33 references. Compliance with this special condition may necessitate changes to the EEC, and may require additional part 33 compliance showings. In like manner, changes to the EEC at the part 33 level may require additional compliance showings to this special condition. The overall intent of this special condition is to leverage off of the part 33 compliance as much as possible and address the airplane level effects of an EEC installation.

The EEC system includes all of the subsystems on the aircraft that interface with the EEC and provide aircraft data and electrical power. This special condition is applicable to and includes all functions of the EEC system that have an effect at the airplane level. An example of this is control of the turbine engine compressor variable geometry (VG): the VG function in itself is not an airplane function, but changes to the VG scheduling will require re-substantiating compliance to part 23 requirements, such as § 23.939.

The components that should be considered part of the EEC system are defined in Society of Automotive Engineers (SAE) document, Aerospace Recommended Practice (ARP) 5107B, Guidelines for Time-Limited-Dispatch (TLD) Analysis for Electronic Engine Control Systems, section 6.4. This guidance is intended for turbine engine installations; however, the intent is applicable to piston engine installations. A means of compliance issue paper giving specific guidance can be generated, if desired, for the applicant.

Part 33 certification data, if applicable, may be used to show compliance with the requirements of part 23 installation requirements; however, compliance with the part 33 requirements does not constitute compliance with the requirements of part 23, nor automatically imply that the engine is installable on a part 23 airplane. The part 23 applicant is required to show compliance in accordance with part 21. If part 33 data is to be used, then the part 23 applicant must be able to provide this data for their showing of compliance to the part 23 requirements.

Type Certification Basis

Under the provisions of § 21.101, DAI must show that the model DA–40NG meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A47CE or the applicable regulations in effect on the date of application for the change to the model DA–40. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the model DA–40NG because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model DA–40NG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as appropriate, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to

include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The model DA–40NG will incorporate the following novel or unusual design features:

Electronic engine control system.

Applicability

As discussed above, these special conditions are applicable to the model DA–40NG. Should DAI apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes the following special conditions as part of the type certification basis for Diamond Aircraft Industry GmbH model DA–40NG with the installation of the Austro Engine GmbH model E4 aircraft diesel engine.

1. Electronic Engine Control

a. For electronic engine control system installations, it must be established that no single failure or malfunction or probable combinations of failures of Electronic Engine Control (EEC) system components will have an effect on the system, as installed in the airplane, that causes the loss-of-thrust-control (LOTC), or loss-of-power-control (LOPC) probability of the system to exceed those allowed in part 33 certification.

b. Electronic engine control system installations must be evaluated for environmental and atmospheric conditions, including lightning. The EEC system lightning and High-Intensity Radiated Fields (HIRF) effects that result in LOTC/LOPC should be considered catastrophic.

c. The components of the installation must be constructed, arranged, and installed so as to ensure their continued safe operation between normal inspections or overhauls.

d. Functions incorporated into any electronic engine control that make it part of any equipment, systems or installation whose functions are beyond that of basic engine control, and which may also introduce system failures and malfunctions, are not exempt from § 23.1309 and must be shown to meet part 23 levels of safety as derived from § 23.1309. Part 33 certification data, if applicable, may be used to show compliance with any part 23 requirements. If part 33 data is to be used to substantiate compliance with part 23 requirements, then the part 23 applicant must be able to provide this data for their showing of compliance.

Note: The term ''probable'' in the context of ''probable combination of failures'' does not have the same meaning as in AC 23.1309–1D. The term ''probable'' in ''probable combination of failures'' means ''foreseeable,'' or (in AC 23.1309–1D terms), ''not extremely improbable.''

Issued in Kansas City, Missouri, on August 31, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22890 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0916; Directorate Identifier 2011–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Several cases of aileron terminal quadrant support brackets that were manufactured using sheet metal have been found cracked on DHC–8 Series 300 aircraft. Investigation revealed that the failure of the support bracket was due to fatigue. Failure of the aileron terminal quadrant support bracket could result in an adverse reduction of aircraft roll control.

* * * * *

These conditions could result in loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 24, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7329; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0916; Directorate Identifier 2011–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On December 16, 2010, we issued AD 2010–26–13, Amendment 39–16553 (75 FR 81420, December 28, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–26–13, we have determined there is a typographical error in paragraph (g)(2) of AD 2010–26–13. Paragraph (g)(2) of AD 2010–26–13 requires installing a new aileron input quadrant support bracket ''before the accumulation of 33,000 total flight cycles or within 6,000 flight hours after the effective date of this AD, whichever occurs first.'' The compliance time of ''33,000 total flight cycles,'' should have been ''33,000 total flight hours.'' We have revised paragraph (g)(2) of this proposed AD to include the 33,000 total flight hours compliance time.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry.

The actions that are required by AD 2010–26–13 and retained in this proposed AD take about 72 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $1,080 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, the estimated cost of the currently required actions is $93,600, or $7,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16553 (75 FR 81420, December 28, 2010) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–0916; Directorate Identifier 2011–NM–127–AD.

Comments Due Date

(a) We must receive comments by October 24, 2011.

Affected ADs

(b) This AD supersedes AD 2010–26–13, Amendment 39–16553 (75 FR 81420, December 28, 2010).

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–301, –311, and –315 airplanes, certificated in any category; having serial numbers 100 through 530 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Several cases of aileron terminal quadrant support brackets that were manufactured using sheet metal have been found cracked on DHC–8 Series 300 aircraft. Investigation revealed that the failure of the support bracket was due to fatigue. Failure of the aileron terminal quadrant support bracket could result in an adverse reduction of aircraft roll control.

* * * * *

These conditions could result in loss of control of the airplane.

Compliance

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

Restatement of Requirements of AD 2010–26–13, With Reduced Compliance Time and No New Service Information

Actions

(g) For airplanes with an aileron terminal quadrant support bracket having part number (P/N) 85711569: At the applicable times specified in paragraph (g)(1) or (g)(2) of this AD, install a new aileron input quadrant support bracket by incorporating MODSUM 8Q101250, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–43, Revision B, dated October 7, 2009.

(1) For airplanes that have accumulated 30,000 total flight hours or more as of February 1, 2011 (the effective date of AD 2010–26–13): Within 3,000 flight hours after February 1, 2011.

(2) For airplanes that have accumulated less than 30,000 total flight hours as of February 1, 2011: At the earlier of the times of paragraphs (g)(2)(i) and (g)(2)(ii).

(i) Before the accumulation of 33,000 total flight cycles or within 6,000 flight hours after February 1, 2011, whichever occurs first.

(ii) Before the accumulation of 33,000 total flight hours or within 6,000 flight hours after the effective date of this AD, whichever occurs first.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Doing the installation by incorporating MODSUM 8Q101250 is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before February 1, 2011, in accordance with Bombardier Service Bulletin 8–57–43, dated August 9, 2002; or Bombardier Service Bulletin 8–57–43, Revision A, dated January 17, 2003.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2009–45, dated December 11, 2009; and Bombardier Service Bulletin 8–57–43, Revision B, dated October 7, 2009; for related information.

Issued in Renton, Washington, on August 29, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22710 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0578; Airspace Docket No. 11–ASO–24]

Proposed Establishment of Class D and E Airspace and Amendment of Class E; Brooksville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D and E airspace and amend existing Class E airspace at Brooksville, FL. to accommodate a new air traffic control tower at Hernando County Airport. Controlled airspace is necessary for the support of air traffic operations at Hernando County Airport and would enhance the safety and airspace management at the airport. This action also would make a minor adjustment to the geographic coordinates of the airport.

DATES: 0901 UTC. Comments must be received on or before October 24, 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.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–0578; Airspace Docket No. 11–ASO–24, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically

invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA–2011–0578; Airspace Docket No. 11–ASO–24) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.* Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D airspace, Class E surface area airspace and amend Class E airspace extending upward from 700 feet above the surface at Hernando County Airport, Brooksville, FL. Controlled airspace is necessary to support the operation of the new air traffic control tower, and new standard instrument approach procedures, and would enhance the safety and management of aircraft operations at the airport. Also, to be in concert with the FAAs aeronautical database, this action would adjust the geographic coordinates of the airport.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

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

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

This proposed rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it proposes to establish and amend controlled airspace at Hernando County Airport, Brooksville, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for part 71 will continue 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 5000 Class D airspace.

* * * * *

ASO FL D Brooksville, FL [New]

Hernando County Airport, FL
(Lat. 28°28′25″ N., long. 82°27′20″ W.)

That airspace extending upward from the surface up to and including 1,500 feet MSL within a 5.1-mile radius of the Hernando County Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO FL E2 Brooksville, FL [New]

Hernando County Airport, FL
(Lat. 28°28′25″ N., long. 82°27′20″ W.)

That airspace extending from the surface within a 5.1-mile radius of Hernando County Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASO FL E5 Brooksville, FL [Amended]

Hernando County Airport, FL
(Lat. 28°28′25″ N., long. 82°27′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Hernando County Airport.

Issued in College Park, Georgia, on August 31, 2011.

Barry A. Knight,

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

[FR Doc. 2011–22881 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–29778; File No. S7–34–11]

RIN 3235–AL21

Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission (''Commission'') and its staff (''Commission staff'' or ''staff'') are reviewing interpretive issues under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act'') relating to the status under the Act of companies that are engaged in the business of acquiring mortgages and mortgage-related instruments and that rely on the exclusion from the definition of investment company in Section 3(c)(5)(C) of the Act (together, ''mortgage-related pools''). This review is focusing, among others, on certain real estate investment trusts (''REITs''). To help facilitate this review, the Commission requests information about these companies and how Section 3(c)(5)(C) of the Act is interpreted by, and affects investors in, these companies. The Commission solicits commenters' views about the application of the Investment Company Act to mortgage-related pools, including suggestions on the steps that the Commission should take to provide greater clarity, consistency or regulatory certainty with respect to Section 3(c)(5)(C).

DATES: Comments should be received on or before November 7, 2011.

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

Electronic Comments

Use the Commission's Internet comment form *http://www.sec.gov/rules/concept.shtml*); or send an e-mail to *rule-comments@sec.gov*. Please include File No. S7–34–11 on the subject line; or use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File No. S7–34–11. This file number should be included on the subject line if e-mail is used. To help process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/concept.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without charge; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, at (202) 551–6840, or Nadya Roytblat, Assistant Chief Counsel, at (202) 551–6825, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

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I. Introduction and Executive Summary

The Commission and staff are reviewing interpretive issues relating to the status of mortgage-related pools under the Investment Company Act.[1] Companies that are engaged in the business of acquiring mortgages and mortgage-related instruments, and that issue securities, generally hold assets that are securities under the Investment Company Act and typically meet the definition of investment company under the Act.[2] While some such companies register as investment companies under the Act,[3] many seek to rely on Section 3(c)(5)(C) of the Act, which generally excludes from the definition of investment company any person who is primarily engaged in, among other things, ''purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.'' [4] The

[1] Certain companies that are engaged in the business of acquiring mortgages and mortgage-related instruments are issuers of mortgage-backed securities that may rely on Section 3(c)(5)(C). Such issuers are not included in the term ''mortgage-related pools'' as it is used in this release. *See infra* note 5 and accompanying text.

[2] Section 3(a)(1)(A) of the Investment Company Act defines an investment company as any issuer which ''is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.'' 15 U.S.C. 80a–3(a)(1)(A). Section 3(a)(1)(C) defines an investment company as any issuer which ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities [as that term is defined in the Act] having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on a unconsolidated basis.'' 15 U.S.C. 80a–3(a)(1)(C). A company that issues securities and is primarily engaged in investing in, owning, or holding mortgages and mortgage-related instruments typically meets one, if not both, of these definitions. *See, e.g.,* SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong. 2d Sess. 328 (1966) (''PPI Report'') (stating that mortgages and other interests in real estate are investment securities for purposes of the Act).

Section 2(a)(36) of the Investment Company Act broadly defines ''security'' as ''any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.''

[3] According to industry statistics derived from Lipper's LANA Database, as of June 30, 2011, there were 23 series of registered open-end investment companies with total assets of $70.6 billion that invested ''at least 65% of their assets in Government National Mortgage Association securities.'' In addition, as of that date, there were 34 series of registered open-end investment companies with total assets of $26.6 billion, and 11 registered closed-end investment companies with total assets of $1.8 billion, that invested ''at least 65% of their assets in mortgages/securities issued or guaranteed as to principal and interest by the U.S. government and certain Federal agencies.''

[4] 15 U.S.C. 80a–3(c)(5)(C). Section 3(c)(5) excludes from the definition of investment company ''[a]ny person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts

exclusion provided by Section 3(c)(5)(C) sometimes also is used by issuers of mortgage-backed securities, whose reliance on this statutory provision is discussed in a companion release.[5]

Section 3(c)(5)(C) of the Act was enacted in 1940 to exclude from regulation under the Investment Company Act companies that were engaged in the mortgage banking business and that did not resemble, or were not considered to be, issuers that were in the investment company business.[6] Since that time, as the mortgage markets have evolved and expanded, a wide variety of companies, many of them unforeseen in 1940, have relied upon Section 3(c)(5)(C).[7] The statutory exclusion from the definition of investment company provided by Section 3(c)(5)(C) does not have an extensive legislative history and has not been comprehensively addressed by the Commission. Section 3(c)(5)(C) has been addressed in staff no-action letters on a case-by-case basis.[8]

In light of the evolution of mortgage-related pools and the development of new and complex mortgage-related instruments, the Commission is reviewing interpretive issues relating to the status of mortgage-related pools under the Investment Company Act and whether mortgage-related pools potentially are making judgments about their status under the Act without sufficient Commission guidance. It appears that some types of mortgage-related pools might interpret the statutory exclusion provided by Section 3(c)(5)(C) in a broad manner, while others might interpret the exclusion too narrowly, suggesting that there may be confusion among some mortgage-related pools about when the exclusion applies. The Commission also is concerned that the staff no-action letters that have addressed the statutory exclusion in Section 3(c)(5)(C) may have contained, or led to, interpretations that are beyond the intended scope of the exclusion and inconsistent with investor protection. The Commission is concerned that certain types of mortgage-related pools today appear to resemble in many respects investment companies such as closed-end funds and may not be the kinds of companies that were intended to be excluded from regulation under the Act by Section 3(c)(5)(C). Therefore, the Commission believes that both investors and mortgage-related pools may benefit from the Commission's comprehensive review of the status of mortgage-related pools under the Investment Company Act and from any resulting guidance.

Accordingly, the Commission is requesting data and other information from the public about mortgage-related pools and soliciting views about the application of Section 3(c)(5)(C) of the Investment Company Act to mortgage-related pools, including steps that the Commission might take in this area. The Commission's goals in this effort are to: (1) be consistent with the Congressional intent underlying the exclusion from regulation under the Act provided by Section 3(c)(5)(C); (2) ensure that the exclusion is administered in a manner that is consistent with the purposes and policies underlying the Act, the public interest, and the protection of investors; (3) provide greater clarity, consistency and regulatory certainty in this area; and (4) facilitate capital formation.

II. Companies That Rely on Section 3(c)(5)(C)

A. Overview

By its terms, Section 3(c)(5)(C),[9] excludes from the definition of investment company ''[a]ny person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged * * * [in the business of] purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.'' Many different types of companies that engage in a variety of businesses rely on this exclusion.[10] Such companies include: Those that originate and hold mortgages and participations of mortgages that they originated; companies engaged in the business of acquiring from affiliates or third parties mortgages and mortgage-related instruments (such as mortgage participations, mezzanine loans and mortgage-backed securities); companies that invest in real estate, mortgages and mortgage-related instruments; and companies whose primary business is to invest in so-called agency securities [11] and other mortgage-backed securities.[12]

Companies that rely on the exclusion in Section 3(c)(5)(C) are structured and operated in various ways. Nevertheless, it appears that several general

receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interest in real estate.''

[5] *Treatment of Asset-Backed Issuers under the Investment Company Act,* Investment Company Act Release No. 29779 (Aug. 31, 2011) (''3a–7 Companion Release'').

[6] *See infra* note 38 and accompanying text.

[7] Some companies that privately place their securities may instead rely on the private investment company exclusions set forth in Sections 3(c)(1) and 3(c)(7) of the Act. Section 3(c)(1) of the Investment Company Act excludes from the definition of investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 investors and which is not making and does not presently propose to make a public offering of its securities. 15 U.S.C. 80a–3(c)(1). Section 3(c)(7) of the Investment Company Act excludes from the definition of investment company any issuer whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are ''qualified purchasers'' as defined in the Act and which is not making and does not at that time propose to make a public offering of its securities. 15 U.S.C. 80a–3(c)(7).

[8] This release includes extensive discussion of staff no-action letters; accordingly the Commission notes that its discussion of staff statements is provided solely for background and to facilitate comment on issues that the Commission might address. The discussion is in no way intended to suggest that the Commission has adopted the analysis, conclusions or any other portion of the staff statements discussed here. Staff no-action letters are issued by the Commission staff in response to written requests regarding the application of the Federal securities laws to proposed transactions. Many of the staff no-action letters are ''enforcement-only'' letters, in which the staff states whether it will recommend enforcement action to the Commission if the proposed transaction proceeds in accordance with the facts, circumstances and representations set forth in the requester's letter. Other staff no-action letters provide the staff's interpretation of a specific statute, rule or regulation in the context of a specific situation. *See Informal Guidance Program for Small Entities,* Investment Company Act Release No. 22587 (Mar. 27, 1997).

[9] Section 3(c)(5) was initially enacted in 1940 as Section 3(c)(6). Congress redesignated the provision as Section 3(c)(5) in 1970. Investment Company Amendments Act of 1970, Public Law 91–547, 84 Stat. 1413 (1970) (codified as amended 15 U.S.C. 80a–3(c)(5)).

[10] *See infra* note 13.

[11] Agency securities are mortgage-backed securities issued by the government-sponsored enterprises, Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac).

[12] A summary review by the staff of filings under the Securities Exchange Act of 1934 (''Exchange Act'') of issuers identifying themselves as REITs suggests that, as of April 2011, there were approximately 49 REITs that had disclosed that they were primarily engaged in the business of holding mortgages and/or mortgage-related instruments, with most indicating that they or their subsidiaries were relying on Section 3(c)(5)(C). Of these companies, 15 stated that they were primarily engaged in the business of acquiring agency securities and other types of mortgage-backed securities. The staff's review also identified 57 companies that had disclosed in their Exchange Act filings that they were investing in both (i) real estate, and (ii) mortgages and mortgage-related instruments, with 28 of such companies suggesting that they or their subsidiaries may be relying on Section 3(c)(5)(C). This review did not include those companies that have not elected to be treated as REITs under the Internal Revenue Code but may nevertheless be relying on the Section 3(c)(5)(C) exclusion.

observations about mortgage-related pools can be made.[13]

Many, if not most, mortgage-related pools are corporations or business trusts that have elected to be treated as REITs for purposes of their tax status under the Internal Revenue Code.[14] Special tax provisions for REITs were created by Congress in 1960 as a means to make available to retail investors opportunities to invest in income-producing real estate and real estate-related assets.[15] In a REIT structure, investor assets are pooled together to acquire, or provide financing for, various types of income-producing real estate interests that are selected and managed by professional asset managers. Like most registered investment companies, companies that qualify for REIT status typically seek pass-through tax treatment. To achieve this tax benefit, a company electing REIT status must comply with restrictions and limitations set forth in the Internal Revenue Code.[16]

Although mortgage-related pools may utilize a variety of investment strategies, most mortgage-related pools use leverage to magnify their returns.[17] For example, some mortgage-related pools that primarily hold agency securities and other mortgage-backed securities operate using a business model that depends on the use of leverage, with their profits, if any, generated by the spread between the cost of borrowing and the return on holdings purchased with the proceeds from such borrowing.[18] According to data provided by the National Association of Real Estate Investment Trusts (''NAREIT''), as of September 30, 2010, the debt ratio of publicly traded Mortgage REITs averaged 83.5%, a debt-to-equity ratio of nearly five to one.[19] In contrast, as of June 30, 2010, the debt-to-equity ratio of registered closed-end investment companies that use borrowings was generally less than one quarter to one.[20]

B. Management Style and Corporate Governance

Some mortgage-related pools are internally managed and have their own employees to carry out the administrative, investment and other activities necessary to operate the companies. Other mortgage-related pools have few, if any, employees and instead rely on separate advisory entities for the day-to-day operations of the companies. These advisory entities often are the mortgage-related pool's sponsor (typically, a real estate investment firm, an investment management firm, a private equity manager or other similar company that sponsors REITs, hedge funds and/or private equity funds) or an affiliate of the sponsor. An adviser of an externally managed mortgage-related pool is compensated by the company through a variety of different compensation schemes, which may include a performance or incentive fee. Regardless of whether they are internally or externally managed, most mortgage-related pools have boards of directors or trustees to oversee the companies' management.

Many mortgage-related pools list and trade their securities on a national securities exchange and, like other public companies listed on a national securities exchange, must comply with the exchange's listing and maintenance requirements, including corporate governance rules. Such rules require, among other things, that a majority of the members of the company's board of directors or trustees be independent of its management.[21] Other mortgage-related pools do not list and trade their securities on a national securities exchange and may not be subject to any such corporate governance rules. Many non-exchange traded REITs, however, are structured in accordance with the NASAA Guidelines, as well as any applicable regulations of the states in which they sell their shares.[22] Among other things, the NASAA Guidelines provide for a REIT to have a board of

[13] The Commission's information about mortgage-related pools discussed in this release is derived primarily from the staff's review of registration statements filed under the Securities Act of 1933 (''Securities Act'') and periodic reports filed under the Exchange Act, to the extent that these filings discuss whether a company is relying on Section 3(c)(5)(C). Information available to the Commission is further limited by the fact that companies that rely on Section 3(c)(5)(C) also include companies that privately place their securities without registering under the Securities Act and companies that may not be subject to the periodic reporting requirements under the Exchange Act. The description of mortgage-related pools provided in this section of the release relates primarily to companies that make filings with the Commission under the Securities Act and the Exchange Act, and is based on these filings.

[14] The REIT provisions are set forth in Sections 856 through 859 of the Internal Revenue Code. 26 U.S.C. 856–859.

[15] *See, e.g.* Real Estate Investment Trusts, H.R. Rep. No. 2020, 86th Cong. 2nd Sess. 3–4 (1960). REITs may be classified into one of three categories. The National Association of Real Estate Investment Trusts (''NAREIT'') generally defines equity REITS to be companies that own and operate income-producing real estate, and mortgage REITs to be companies that lend money directly to real estate owners and their operators, or indirectly through the acquisition of loans or mortgage-backed securities. *See* NAREIT, *The REIT Story: and Introduction to the Benefits of Investing in Real Estate Stocks,* REIT.com (Feb. 2011). Hybrid REITs generally are companies that use the investment strategies of both Equity REITs and Mortgage REITs. As noted above, mortgage REITs and some Hybrid REITs typically seek to rely on Section 3(c)(5)(C). *See supra* note 12. Equity REITs that hold fee interests directly typically do not invest in securities to such an extent as to fall within the definition of investment company under the Investment Company Act. *See supra* note 2.

[16] These requirements generally provide that: (1) the company distribute at least 90% of its taxable income in dividends to its shareholders annually; (2) at least 75% of the company's total assets on the last day of each quarter of the company's taxable year consist of real estate assets (including interests in real property, interests in mortgages on real property and shares of other REITs), cash and cash items, and government securities; and (3) the company derive at least 75% of its gross income during the past year from, among other things, rents from real property, interest on obligations secured by mortgages on real property or on interests in real property, and 95% of its gross income from the same assets that qualify for the 75% test or from dividends or interest from any source. In addition to the asset and income tests and the 90% dividend distribution requirements, the Internal Revenue Code requires a company that elects REIT status to: be a corporation, trust, or association; be managed by one or more trustees or directors; have transferable shares; have a minimum of 100 shareholders; have no more than 50% of its shares held by five or fewer individuals; and not engage in certain prohibited transactions. *See supra* note 14.

[17] *See, e.g.,* Peter C. Beller, *Bet Against the Fed, Buy Mortgage REITs,* Forbes.com, Jan. 25, 2010; *Anthracite Capital Files Chapter 7,* REITwrecks.com (Mar. 15, 2010).

[18] *See, e.g.,* Vivian Marino, *Some REITS Have a Contrarian Flavor,* NY Times.com, Mar. 29, 2009.

[19] NAREIT REITWatch: A Monthly Statistical Report on the Real Estate Investment Trust Industry (Apr. 2011). NAREIT calculates the debt ratio by dividing the total debt outstanding in a REIT sector by that REIT sector's total market capitalization. Total capitalization equals the sum of total debt plus implied market capitalization.

[20] *See* Thomas J. Herzfeld, Survey of Closed-End Fund Leverage, Investor's Guide to Closed-End Funds (Oct. 2010). We compared REITs to registered closed-end investment companies because, as discussed below, certain mortgage-related pools have characteristics similar to such registered companies. *See infra* section II.C.

We note that certain REITs follow the North American Securities Administrators Association's Statement of Policy Regarding Real Estate Investment Trusts (''NASAA Guidelines''), which generally state that the maximum level of borrowings (in relation to the company's net asset value) should not exceed 300% without ''a satisfactory showing that a higher level of borrowing is appropriate'' and that any borrowing in excess of that level must be approved by a majority of the company's independent trustees and disclosed to shareholders. NASAA Guidelines at V.J. *See infra* note 22. We understand from filings made by mortgage-related pools under the Securities Act and the Exchange Act that other mortgage-related pools may specify in their organizational documents the level of leverage that they may use, although that level often may be increased with the approval of a majority of the company's board of directors or trustees, and still others may use leverage up to any level deemed appropriate by their investment advisers.

[21] *See, e.g.,* Section 303A of the New York Stock Exchange Listed Company Manual.

[22] Most states require non-exchange traded REITs to comply with the provisions of the NASAA Guidelines, although certain states have adopted their own guidelines. *See supra* note 20. *See, e.g.,* Foss, *et al., Real Estate Investment Trusts Handbook,* § 4:1 (2009–2010 ed).

trustees that has a majority of independent members.[23]

C. Similarities to Traditional Investment Companies

Some mortgage-related pools today have characteristics similar to, and may operate like, traditional investment companies. For example, both mortgage-related pools and traditional investment companies pool investor assets to purchase securities and provide investors with professional asset management.[24] Like traditional investment companies, mortgage-related pools may be internally or externally managed, with externally managed mortgage-related pools typically having few, if any, employees, and instead relying on their investment advisers, which may be their sponsors or the sponsors' affiliates, to operate the companies.[25] Like investment advisers to traditional investment companies, investment advisers to mortgage-related pools typically are compensated with an asset-based fee.[26] Some mortgage-related pools invest in the same types of assets as registered investment companies and private investment funds.[27] Finally, some mortgage-related pools are perceived by investors and the media as being investment vehicles and not as companies that are engaged in the mortgage banking business.[28]

With respect to investment companies, the Investment Company Act [29] seeks to prevent such companies from, among other things, (i) Employing unsound or misleading methods, or not receiving adequate independent scrutiny, when computing the asset value of their investments or their outstanding securities; [30] (ii) engaging in excessive borrowing and issuing excessive amounts of senior securities; [31] and (iii) being organized, operated, managed, or having their portfolio securities selected, in the interests of company insiders.[32] In addition, the Investment Company Act seeks to protect the assets of investment companies, including imposing custody controls and preventing controlling persons of an investment company from commingling the investment company's assets with their own and misappropriating them.[33]

We are concerned that some mortgage-related pools, as pooled investment vehicles, may raise the potential for the same types of abuses, such as deliberate misvaluation of the company's holdings,[34] extensive leveraging,[35] and overreaching by insiders.[36] The Commission also has

[23] NASAA Guidelines at III.B. The NASAA Guidelines also address: A REIT's issuing certain securities, including redeemable securities; minimum suitability requirements; leverage concerns; potential conflicts of interests (such as providing for a majority of a REIT's board of trustees, including a majority of its independent trustees, to approve transactions between the REIT and its affiliates); and annual reports to shareholders. NASAA Guidelines at III., V.,VI.

[24] Like registered investment companies, many mortgage-related pools publicly offer their securities to both retail and institutional investors.

[25] In addition, as discussed previously, both registered investment companies that seek to avoid corporate taxation and mortgage-related pools that elect REIT status must distribute at least 90% of their income to investors annually so as to avoid corporate taxation. *See supra* note 16 and accompanying text.

[26] Investment advisers to mortgage-related pools also may receive incentive-based fees of a type that is prohibited for investment advisers to registered investment companies under the Investment Advisers Act of 1940 (''Advisers Act''), but typically charged by investment advisers to hedge funds and certain other private investment companies. *See* Section 205 of the Advisers Act. 15 U.S.C. 80b–5. An investment adviser to a mortgage-related pool may be required to register under the Advisers Act. *See generally* Section 203 of the Advisers Act and Commission rules thereunder.

[27] For example, many mortgage-related pools and registered investment companies, including money market funds, invest in agency securities. According to the Federal Reserve, as of March 31, 2011, registered investment companies (not including money market funds) held $800.8 billion (or 10.5%), and money market funds held $373.4 billion (or 4.9%), of outstanding ''agency- and GSE-backed securities,'' defined as issues of Federal budget agencies (such as those for TVA), issues of government-sponsored enterprises (such as Fannie Mae and FHLB) and agency- and GSE-backed mortgage pool securities issued by Ginnie Mae, Fannie Mae, Freddie Mac and the Farmers Home Administration. In contrast, REITs held $191.1 billion (or 2.5%) of such securities. Federal Reserve Statistical Release, *Flow of Funds Accounts of the United States: Flows and Outstandings First Quarter 2011* (June 9, 2011). As noted previously, certain registered investment companies focus their investments on the same types of assets as mortgage-related pools that primarily hold agency securities and other mortgage-backed securities. *See supra* note 3. In addition, in recent years, some hedge funds and offshore funds have been investing in the same types of assets as some mortgage-related pools. *See, e.g., Hedge Funds Investing in Delinquent Mortgages,* MSNBC.com (July 30, 2008).

[28] For example, a number of mortgage REITs appear to have been formed with the intent of targeting retail investors who may be unable to make the high minimum investments often required of large bond funds. *See A.D. Pruitt, Mortgage REITs on a Tear as High Yields Fuel Demand,* Wall St. J. (Apr. 13, 2011). Press reports have also characterized some such companies as investment vehicles. S*ee, e.g.,* Jonathan Weil, *Hedge Fund Instant IPO Tests the New Complacency,* Bloomberg.net (Jun. 18, 2009) (''PennyMac is a hedge fund dressed up as a real estate investment trust''). *See also* Nathan Vardi, *High-Profile Investor Sues Carlyle Group,* Forbes.com (July 13, 2009) (''Michael Huffington, the wealthy former Republican congressman from California, is suing the Carlyle Group and its co-founder, David Rubenstein, over misrepresentations and deceptions Huffington claims they made regarding his $20 million investment loss in Carlyle Corp., Carlyle's failed * * * mortgage fund.'').

[29] *See, e.g.,* Section 1(b) of the Investment Company Act (setting forth findings and declaration of policy). 15 U.S.C. 80a–1(b).

[30] The Investment Company Act places significant emphasis on the manner in which a registered investment company must value its portfolio. *See, e.g.,* Section 2(a)(41) of the Act. 15 U.S.C. 80(a)–2(a)(41) (defining ''value,'' with respect to securities held by a registered investment company, to be (a) Market value for securities for which market quotations are readily available or (b) for other securities or assets, fair value as determined in good faith by the company's board of directors).

[31] Prior to 1940, some investment companies were highly leveraged through the issuance of ''senior securities'' in the form of debt or preferred stock, which often resulted in the companies being unable to meet their obligations to the holders of their senior securities. *See generally Investment Trusts and Investment Companies: Report of the Securities and Exchange Commission* (1940) (''Investment Trusts Study''). Excessive leverage also greatly increased the speculative nature of the common stock of the companies. *Id.* Section 18 of the Investment Company Act limits the ability of registered investment companies to engage in borrowing and to issue senior securities. 15 U.S.C. 80a–18.

[32] A study conducted prior to the adoption of the Act documented numerous instances in which investment companies were managed for the benefit of their sponsors and affiliates to the detriment of investors. *See* Investment Trusts Study, *supra* note 31. Section 17 of the Investment Company Act prohibits certain transactions involving investment companies and their affiliates. 15 U.S.C. 80a–17(a). Other provisions of the Investment Company Act also effectively limit opportunities for overreaching by investment company sponsors and affiliates. *See, e.g.,* Section 10(f) of the Investment Company, which generally prohibits a registered investment company from knowingly purchasing, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an affiliated person of the investment company. 15 U.S.C. 80a–10(f).

[33] *See, e.g.,* Investment Trusts Study, *supra* note 31. Prior to 1940, investment company assets were not adequately protected from misuse by investment company insiders. *Id.* In many cases, controlling persons of investment companies commingled the investment companies' assets with the investment advisers' assets and then proceeded to misuse the assets themselves. *Id.* Section 17(f) of the Investment Company Act and the rules thereunder set forth requirements with respect to the custody of investment company assets. 15 U.S.C. 80a–17(f). *See, e.g.,* Rule 17f–2 under the Investment Company Act governing custody of investments by a registered investment company. 17 CFR 270.17f–2.

[34] For example, the Commission has brought an enforcement action against the management of a company that had, among other things, improperly recorded mortgages that had decreased in value at cost rather than at market value in order to avoid writing down certain mortgages held for resale, thereby adversely affecting the company's income and equity. *See SEC* v. *Patrick Quinlan,* 2008 Fed. Sec. L. Rep. (CCH) ¶ 95,005 (E.D. Mich. Nov. 7, 2008), *aff'd,* 373 Fed. Appx. 581 (6th Cir. 2010).

[35] For example, an offshore fund that held mortgage-backed securities reportedly had a 32:1 leverage ratio (borrowing against the security of the mortgage-backed securities), so that when the mortgage-backed securities lost value, the fund could not service its debts, resulting in lenders seizing the fund's assets. *See, e.g.,* Nathan Vardi, *High-Profile Investor Sues Carlyle Group, Forbes.com* (July 13, 2009).

[36] For example, the Commission brought a settled administrative proceeding against a former chief executive officer of both a publicly held REIT and its manager (which owned approximately 52% of the REIT) who had used his significant influence on the advisory services provided by the REIT manager to cause the REIT, its manager and other related

Continued

brought a number of enforcement cases, for example, in which controlling persons of companies that hold mortgage-related assets used such companies' assets to further their own interests.[37]

D. Request for Comment

The Commission is interested in learning more about mortgage-related pools. Accordingly, commenters are requested to provide information about companies that rely on Section 3(c)(5)(C) of the Act, including, among other things, the various types of such companies; how such companies are operated, including their strategies for the acquisition and management of their holdings; the types of investors that invest in such companies; and the roles of such companies in the mortgage markets. We ask commenters to discuss the differences, if any, between companies that originate mortgages and then continue to hold all or portions of those mortgages, and companies that only invest in mortgages and mortgage-related instruments. The Commission also invites commenters to provide the same type of information about any similar companies that do not rely on Section 3(c)(5)(C) and to explain whether they are registered under the Act or rely on another exclusion or exemption and, if so, which exclusion or exemption. The Commission is interested in obtaining information about both public (exchange-traded and non-exchange traded) and privately offered mortgage-related pools and similar companies. The Commission also requests that commenters provide any other information about mortgage-related pools they believe is relevant to the Commission's review of the status of such companies under the Investment Company Act.

We also ask commenters for their views on the apparent similarities between certain mortgage-related pools and traditional investment companies. We ask commenters to describe any key operational or structural characteristics of mortgage-related pools that serve to distinguish them from traditional investment companies regulated under the Investment Company Act. The Commission requests that commenters provide any other information that may be relevant to evaluating the similarities and differences between mortgage-related pools and investment companies.

Finally, we request comment on the types of potential abuses that the Investment Company Act was intended to prevent that might be associated with mortgage-related pools. We also are interested in learning about any existing safeguards in the structure and operations of mortgage-related pools that may address concerns similar to those addressed by the Investment Company Act. Commenters also are invited to comment on whether certain concerns addressed by the Investment Company Act may not be relevant to mortgage-related pools and the reasons why. Commenters also should discuss whether, and to what extent, such potential abuses are addressed by any industry practices or other regulatory schemes that may be applicable to mortgage-related pools.

III. The Exclusion Provided by Section 3(c)(5)(C)

A. Legislative and Administrative Background

Section 3(c)(5) originally was intended to exclude from the definition of investment company, among other things, companies that did not resemble, or were not considered to be, issuers that were in the investment company business.[38] In 1970, Congress amended Section 3(c)(5) to prohibit any issuer relying on the exclusion from issuing redeemable securities. According to the legislative history, certain companies that had been relying on Section 3(c)(5) sought to capitalize on the popularity of mutual funds by issuing redeemable securities.[39] Because Section 3(c)(5) was not intended to cover those companies that fell within the generally understood concept of a traditional investment company,[40] the 1970 amendment sought to ensure that companies that structured themselves like mutual funds would be subject to regulation under the Investment Company Act, regardless of the types of securities that they held.[41]

In 1960, the Commission addressed Section 3(c)(5)(C) in a release that discussed the applicability of the Federal securities laws to REITs.[42] In the 1960 Release, the Commission, among other things, stated that a REIT may fall within the definition of investment company under the Investment Company Act but, depending on the characteristics of its

parties together to purchase over a million shares of a publicly traded company over a 13-month period, representing 16.1% of the total shares of that company. These purchases accounted for approximately 54% of the total trading volume in the company's stock during that period, and on some days these parties purchased all of the company's stock that traded that day. Although no entity itself purchased more than 5% of the company's securities, the Commission determined that given the interrelationships that existed, the REIT and others constituted a ''group'' for purposes of Section 13(d), and that a Schedule 13D should have been filed. *See In the Matter of Basic Capital Management Inc., et al.,* Exchange Act Release No. 46538 (Sept. 24, 2002). This case illustrates how a mortgage-related pool insider has the potential to influence the management of the company's assets for the insider's benefit.

[37] *See, e.g., SEC* v. *Pittsford Capital Income Partners LLC, et al.,* No. 06–6353 (W.D.N.Y. Aug. 23, 2007), *aff'd,* 305 Fed. Appx. 694 (2d. Cir. 2008) (persons that controlled certain real estate investment companies sold to senior citizens engaged in a fraudulent scheme involving, among other things, transfers of large amounts of money from the companies to entities in which the controlling persons had significant personal interests); *SEC* v. *Global Express Capital Real Estate Investment Fund I et al.,* No. 03–1514 (Nev. Mar. 28, 2006), *aff'd in part, rev'd and remanded in part,* 289 Fed. Appx. 183 (9th Cir. 2008) (a Ponzi-like scheme which purported to pool investor funds to purchase interests in mortgage loans and trust deeds); *SEC* v. *LandOak Securities, LLC, et al.,* No. 3:08–209 (E.D. Tenn., Mar. 29, 2011) (persons that controlled a mortgage company misappropriated funds due to the company's investors).

[38] *See, e.g.,* H.R. Rep. No. 2639, 76th Cong., 3d Sess. 12(1940) (''Subsection (c) specifically excludes * * * companies dealing in mortgages. * * * ''); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 17 (1970) (''Although the companies enumerated * * * have portfolios of securities in the form of * * * mortgages and other liens on and interests in real estate, they are excluded from the act's coverage because they do not come within the generally understood concept of a conventional investment company investing in stocks and bonds of corporate issuers'') (''1970 House Report''). *See also* PPI Report, *supra* note 2 at 328 (''Section 3(c)(6) provides for an exclusion from the definition of investment company for companies primarily engaged in the * * * real estate businesses. Although these companies are engaged in acquiring * * * mortgages and other interests in real estate—thus acquiring investment securities, such activities are generally understood not to be within the concept of a conventional investment company which invests in stocks and bonds of corporate issuers''); *Exclusion from the Definition of Investment Company for Certain Structured Financings,* Investment Company Act Release No. 18736 (May 29, 1992) (''Proposing Release to Rule 3a–7'') at text following n.5 (''section 3(c)(5)] * * * originally was intended to exclude issuers engaged in the commercial finance and mortgage banking industries.'').

As initially enacted by Congress in 1940, Section 3(c)(5) was limited to companies that did not issue face-amount certificates of the installment type or periodic payment plan certificates, in response to the abuses found prior to 1940 in the sale of these types of securities by certain companies, including those of the type that would have otherwise been excluded by this provision. *See generally Investment Trusts and Investment Companies: Hearings Before a Subcomm. of the Senate Comm. on Banking and Currency on S. 3580,* 76th Cong., 3d. at 182 (1940) (statement of David Schenker). The prohibition on issuing face-amount certificates also may have been added to ensure that Investors Syndicate, a face-amount certificate company that held real estate and mortgage interests, would not be able to rely on Section 3(c)(5)(C) and instead be required to register under the Investment Company Act, as detailed in the Investment Trusts Study, *supra* note 31, at Ch. II of Companies Issuing Face Amount Installment Contracts (1940).

[39] *See, e.g.,* 1970 House Report, *supra* note 38 at 17; PPI Report, *supra* note 2 at 328–329.

[40] *See supra* note 38.

[41] *See, e.g.,* 1970 House Report, *supra* note 38.

[42] *Real Estate Investment Trusts,* Investment Company Act Release No. 3140 (Nov. 18, 1960) (''1960 Release'') (discussing Section 3(c)(6)(C), which was subsequently redesignated as Section 3(c)(5)(C)). *See supra* note 9.

assets and the nature of the securities it issues, the REIT may be able to rely on Section 3(c)(5)(C).[43] In the 1960 Release, the Commission also generally stated that the applicability of the Section 3(c)(5)(C) exclusion could be determined only on the basis of the facts and circumstances of the particular REIT. The Commission further stated, however, that any REIT that invested ''exclusively in fee interests in real estate or mortgages or liens secured by real estate'' could rely on the Section 3(c)(5)(C) exclusion, provided that the REIT also met the exclusion's other criteria with respect to the nature of the securities it issued.[44] The Commission explained that a REIT might not qualify for the exclusion if it ''invested to a substantial extent in other real estate investment trusts * * * or in companies engaged in the real estate business or in other securities.''[45] The Commission has not specifically addressed the scope of Section 3(c)(5)(C) since the 1960 Release.[46]

B. Commission Staff No-Action Letters and Other Interpretations

As noted above, Section 3(c)(5)(C) generally excludes from the definition of investment company any person who is primarily engaged in, among other things, ''purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.'' The staff, in providing guidance on this exclusion, generally has focused on whether at least 55% of the issuer's assets will consist of mortgages and other liens on and interests in real estate (called ''qualifying interests'')[47] and the remaining 45% of the issuer's assets will consist primarily of real estate-type interests.[48] The staff generally has viewed the following types of assets as qualifying interests:

- Assets that represent an *actual* interest in real estate or are loans or liens fully secured by real estate. Thus, the staff generally took the position that an issuer may treat as qualifying interests such assets as mortgage loans fully secured by real estate, fee interests in real estate, second mortgages secured by real property, deeds of trust on real property, installment land contracts and leasehold interests secured solely by real property.[49]
- Assets that can be viewed as being the functional equivalent of, and provide their holder with the same economic experience as, an actual interest in real estate or a loan or lien fully secured by real estate. Thus, the staff took the position that a Tier 1 real estate mezzanine loan, under certain conditions, may be considered a qualifying interest if the loan may be viewed as being the functional equivalent of, and provide its holder with the same economic experience as, a second mortgage.[50]

Consistent with the view the Commission expressed in the 1960 Release, the staff has taken the position that an issuer that is primarily engaged in the business of holding interests in the nature of a security in another person engaged in the real estate business, generally may not rely on Section 3(c)(5)(C).[51] Thus, securities issued by REITs, limited partnerships, or other entities that invest in real estate, mortgages or mortgage-related instruments, or that are engaged in the real estate business, generally are not considered by the staff to be qualifying interests. In two particular circumstances, however, the staff expressed the view that certain interests in another person engaged in the real estate business may be regarded as qualifying interests:

- The staff has expressed the view that ''whole pool certificates'' that are issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae (''agency whole pool certificates'') provide the holder with the same economic experience as an investor who purchases the underlying mortgages directly, and therefore would be qualifying interests;[52] and
- The staff has expressed the view that certain subordinate participations in commercial real estate first mortgage loans, called B–Notes, have a number of attributes that, when taken together, may allow them to be classified as an interest in real estate rather than an interest in the nature of a security issued by a person that is engaged in the real estate business.[53]

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] The Commission testified before Congress in 1983 and 1984 concerning the applicability of the Investment Company Act to issuers of some mortgage-related securities in connection with legislation that became the Secondary Mortgage Market Enhancement Act of 1984. Statement of the Securities and Exchange Commission Submitted to the Subcommittee on Housing and Urban Affairs, U.S. Senate, on S. 1821 (Sep. 27, 1983) (''The Commission believes that the Investment Company Act offers important protections to investors in entities coming within the definition of the term 'investment company' that should not be sacrificed lightly, even in the name of an objective as worthwhile as enhancing the private secondary mortgage market'').

In the Proposing Release to Rule 3a–7, issued in 1992, the Commission discussed the reliance on Section 3(c)(5) by certain private sector issuers of asset-backed securities, including mortgage-backed securities. *See* Proposing Release to Rule 3a–7, *supra* note 38. In that release, the Commission requested comment on whether Section 3(c)(5) should be amended to prevent such issuers from continuing to rely on this exclusion, because such issuers could instead rely on Rule 3a-7. In response to commenters' arguments, including that it would be inappropriate to narrow the scope of Section 3(c)(5) until both the market and the Commission gained experience with Rule 3a–7, the Commission decided not to pursue any legislative changes with respect to Section 3(c)(5) at that time. *See Exclusion from the Definition of Investment Company for Structured Financings,* Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)] (''Adopting Release to Rule 3a–7''). In the 3a–7 Companion Release, the Commission once again is seeking comment on whether Section 3(c)(5) should be amended to limit the ability of asset-backed issuers to rely on this exclusion. 3a–7 Companion Release, *supra* note 5.

[47] *See, e.g.,* Salomon Brothers, Inc., SEC Staff No-Action Letter (June 17, 1985).

[48] *See, e.g.,* Citytrust, SEC Staff No-Action Letter (Dec. 19, 1990); Greenwich Capital Acceptance Inc., SEC Staff No-Action Letter (Aug. 8, 1991) (issuer represented its intention to invest at least 25% of its total assets in real estate-type interests (subject to reduction to the extent that the issuer invested more than 55% of its total assets in qualifying interests) and no more than 20% of its total assets in miscellaneous investments).

[49] *See, e.g.,* United States Property Investment N.V., SEC Staff No-Action Letter (May 1, 1989) (mortgage loan secured exclusively by real estate in which the value of the real estate was equal or greater than the note evidencing the loan); Division of Investment Management, SEC, *The Treatment of Structured Finance Under the Investment Company Act,* Protecting Investors: A Half Century of Investment Company Regulation (1992) Ch. 1 (''Protecting Investors Report'') at n. 345 and accompanying text (mortgage loan in which 100% of the principal amount of each loan was fully secured by real estate at the time of origination and 100% of the market value of the loan was fully secured by real estate at the time of acquisition); United Bankers, SEC Staff No-Action Letter (Mar. 23, 1988) (fee interests in real estate); The State Street Mortgage Co., SEC Staff No-Action Letter (July 17, 1986) (second mortgages); First National Bank of Fremont, SEC Staff No-Action Letter (Nov. 18, 1985) (deeds of trust on real property); American Housing Trust I, SEC Staff No-Action Letter (May 21, 1988) (installment land contracts); Health Facility Credit Corp., SEC Staff No-Action Letter (Feb. 6, 1985) (leasehold interests).

[50] *See* Capital Trust Inc., SEC Staff No-Action Letter (May 24, 2007).

[51] *See* 1960 Release, *supra* note 42. *See also* Urban Land Investments Inc., SEC Staff No-Action Letter (Nov. 4, 1971); The Realex Capital, SEC Staff No-Action Letter (Mar. 19, 1984); M.D.C. Holdings, SEC Staff No-Action Letter (May 5, 1987). The staff also has stated its view that an issuer that is engaged primarily in purchasing or otherwise acquiring participations or fractionalized interests in individual or pooled mortgages or deeds of trust would not qualify to rely on Section 3(c)(5)(C) because such participations and interests are in the nature of a security in another person engaged in the real estate business. MGIC Mortgage Corp., SEC Staff No-Action Letter (Oct. 6, 1972 and Aug. 1, 1974); M.D.C Holdings, SEC Staff No-Action Letter (May 5, 1987).

[52] *See* Protecting Investors Report, *supra* note 49 at n. 267. A whole pool certificate is a security that represents the entire ownership interest in a particular pool of mortgage loans. *Id. See also* American Home Finance Corp. (pub. avail. Apr. 9, 1981).

[53] Capital Trust Letter, SEC Staff No-Action Letter (Feb. 3, 2009) (''Capital Trust B-Note Letter''). The Capital Trust B-Note Letter was intended to clarify the staff's earlier statements with respect to mortgage participations as qualifying interests. In

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Finally, the staff has expressed the view that certain mortgage-related instruments that were not treated as qualifying interests may be treated as real estate-type interests. In the staff's view, such instruments would include loans in which at least 55% of the fair market value of each loan was secured by real estate at the time the issuer acquired the loan,[54] and agency partial pool certificates.[55]

Some mortgage-related pools have determined that certain other assets constitute qualifying assets for purposes of that exclusion. For example, we understand that mortgage-related pools generally treat bridge loans, certain construction and rehabilitation loans, wrap-around mortgage loans and investments in distressed debt as qualifying interests, provided that the loans are fully secured by real estate. We also understand that some mortgage-related pools have determined to treat a convertible mortgage (which is a mortgage plus an option to purchase the underlying real estate) as two assets—a mortgage loan (treated as a qualifying interest provided that it is fully secured by real estate) and an option to purchase real estate (which is assigned an independent value and treated as a real estate-type interest).

With respect to certain other mortgage-related instruments, there appears to be a degree of uncertainty or differing views among mortgage-related pools as to the availability of the Section 3(c)(5)(C) exclusion. For example, it appears that some mortgage-related pools that invest in certificates issued by pools that hold whole loans and participation interests in loans that are secured by commercial real estate (''CMBS'') limit the amount of CMBS that they hold, treating such assets as real estate-type interests under Section 3(c)(5)(C), whereas others treat certain CMBS as qualifying interests.

C. Request for Comment on the Current Interpretation of Section 3(c)(5)(C)

As the discussion above indicates, the exclusion from the definition of investment company provided by Section 3(c)(5)(C) does not have an extensive legislative history, has not been comprehensively addressed by the Commission, and generally has been addressed in staff no-action letters only on a case-by-case basis. The evolution of mortgage-related pools and the development of new and complex mortgage-related instruments have led us to be concerned that mortgage-related pools are making judgments about their status under the Investment Company Act without sufficient Commission guidance.[56] It appears that some types of mortgage-related pools might interpret the statutory exclusion provided by Section 3(c)(5)(C) in a broad manner, while others might interpret the exclusion too narrowly. The Commission also is concerned that the staff no-action letters that have addressed the statutory exclusion in Section 3(c)(5)(C) may have contained, or led to, interpretations that are beyond the intended scope of the exclusion and inconsistent with investor protection. The Commission is concerned that certain types of companies today appear to resemble in many respects management investment companies that are registered under the Act and may not be the kinds of companies that were intended to be excluded from regulation under the Act by Section 3(c)(5)(C).

The Commission requests comment from mortgage-related pools, investors, and the public on the current state of guidance and interpretation concerning Section 3(c)(5)(C). The Commission is interested in learning from mortgage-related pools and their legal counsel about any difficulties they may have encountered in determining the status of such companies under the Investment Company Act. Are we correct that there is uncertainty or differing views among companies as to the availability of the Section 3(c)(5)(C) exclusion? If so, please explain and provide specific examples. Do commenters believe that the exclusion provided by Section 3(c)(5)(C) is generally being used consistent with the purposes and policies underlying that provision and investor protection? Do commenters believe that certain mortgage-related pools may be giving too broad an interpretation to this statutory exclusion? If so, does such broad interpretation result in companies that resemble traditional investment companies avoiding regulation under the Act and, if so, is it inconsistent with the purposes and policies underlying that provision and investor protection? Do commenters believe that certain companies may be giving too narrow an interpretation to this statutory exclusion? Commenters are requested to provide detailed explanations of their views, including specific examples, if appropriate.

We noted above that companies generally determine whether they are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate, based on whether at least 55% of the company's assets consist of qualifying interests and the remaining 45% of the company's assets consist primarily of real estate-type interests. Is this an appropriate approach to determining an issuer's primary engagement for purposes of Section 3(c)(5)(C)? Is it a difficult determination to make? Is the approach too broad or, conversely, too narrow in terms of identifying the types of companies that are able to rely on the exclusion, consistent with legislative intent? Does this approach lead certain companies to invest their assets in a different manner than they otherwise would in accordance with their business model, in order to have the certainty of being able to rely on Section 3(c)(5)(C)? Are there companies that have concluded that they do not qualify for the exclusion in Section 3(c)(5)(C)? If so, how did such companies address their status under the Investment Company Act? Commenters are requested to comment on their experiences in this

prior letters, the staff had expressed the view that a trust that held certain participation interests in construction period mortgage loans acquired from mortgage lenders may rely on Section 3(c)(5)(C), concluding that each mortgage participation interest held by the trust was an interest in real estate because the participation interest was in a mortgage loan that was fully secured by real property and the trustee had the right by itself to foreclose on the mortgage securing the loan in the event of default. *See, e.g.* Northwestern Ohio Building and Construction Trades Foundation, SEC Staff No-Action Letter (Apr. 20, 1984); Baton Rouge Building and Construction Industry Foundation, SEC Staff No-Action Letter (Aug. 31, 1984). Although the Capital Trust B-Note Letter specifically did not withdraw the prior staff no-action letters, it noted the staff's view that, while the right to foreclose is an important attribute to consider when determining whether an asset should be considered a qualifying interest, other attributes of the asset also need to be considered when making such a determination.

[54] NAB Asset Corp., SEC Staff No-Action Letter (June 20, 1991).

[55] The staff has expressed the view that, while an agency partial pool certificate (which is a certificate that represents less than the entire ownership interest in a mortgage pool) is not a qualifying interest because it is more akin to being an investment in the securities of an issuer holding mortgages rather than an investment directly in the underlying mortgages, such asset may be treated as a real estate-type interest for purposes of determining whether an issuer may rely on Section 3(c)(5)(C). *See, e.g.,* Nottingham Realty Securities, SEC Staff No-Action Letter (Apr. 19, 1984); Protecting Investors Report, *supra* note 49 at n. 268 and accompanying text.

[56] In this regard we note that most mortgage-related pools, when publicly offering their securities, disclose in their registration statements that their determinations whether they may rely on the Section 3(c)(5)(C) exclusion will be based on staff no-action letters and Commission guidance and, where such guidance does not exist, on their own judgments. Such companies also state that there can be no assurance that the Commission staff will concur with their views, or that the laws governing the Investment Company Act status of mortgage-related pools, or the guidance provided by the Commission or its staff, will not change in a manner that would not adversely affect their operations.

area, including the economic impact of this approach.

With respect to the staff no-action letters, we ask for comment on whether any of the staff's analysis relating to the determination of whether an asset is a ''lien on or interest in real estate'' for purposes of Section 3(c)(5)(C) would be relevant in formulating Commission guidance for today's mortgage-related pools. Commenters should identify any such staff position and explain its relevance. For example, should certain mortgage participations be treated as interests in real estate and, if so, what types of participations and why? Is a company whose primary business activity consists of holding mortgage participations, the type of entity that should be excluded from the definition of investment company? Why or why not, and does it matter what type(s) of participations the company holds? If participations are to be treated as interests in real estate, what features should be considered in making a determination about such assets? For example, should the right to foreclose be considered an important attribute, even though such right only exists if the underlying mortgage defaults? [57] Commenters are encouraged to discuss the costs and benefits of their recommendations.

We also request comment on the view that the Commission should take concerning agency whole pool certificates under Section 3(c)(5)(C). Should the Commission revisit the staff's view that agency whole pool certificates may be treated as interests in real estate? [58] Should we view a company whose primary business consists of investing in agency whole pool certificates—or other mortgage-backed securities—as the type of entity that Congress intended to be encompassed by the exclusion provided by Section 3(c)(5)(C) or not? What would be the economic impact of the Commission adopting a position that would not treat agency whole pool certificates as interests in real estate? Commenters should explain how such companies are similar to, or differ from, traditional investment companies that invest in similar assets, and how any such similarities or differences should affect the status of such companies under the Investment Company Act.

Finally, we ask for comment generally on whether guidance is needed with respect to other mortgage-related instruments. If so, which instruments and what should that guidance provide? We note in particular the differing approaches taken by certain mortgage-related pools as to the appropriate treatment of certain types of CMBS for purposes of determining a company's ability to rely on Section 3(c)(5)(C). Should the Commission provide guidance with respect to these mortgage-related instruments, what should that guidance address, and what would be the potential economic impact of this guidance? We also request comment on whether a company whose primary business consists of investing in CMBS, or any other type of mortgage-backed security, is the type of entity that Congress intended to be encompassed by the exclusion provided by Section 3(c)(5)(C).

IV. Request for Comment on Possible Commission Action

The Commission requests comment on what steps, if any, it should take to provide greater clarity, consistency or regulatory certainty regarding the status of mortgage-related pools under the Investment Company Act. The Commission potentially could engage in rulemaking (such as a safe harbor or definitional rule), issue an interpretive release, and/or provide exemptive relief to address mortgage-related pools and the scope of Section 3(c)(5)(C), or take no further action at this time. Commenters are encouraged to discuss the benefits and costs of each such option.

Commenters are asked to address whether a test could be devised that would differentiate companies that are primarily engaged in the real estate and mortgage banking business from those companies that resemble traditional investment companies. If commenters believe that such a test is appropriate, the Commission is interested in commenters' views as to the factors that would be suitable in such a test, the benefits and costs associated with any suggested test, and the effect that any suggested test may have on investor protection, competition, efficiency and capital formation.

Section 3(c)(5)(C) suggests that one factor that must be considered when determining whether a company is primarily engaged in the business set forth in Section 3(c)(5)(C) is the composition of the company's assets. Would it be helpful for the Commission to define the term ''liens on and other interests in real estate'' for purposes of Section 3(c)(5)(C)? If so, how should the Commission define that term? For example, in light of the reference to ''mortgages'' in Section 3(c)(5)(C), should the term ''liens on and interests in real estate'' also be defined to include only those assets that are directly related to real estate, rather than include, for example, interests in a mortgage or in a pool or other entity that holds real estate? The Commission requests comment on the advantages and disadvantages of defining the term ''liens on and interests in real estate'' in this manner. If commenters believe that a broader definition of the term ''liens on and interests in real estate'' is more appropriate, the Commission requests comment on the principles or concepts that could be used to craft such a definition. Commenters are encouraged to discuss the benefits and costs of alternative definitions.

In addition to the composition of a company's assets, other factors may help to differentiate companies that are primarily engaged in the real estate and mortgage banking business from those companies that resemble traditional investment companies. What are such other factors? Should a company also look to its sources of income in determining its ''primary business'' under Section 3(c)(5)(C)? [59] Should factors such as the company's historical development, the activities of its officers, directors and employees, and its public representations also be considered in determining the company's primary business under Section 3(c)(5)(C)? Are there factors that may be potentially indicative of a company's non-investment company business? For example, are there any types of business activities or types of business expenses that differentiate such a company from an investment company? [60] Commenters are urged to be specific in their responses.

[57] *See supra* note 53.

[58] The Commission issued a similar request for comment in 1992. *See* Proposing Release to Rule 3a-7, *supra* note 38 at n.103 and accompanying text. That request for comment stemmed from the Protecting Investors Report, issued in 1992, in which the staff discussed whether it should reconsider its position with respect to agency whole pool certificates, noting that an agency whole pool certificate holder does not have the same economic experience as an investor who holds the underlying mortgages because of the agency guarantee, which increases the certificates' liquidity. Protecting Investors Report, *supra* note 49 at text following n.346. Commenters strongly urged the staff not to withdraw its position, arguing that agency whole pool certificates are interests in real estate because certificate holders receive payment streams that reflect payments on the underlying mortgages. Commenters also argued that withdrawal of the position could result in some REITs and mortgage bankers that held these instruments becoming subject to the Investment Company Act. In response to commenters' concerns at that time, the staff ultimately decided not to withdraw its position. Adopting Release to Rule 3a–7, *supra* note 46 at nn. 90–92 and accompanying text.

[59] *See, e.g.,* Section 3(c)(6) of the Investment Company Act. 15 U.S.C. 80a–3(c)(6). We note that the Internal Revenue Code's REIT provisions contain an asset and income test. *See supra* note 16.

[60] *See e.g.,* Rule 3a–8 under the Investment Company Act (addressing the status under the Act

Continued

IV. General Request for Comment

In addition to the issues raised or mentioned in this release, the Commission requests and encourages all interested persons, including investors in mortgage-related pools, to submit their views on any other issues relating to the status of such companies under the Investment Company Act. The Commission particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or issues raised in this release.

Dated: August 31, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22771 Filed 9–6–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29779; File Nos. S7–35–11]

17 CFR Part 270

RIN 3235–AL03

Treatment of Asset-Backed Issuers Under the Investment Company Act

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Commission is considering proposing amendments to Rule 3a–7 under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''), the rule that provides certain asset-backed issuers with a conditional exclusion from the definition of investment company. Amendments to Rule 3a–7 that the Commission may consider could reflect market developments since 1992, when Rule 3a–7 was adopted, and recent developments affecting asset-backed issuers, including the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') and the Commission's recent rulemakings regarding the asset-backed securities markets. The Commission is withdrawing its 2008 proposal to amend Rule 3a–7, which was published July 11, 2008.

DATES: Comments should be received on or before November 7, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–35–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File Number S7–35–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/concept.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, at (202) 551–6840 or Nadya Roytblat, Assistant Chief Counsel, at (202) 551–6825, Office of the Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

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I. Introduction and Executive Summary

Asset-backed issuers [1] typically meet the definition of investment company under the Investment Company Act, but generally cannot operate under certain of the Act's requirements and restrictions.[2] In 1992, the Commission adopted Rule 3a–7 under the Investment Company Act specifically to exclude from the definition of investment company certain asset-backed issuers that meet the rule's conditions.[3] These conditions were designed to incorporate then-existing practices in the asset-backed securities market that we believed served to distinguish asset-backed issuers from registered investment companies and addressed investor protection under the Investment Company Act.[4]

Rule 3a–7 includes several conditions that refer to credit ratings by nationally recognized statistical rating organizations (''NRSROs'' or ''rating agencies''). One such condition is that certain of the asset-backed issuer's fixed-income securities receive certain credit ratings by at least one rating agency. These conditions were included in Rule 3a–7 not principally as standards of credit-worthiness, but, because we believed that rating agencies, when providing a rating assessing the credit risk of an asset-

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of certain research and development companies based on, among other things, their research and development expenses, the activities of their officers, directors and employees, their public representations of policies, and their historical development). 17 CFR 270.3a–8.

[1] We use the term ''asset-backed issuer'' in this release to refer generally to any issuer of fixed-income securities the payments on which depend primarily on the cash flows generated by a specified pool of underlying financial assets. *See also infra* section III.A.2.d.ii for a discussion of the definition of ''asset-backed securities'' under other Federal securities laws.

[2] *See infra* note 29.

[3] 17 CFR 270.3a–7.

[4] The conditions also were intended to accommodate future innovations in the securitization market, consistent with investor protection. *See Exclusion from the Definition of Investment Company for Structured Financings,* Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)] (''Adopting Release'') at text accompanying n.8. Rule 3a–7 effectuated the recommendation made by the Division of Investment Management's staff in its report, *Protecting Investors: A Half Century of Investment Company Regulation,* The Treatment of Structured Finance under the Investment Company Act 1–101 (May 1992) (''Protecting Investors Report''). The Protecting Investors Report contains a discussion of the issues raised by asset-backed issuers under the Investment Company Act and the state of the asset-backed securities market prior to the Rule's adoption.

backed issuer, evaluated whether the issuer was structured in a manner that also addressed investor protection under the Investment Company Act.[5]

The Dodd-Frank Act,[6] enacted in 2010, generally requires the Commission to review any references to or requirements regarding credit ratings in its regulations, remove these references or requirements and substitute other appropriate standards of credit-worthiness in place of the credit ratings.[7] Even though the ratings-related conditions in Rule 3a–7 generally were not intended to serve as standards of credit-worthiness, we are issuing this advance notice of proposed rulemaking in response to these requirements and in light of market developments since Rule 3a–7 was adopted. We also are withdrawing our 2008 proposal to amend Rule 3a–7.[8]

The Dodd-Frank Act also directed the Commission to undertake a number of rulemakings related to the asset-backed securities market.[9] Prior to the passage of the Dodd-Frank Act, in April 2010, the Commission proposed comprehensive revisions to the offering process, disclosure, and reporting requirements for asset-backed securities under the Securities Act of 1933 (''Securities Act'') and the Securities Exchange Act of 1934 (''Exchange Act'').[10] The Commission recognized that many of the problems giving rise to the recent financial crisis involved structured finance and proposed a number of changes designed to improve investor protection and promote more efficient asset-backed markets.[11] Among other things, the Commission proposed to amend: the disclosure requirements of Regulation AB to require that more information be provided to investors about the assets being securitized; the eligibility requirements for public offerings of asset-backed securities conducted through ''shelf registration'' by replacing the existing requirement that the securities receive an investment grade rating with new requirements; and the safe harbors under the Securities Act for exempt offerings and exempt resales of asset-backed securities.[12] In light of the requirements of the Dodd-Frank Act and the comments subsequently received on the 2010 ABS Proposing Release, the Commission has issued a release revising and re-proposing certain of the proposals in the 2010 ABS Proposing Release.[13] The 2011 ABS Re-proposal requests comment on whether, to be eligible for shelf registration under the Securities Act, an asset-backed issuer should, among other requirements, meet the conditions of Rule 3a–7.

The Commission also believes that it is appropriate to consider amending Rule 3a–7, among other things, to determine the role, if any, that credit ratings should continue to play in the context of Rule 3a–7. In the aftermath of the recent financial crisis, NRSROs' credit rating procedures and methodologies raised a number of concerns in light of the role the NRSROs played in determining credit ratings for securities collateralized by or linked to subprime residential mortgages, and the Commission has engaged in various regulatory initiatives to address these concerns.[14] The potential amendments to Rule 3a–7 could include replacing references to credit ratings with conditions that are tailored to address Investment Company Act-related concerns. The Commission also is considering amending Rule 3a–7 to address two issues, detailed below, that have arisen relating to the potential Investment Company Act status of certain holders of securities of asset-backed issuers that rely on Rule 3a–7.

To assist the Commission in its review of the treatment of asset-backed issuers under the Investment Company Act, the Commission is issuing this advance notice of proposed rulemaking and soliciting broad public comment on these issues. The Commission also invites commenters to address any other issues relating to the treatment of asset-backed issuers, the protection of investors under the Investment Company Act and capital formation that they believe may warrant Commission attention.

II. Background

A. Asset-Backed Issuers as Investment Companies

An issuer of asset-backed securities typically is a special purpose entity that acquires and holds a pool of income-producing financial assets and issues non-redeemable debt obligations or equity securities with debt-like characteristics (''fixed-income securities''), the payment of which depends primarily on the cash flow generated by the pooled financial assets. An asset-backed issuer that has more assets, or expects to receive more income, than needed to make full payment on the fixed-income securities also may sell interests in the residual or additional cash flow.[15]

[5] *See* Adopting Release, *supra* note 4 at n.42 and accompanying text. *See also infra* note 38.

[6] Public Law 111–203, 124 Stat. 1376 (2010).

[7] Section 939A of the Dodd-Frank Act.

[8] In 2008, the Commission proposed to replace the references to credit ratings in Rule 3a–7 with a prohibition on the sale of securities of issuers relying on Rule 3a–7 to anyone other than certain institutional investors (''retail sales prohibition''). *References to Ratings of Nationally Recognized Statistical Rating Organizations,* Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] (''2008 NRSRO Proposing Release'') at nn.36–47 and accompanying text. Commenters generally opposed the retail sales prohibition, suggesting, among other things, that the retail sales prohibition would have unnecessarily precluded offerings to retail investors and impeded the liquidity and growth of the asset-backed securities market. *See, e.g.,* comment letter from Dechert LLP to the Commission (Sept. 5, 2008), File No. S7–19–08 (''Dechert Comment Letter''); comment letter from Mayer Brown LLP to Florence E. Harmon, Acting Secretary (Sept. 4, 2008), File No. S7–19–08; comment letter from the American Bar Association to Florence E. Harmon, Acting Secretary (Sept. 12, 2008), File No. S7–19–08. In a 2009 release, the Commission deferred consideration of this proposal. *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Investment Company Act Release No. 28940 (Oct. 5, 2009) [74 FR 52374 (Oct. 9, 2009)] at text following n.64. Based, in part, on the comments received, we have decided to withdraw from further consideration the amendments to Rule 3a–7 proposed in the 2008 NRSRO Proposing Release.

[9] A summary of these Dodd-Frank Act provisions is available at *http://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml. See also Proposed Rules for Nationally Recognized Statistical Rating Organizations,* Securities Exchange Act Release No. 64514 (May 18, 2011) [76 FR 33420 (June 9, 2011)] (proposal requiring third parties retained to conduct due diligence related to asset-backed securities to provide a certification containing specified information to the NRSRO that is producing a rating for the asset-backed securities); *Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Securities Act Release No. 9175 (Jan. 20, 2011) [76 FR 4489 (Jan. 26, 2011)] (''Section 943 Release'') (adopting rules requiring securitizers of asset-backed securities to disclose the history of fulfilled and unfulfilled repurchase requests related to their outstanding asset-backed securities and disclosure by NRSROs of representations, warranties and enforcement mechanisms available to investors in an asset-backed securities offering); *Issuer Review of Assets in Offerings of Asset-Backed Securities,* Securities Act Release No. 9176 (Jan. 20, 2011) [76 FR 4231 (Jan. 25, 2011)] (adopting rules requiring issuers of asset-backed securities to conduct a review of the assets underlying those securities and make certain disclosures about those reviews).

[10] *Asset-Backed Securities,* Securities Act Release No. 9117 (Apr. 7, 2010) [75 FR 23328 (May 3, 2010)] (''2010 ABS Proposing Release'').

[11] *Id.*

[12] *Id. See infra* section III.A.2.d.

[13] *Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment,* Securities Act Release No. 9244 (July 26, 2011) [76 FR 47948 (Aug. 5, 2011)] (''2011 ABS Re-proposal'').

[14] *See, e.g.,* 2008 NRSRO Proposing Release, *supra* note 8. *See also* Summary Report of Issues Identified in the Staff's Examinations of Select Credit Rating Agencies (July 2008). The report can be accessed at *http://www.sec.gov/news/studies/2008/craexamination070808.pdf.*

[15] For a more complete explanation of the structure of an asset-backed issuer and the roles of the various parties that may be involved in the organization and operation of the issuer, *see, e.g.,* 2010 ABS Proposing Release, *supra* note 13; Kravitt, *Securitization of Financial Assets,* (2d ed. 2009) (''Kravitt''); *Asset-Backed Securities,* Securities Act

Continued

An asset-backed issuer typically meets the definition of investment company under Section 3(a)(1) of the Investment Company Act because it issues securities [16] and is engaged in the business of investing in, owning or holding financial assets that are securities [17] under the Investment Company Act.[18] With respect to investment companies generally, as set forth in Section 1(b) of the Act,[19] Congress was concerned, among other things, about companies that were: (i) Organized, operated, managed, or their portfolio securities selected, in the interest of company insiders; [20] (ii) issuing excessive amounts of senior securities; [21] (iii) when computing the asset value of their outstanding securities, employing unsound or misleading methods, or not being subjected to adequate independent scrutiny; [22] and (iv) operating without adequate assets.[23] In addition, the Investment Company Act reflected concerns that the assets of investment companies were not adequately protected, with controlling persons of investment companies commingling the investment company's assets with their own and then proceeding to misappropriate them.[24]

Like most investment companies, asset-backed issuers typically have no employees and must rely for their operations on their sponsors, servicers and other persons, each of whom has its own separate and distinct set of financial and other interests. Furthermore, with the exception of the role typically assigned to the trustee, the sponsor, or a person affiliated with the sponsor, potentially could be responsible for most, if not all, of the operations of an asset-backed issuer.[25] This structure presents significant potential for conflicts of interest. Thus, for example, one Investment Company Act-related concern is the possibility of a sponsor intentionally overvaluing assets or ''dumping'' into the asset-backed issuer assets that are insufficient to produce the cash flow needed to meet the issuer's obligations to its securities holders, contrary to representations made to investors.[26] Another Investment Company Act-related concern is that a sponsor potentially could substitute inferior assets for the assets transferred to the issuer at the time of securitization.[27] Still another Investment Company Act-related concern relates to the safeguarding of the issuer's assets and the cash flow derived from such assets from being jeopardized, among other things, by the servicer or the trustee commingling the assets and the cash flow with their own assets or by the servicer or trustee investing the issuer's cash flow in a speculative manner.[28]

B. Rule 3a–7

Although asset-backed issuers typically meet the definition of investment company, as a practical matter, they cannot operate under certain of the Investment Company Act's requirements and restrictions.[29]

Release No. 8518 (Dec. 22, 2004) [70 FR 1506 (Jan. 7, 2005)] (''2004 ABS Release''); *Exclusion from the Definition of Investment Company for Certain Structured Financings,* Investment Company Act Release No. 18736 (May 29, 1992) [57 FR 23980 (June 5, 1992)] (''Proposing Release'').

[16] Section 2(a)(36) of the Investment Company Act broadly defines ''security'' as ''any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.''

[17] *See, e.g.,* SEC, *Report on the Public Policy Implications of Investment Company Growth,* H.R. Rep. No. 2337, 89th Cong., 2d Sess. 328 (1966) (stating that notes representing the sales price of merchandise, loans to manufacturers, wholesalers, retailers and purchasers of merchandise or insurance, and mortgages and other interests in real estate are investment securities for purposes of the Investment Company Act). *See also* Protecting Investors Report, *supra* note 4, at n. 339 and accompanying text.

[18] Section 3(a)(1)(A) of the Act defines an investment company as any issuer which ''is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.'' Section 3(a)(1)(C) defines an investment company as any issuer which ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities [as defined by Section 3(a)(2) of the Investment Company Act] having a value exceeding 40 per centum of the value of [its] total assets (exclusive of Government securities and cash items) on an unconsolidated basis'' (''40% investment securities test''). Section 3(a)(2) of the Investment Company Act defines ''investment securities'' to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries that are not themselves (i) investment companies and (ii) are not relying on the private investment company exclusions of that Act. Asset-backed issuers typically meet the definition of investment company in Section 3(a)(1)(A) and/or Section 3(a)(1)(C). 15 U.S.C. 80a–3(a)(1). *See also infra* note 30 (discussing statutory exclusions from the definition of investment company that may be available to certain asset-backed issuers).

[19] 15 U.S.C. 80a–1(b).

[20] A study conducted prior to the adoption of the Act documented numerous instances in which investment companies were managed for the benefit of their sponsors and affiliates to the detriment of investors. *Investment Trusts and Investment Companies: Hearings on S.3580 Before a Subcomm. of the Senate Comm. On Banking and Currency,* 3d Sess. 89 (1940) (''Investment Trusts Study''). Section 17 of the Investment Company Act prohibits certain transactions involving investment companies and their affiliates. 15 U.S.C. 80a–17(a). Other provisions of the Investment Company Act also effectively limit opportunities for overreaching by investment company sponsors and affiliates. *See, e.g.,* Section 10(f) of the Investment Company, which generally prohibits a registered investment company from knowingly purchasing, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an affiliated person of the investment company. 15 U.S.C. 80a–10(f).

[21] Prior to 1940, some investment companies were highly leveraged through the issuance of ''senior securities'' in the form of debt or preferred stock, which often resulted in the companies being unable to meet their obligations to the holders of their senior securities. *See id.* Excessive leverage also greatly increased the speculative nature of the common stock of the companies. *Id.* Section 18 of the Investment Company Act limits the ability of registered investment companies to engage in borrowing and to issue senior securities. 15 U.S.C. 80a–18.

[22] Prior to 1940, investment companies often valued their portfolios inaccurately, resulting in unfair and discriminatory practices in the pricing of their securities. *See* Investment Trusts Study, *supra* note 20. The Investment Company Act governs the manner in which registered investment companies value their portfolios, including defining ''value'' in Section 2(a)(41), with respect to securities held by a registered investment company, to be (a) market value for securities for which market quotations are readily available or (b) for other securities or assets, fair value as determined in good faith by the company's board of directors. 15 U.S.C. 80a–2(a)(41).

[23] *See* Investment Trusts Study, *supra* note 20.

[24] *See, e.g.,* Investment Trusts Study, *supra* note 20. Prior to 1940, investment company assets were not adequately protected from misuse by investment company insiders. *Id.* In many cases, controlling persons of investment companies commingled the investment companies' assets with the investment advisers' assets and then proceeded to misuse the assets themselves. *Id.* Section 17(f) of the Investment Company Act and the rules thereunder set forth requirements with respect to the custody of investment company assets. 15 U.S.C. 80a–17(f). *See, e.g.,* Rule 17f–2 under the Investment Company Act governing custody of investments by a registered investment company. 17 CFR 270.17f–2.

[25] *See, e.g.,* Proposing Release, *supra* note 15 at n.95 and accompanying text.

[26] *See, e.g., SEC* v. *Patrick Quinlan, et al.,* 2008 Fed. Sec. L. Rep. (CCH) ¶ 95,005 (E.D. Mich. Nov.7, 2008), *aff'd,* 373 Fed. Appx. 581 (6th Cir., 2010) (the Commission brought an enforcement action against the sponsor of a mortgage-backed issuer that placed in the issuer a large number of mortgages that the sponsor itself had originated whose loan-to-value ratios exceeded the maximum loan-to-value ratios stated in the issuer's prospectus, significantly increasing the riskiness of the investment).

[27] *See* Protecting Investors Report, *supra* note 4 at text following n.281.

[28] *See id.* at text following n.289.

[29] For example, Section 17(a) of the Investment Company Act generally would prohibit the sponsor's sale of assets to the asset-backed issuer. 15 U.S.C. 80a–17(a). In addition, certain asset-backed issuers could not comply with Section 18

As a result, asset-backed issuers often rely on Rule 3a-7 under the Investment Company Act to be excluded from regulation under the Act.[30] The Commission adopted Rule 3a–7 in 1992 specifically to exclude from the definition of investment company certain asset-backed issuers that meet the rule's conditions.[31] These conditions were intended to reflect the structural and operational distinctions between registered investment companies and asset-backed issuers,[32] and incorporated what we believed to be then-existing practices in the asset-backed securities market that addressed investor protection under the Investment Company Act and promoted capital formation.[33] The conditions also were intended to accommodate future developments in the asset-backed securities market, consistent with investor protection.[34]

III. Discussion

A. Revisiting Rule 3a–7

To rely on Rule 3a–7, an asset-backed issuer must issue fixed-income securities or other securities which entitle the holders to receive payments that depend primarily on the cash flow from eligible assets.[35] The rule provides that the issuer's fixed-income securities generally must be rated by at least one NRSRO in one of the four highest ratings categories.[36] At the time the rule was adopted, the Commission understood that NRSROs, in providing credit ratings for fixed-income securities of asset-backed issuers, typically expected the issuers to have certain structural safeguards.[37] The Commission viewed these safeguards as addressing investor protection under the Investment Company Act.[38]

For example, in providing a credit rating for certain asset-backed securities, the NRSROs, among other things, were understood to typically: Review the specific assets to be transferred to the issuer or the method by which the assets were selected; expect an independent auditor to confirm that the asset pool was representative of the sponsor's portfolio; and evaluate limitations placed on the substitution of the issuer's assets and the reinvestment of the cash flow derived from the assets.[39] Such expected review by an NRSRO had the perceived benefit of mitigating opportunities for self-dealing and overreaching by the sponsor or other insiders of the asset-backed issuer.[40] In addition, the NRSROs were understood to analyze the potential performance of the issuer's assets, the risks related to the issuer's cash flow and the cash flow allocation with respect to the payment of the fixed-income securities. Such analysis was viewed as addressing potential concerns relating to misvaluation of the issuer's assets and inadequate asset coverage.[41] The NRSROs also were understood to review whether the asset-backed issuer's assets would be available in the event of the sponsor's insolvency, and evaluate the processes and controls regarding the custody of the issuer's assets and cash flow. Such review was viewed as addressing concerns relating to the safekeeping of the issuer's assets.[42]

Rule 3a–7 also imposes limitations on the acquisition and disposition of the eligible assets that were intended to help ensure that any changes in the issuer's assets would not adversely affect the outstanding fixed-income securities holders and guard against self-dealing and overreaching by the issuer's sponsor or servicer.[43] The restrictions also were intended to prevent activities that resemble the

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of the Act, which generally limits the extent to which registered investment companies may issue senior securities, including debt. 15 U.S.C. 80a–18. *See* Proposing Release, *supra* note 15 at n.36; Protecting Investors Report, *supra* note 4 at n.253 and accompanying text.

[30] Certain asset-backed issuers alternatively may seek to rely on the exclusion from the definition of investment company set forth in Section 3(c)(5)(A), (B) or (C) of the Investment Company Act. 15 U.S.C. 80a–3(c)(5). *See infra* section III.C. The Commission today is issuing a concept release concerning companies that rely on Section 3(c)(5)(C). *Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments,* Investment Company Act Release No. 29778 (Aug. 31, 2011) (the ''Section 3(c)(5)(C) Concept Release''). That release may be relevant to certain asset-backed issuers that rely on that Section. *See infra* section III.C.

As yet another alternative, asset-backed issuers that privately offer and sell their securities may seek to rely on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, commonly referred to as the ''private investment company exclusions.'' 15 U.S.C. 80a–3(c)(1); 15 U.S.C. 80a–3(c)(7). Section 3(c)(1) generally excludes from the definition of investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 investors and which is not making and does not presently propose to make a public offering of its securities. 15 U.S.C. 80a–3(c)(1). Section 3(c)(7) of the Investment Company Act generally excludes from the definition of investment company any issuer whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are certain sophisticated investors, called ''qualified purchasers,'' and which is not making and does not at that time propose to make a public offering of its securities. 15 U.S.C. 80a–3(c)(7). *See* Section 2(a)(51) of the Investment Company Act (defining the term qualified purchaser). 15 U.S.C. 80a–2(a)(51). Section 3(c)(7) may be a particularly useful exclusion for asset-backed issuers that privately offer and sell their securities because, unlike Section 3(c)(1), it does not limit the number of investors that may hold the issuer's securities and many investors in asset-backed securities are large institutional investors that meet the definition of qualified purchaser under the Act. *See, e.g.,* Kravitt, *supra* note 15 at 12.03[D].

[31] Prior to the adoption of Rule 3a–7, the Commission had issued approximately 125 orders under Section 6(c), the Investment Company's Act general exemptive provision, which provided exemptive relief to certain asset-backed issuers, primarily those holding mortgage-related assets. 15 U.S.C. 80a–6(c). *See, e.g.,* Mortgage Bankers Financial Corp. I, *et al.,* Investment Company Act Release Nos. 16458 (June 28, 1988), 53 FR 25226 (notice of application) and 16497 (July 25, 1988), 41 SEC Docket 814 (order); Shearson Lehman CMO, Inc., Investment Company Act Release Nos. 15796 (June 11, 1987), 52 FR 23246 (notice of application) and 15852 (July 2, 1987), 38 SEC Docket 1403 (order). The Commission has not issued any such orders since Rule 3a–7 was adopted in 1992.

[32] For example, an issuer relying on Rule 3a–7 may not issue redeemable securities, because ''investors could confuse the securities with those issued by open-end management investment companies.'' Proposing Release, *supra* note 15, at n. 61 and accompanying text.

[33] Adopting Release, *supra* note 4 at text following n.8.

[34] *Id.*

[35] Rule 3a–7(b)(1) defines eligible assets to be financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

[36] Rule 3a–7(a)(2). When Rule 3a–7 was adopted, almost all publicly offered fixed-income securities issued by asset-backed issuers were rated by at least one rating agency, with most issuing at least one class of fixed-income securities rated in one of the top two categories. See Protecting Investors Report, *supra* note 4 at nn. 187–188 and accompanying text. Rule 3a–7 contains an exception from the rating requirement that permits non-investment grade or unrated fixed-income securities to be sold to institutional accredited investors and any security, without regard to type or rating, to be sold to qualified institutional buyers or to persons involved in the organization or operation of the issuer and their affiliates, provided that the issuer and its underwriters use reasonable care to ensure that all excepted sales and resales are to such persons. *See* Rule 3a–7(a)(2). The exception reflected then-existing industry practice that subordinate tranches of fixed-income asset-backed securities issuances, which typically were not highly rated, if rated at all, and residual interests in the issuer, were placed with certain sophisticated investors. Proposing Release, *supra* note 15 at n.77 and accompanying text.

[37] Adopting Release, *supra* note 4, at text following n. 42. As noted above, the recent financial crisis has exposed various problems with the ratings process and the NRSROs' procedures and methodologies. *See supra* note 14.

[38] Adopting Release, *supra* note 4. The Commission also explained that the rating requirement also served as a means of distinguishing asset-backed issuers from registered investment companies. The Commission, however, emphasized that, ''although ratings generally reflect evaluations of credit risk, the rating requirement [was] not intended to address investment risks associated with the credit quality of a financing.'' Adopting Release, *supra* note 4 at text following n.41.

[39] Protecting Investors Report, *supra* note 4 at nn. 208–211 and accompanying text, n. 218 and accompanying text, and text following n.292 and prior to n.293.

[40] *Id.* at text following n.292.

[41] *Id.* at nn.212, 220–221 and 293 and accompanying text.

[42] *Id.* at nn.294–295 and accompanying text.

[43] *See* Adopting Release, *supra* note 4 at n. 66 and accompanying text.

portfolio management practices employed by registered management investment companies.[44] Under the rule, an issuer generally may acquire additional eligible assets or dispose of such assets only if that action complies with the terms and conditions set forth in the issuer's organizational documents.[45] In addition, any acquisition or disposition of eligible assets may not result in a downgrading of the rating of the issuer's fixed-income securities.[46] The rule also does not permit the acquisition or disposition of eligible assets for the primary purpose of recognizing gains or losses resulting from market changes.[47]

Finally, the rule includes conditions addressing the safekeeping of the issuer's eligible assets and the cash flow derived from such assets. Among other things, the issuer generally must take reasonable steps to cause an independent trustee[48] to have a perfected security interest or ownership interest valid against any third parties in the eligible assets that principally generate the cash flow needed for payment on the fixed-income securities.[49] In addition, the cash flow derived from the eligible assets that is received by the servicer must be deposited periodically in a segregated account that is maintained or controlled by the independent trustee, ''consistent with the rating of the outstanding fixed-income securities.'' [50] This reference to the rating reflected what the Commission understood to be the practice of NRSROs, in issuing the rating, to review the capability of the issuer's servicer to perform its duties, including the risk of loss from the servicer holding the cash flow derived from the eligible assets.[51]

1. Rating Requirements

As discussed above, Rule 3a–7 contains references to ratings in three of the rule's conditions. Specifically, an asset-backed issuer relying on Rule 3a–7 generally must have its fixed-income securities rated by at least one NRSRO in one of the four highest ratings categories.[52] In addition, any acquisition or disposition of eligible assets may not result in a downgrading of the rating of the issuer's fixed-income securities.[53] Finally, the cash flow derived from the eligible assets that is received by the servicer must be deposited periodically in a segregated account that is maintained or controlled by an independent trustee, ''consistent with the rating of the outstanding fixed-income securities.'' [54] In each case, the reference to ratings was intended to be a type of proxy for the relevant investor protections afforded by the Investment Company Act.[55] The condition that the fixed-income securities be rated also was viewed as a means of distinguishing asset-backed issuers from most registered investment companies.[56]

The Commission is considering eliminating the references to ratings in Rule 3a–7. We question whether such references have served, as intended, as a proxy to address Investment Company Act-related concerns, and whether it continues to be appropriate for Rule 3a–7 to make use of ratings in this manner. Accordingly, we ask for comment on the type of analysis that rating agencies currently conduct in providing credit ratings for the fixed-income securities of asset-backed issuers, and the types of structural safeguards that rating agencies expect asset-backed issuers to have, that also address Investment Company Act-related concerns.[57] Please provide a full explanation of whether, and if so how, the actions and expectations of the rating agencies today mitigate the potential for the types of abuses otherwise addressed by the Investment Company Act.

- Do ratings today serve as a proxy for addressing Investment Company Act-related concerns? If so, are there mechanisms in place that help ensure that NRSROs conduct the type of analysis and review of asset-backed issuers' structures and operations that serve to address Investment Company Act-related concerns?
- Did the revelations concerning the NRSROs' processes, policies and methodologies arising out of the recent financial crisis also suggest that ratings failed to serve as a proxy for addressing Investment Company Act-related concerns?
- Even if the actions and expectations of the rating agencies with respect to asset-backed issuers today mitigate the potential for Investment Company Act-related concerns, does it continue to be appropriate to rely on ratings as a proxy for addressing Investment Company Act-related concerns in Rule 3a–7?
- Should some or all of the references to ratings be removed from the rule? Should the references to ratings be replaced with other conditions? What would be the economic impact of removing the references to ratings in Rule 3a–7 and of any suggested new conditions?
- Should Rule 3a–7 continue to require that the fixed-income securities be rated regardless of whether any other conditions are added to the rule? To the extent that the ratings requirements in the rule are perceived to be or are useful as a measure of credit-worthiness, what substitute standards should the Commission consider adopting in accordance with Section 939A of the Dodd-Frank Act? [58] We ask commenters to fully explain their views.

We note that, as discussed in greater detail below, various provisions of the Dodd-Frank Act and Commission rules thereunder, as well as the 2010 ABS Proposing Release and 2011 ABS Re-proposal, set forth requirements relating to certain asset-backed issuers and certain persons involved in the organization and operation of asset-backed issuers, that may serve to address the same Investment Company Act-related concerns as those that underlie the references to ratings in Rule 3a–7.[59] As detailed below, we ask for comment on whether any such requirements should be included as conditions to the exclusion from the

[44] *Id.* at n.62 and accompanying text. *See also infra* section III.A.3. For example, Rule 3a–7 does not permit the acquisition or disposition of eligible assets for the primary purpose of recognizing gains or losses resulting from market changes. Rule 3a–7(a)(3)(iii).

[45] Rule 3a–7(a)(3)(i).

[46] Rule 3a–7(a)(3)(ii). The Commission explained that tying the management of the issuer's eligible assets to the rating of the fixed-income securities addressed the danger of self-dealing, because any addition or removal of assets that adversely affected the fixed-income securities holders was understood to result in a downgrading of the issuer's outstanding fixed-income securities. *See* Adopting Release, *supra* note 4 at n.66 and accompanying text.

[47] Rule 3a–7(a)(3)(iii).

[48] Rule 3a–7(a)(4)(i) generally requires that the trustee be a bank that meets the requirements of Section 26(a)(1) of the Investment Company Act and that is not affiliated, as that term is defined in Rule 405 under the Securities Act, with the issuer or with any person involved in the organization or operation of the issuer, that does not offer or provide credit or credit enhancement to the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in Section 26(a)(3) of the Investment Company Act, limiting when the trustee may resign. 15 U.S.C. 80a–26(a)(3).

[49] Rule 3a–7(a)(4)(ii).

[50] Rule 3a–7(a)(4)(iii).

[51] *See* Proposing Release, *supra* note 15 at n.31. *See also* Adopting Release, *supra* note 4 at text following n.82; Kravitt, *supra* note 15 at 7.03[E].

[52] Rule 3a–7(a)(2).

[53] Rule 3a–7(a)(3)(ii).

[54] Rule 3a–7(a)(4)(iii).

[55] *See supra* note 38 and accompanying text.

[56] *Id.*

[57] *See supra* section III.A.1 (describing the types of review we believed was conducted by the rating agencies when the rule was adopted).

[58] *See supra* note 7 and accompanying text (Section 939A of the Dodd-Frank Act generally requires the Commission to review any references to or requirements regarding credit ratings in its regulations, remove these references or requirements and substitute other appropriate standards of credit-worthiness in place of the credit ratings).

[59] *See infra* section III.A.2.d.

definition of investment company provided by Rule 3a–7.[60]

We also note that, although Rule 3a–7 generally states that fixed-income securities of an asset-backed issuer must be rated by at least one NRSRO in one of the four highest rating categories, the text of the rule does not require fixed-income securities of a Rule 3a–7 issuer to be rated, provided that the securities are sold and resold only to certain sophisticated investors.[61] We request comment on whether and, if so, to what extent, any issuer has relied on Rule 3a–7 to offer fixed-income securities to the sophisticated investors specified in the rule without any tranche of the issuer's fixed-income securities being rated in the categories specified in the rule. If so, please explain whether these securities were offered publicly or privately.

2. Possible New Conditions for Rule 3a–7

We ask for comment on the conditions that should be added to Rule 3a–7 to directly address investor protection under the Investment Company Act.[62] These investor protection issues generally can be characterized as falling into the following areas: (i) Concerns about self-dealing by insiders, misvaluation of assets and inadequate asset coverage as they relate to the structure and operation of the asset-backed issuer; (ii) the benefits of an independent review of the asset-backed issuer's structure and intended operations in addressing these concerns; and (iii) preservation and safekeeping of the asset-backed issuer's eligible assets and cash flow.

Each of these investor protection issues is discussed in greater detail below. Although the Commission has identified these particular issues, the Commission requests and encourages commenters to provide both thoughts about the types of investor protection concerns under the Investment Company Act presented by asset-backed issuers and suggestions as to the types of conditions that should be included in Rule 3a–7 to address these concerns. We also ask for comment on the changes in the asset-backed securities market since 1992, whether such changes present other issues or concerns under the Investment Company Act that we have not described, and how Rule 3a–7 should address them. We ask that commenters fully explain their recommendations, including how any suggested conditions would directly address investor protection under the Investment Company Act, and well as how such suggestions might affect capital formation. We also ask commenters to provide suggested rule text.

a. Structure and Operation of the Issuer

In many respects, the Investment Company Act is generally intended to address the structural and operational integrity of an issuer in relation to the securities being issued.[63] In the context of an asset-backed issuer that may use the exclusion provided by Rule 3a–7, the concern is with the possibility of abusive practices, such as self-dealing and overreaching by insiders, misvaluation of assets, and inadequate asset coverage.[64] For example, the asset-backed issuer's sponsor, among other things, might potentially engage in intentional misvaluation of assets or in a form of ''dumping'' by transferring assets insufficient to produce the cash flow needed to meet the issuer's obligations to its securities holders, contrary to representations made to investors. In addition, once the securities are issued, any person involved in the operation of the issuer potentially might engage in activities that could adversely affect payment of the outstanding fixed-income securities. Such activities might include, for example, substituting assets in the pool after the time of securitization with lower quality assets, investing the issuer's cash flow in a speculative manner, or other activities that present potential conflicts of interest.

There are various approaches that the Commission could take to address these types of concerns in Rule 3a–7. The rule could impose specific requirements or limitations on the structure and operations of an asset-backed issuer relying on the rule in order to prevent these potential types of abuses from occurring. For example, the rule could specify the particular manner in which the issuer's assets should be selected and valued to avoid potential ''dumping'' of assets and misvaluation. The rule also could specify the particular manner in which the issuer's depositor and sponsor may structure the issuer to help guard against self-dealing and overreaching by these insiders. The rule further could prohibit any person involved in the operation of the issuer from engaging in specific activities that may adversely affect payment of the fixed-income securities consistent with their terms.

Alternatively, the rule could take a principles-based approach that would be less prescriptive. For example, among other things, the rule could require that the parameters of the issuer's organization and operations be set forth in its organizational documents, with the goal of mitigating potential opportunities for self-dealing and overreaching on the part of the issuer and any person involved in the organization or operation of the issuer. To this end, the rule could require that the issuer's organizational documents set forth: (i) The specific roles and responsibilities of any person involved in the organization or operation of the issuer; (ii) the specific terms and conditions pursuant to which the issuer may acquire or dispose of eligible assets; and (iii) policies and procedures that are reasonably designed to prevent insiders from engaging in activities that may adversely affect payment of the fixed-income securities after the securities are sold. We understand that the current industry practice of publicly-offered asset-backed issuers is to set forth the parameters of the issuer's organization and operations in the issuer's organizational documents,[65] with varying degrees of specificity.[66]

The Commission requests comment on the types of conditions that may be appropriate for Rule 3a–7 to provide structural and operational safeguards for

[60] *Id.*

[61] *See supra* note 36.

[62] We note that this approach was suggested by a commenter that had responded to the Commission's request for comment in the 2008 NRSRO Proposing Release. *See* comment letter from Shearman & Sterling LLP (on behalf of its client Merrill Lynch Depositor Inc.) to Florence E. Harmon, Acting Secretary (Sept. 24, 2008), File Nos. S7–18–08 and S7–19–08 (''if the Commission feels it necessary that Rule 3a–7 be amended, our client feels that the Commission's proposal that the rating requirement be replaced with alternative specific requirements regarding abuses that the Investment Company Act is designed to address, such as self-dealing and overreaching by issuers, misvaluation of assets, and inadequate asset coverage, is worth further consideration by the Commission * * *'').

[63] *See e.g., supra* notes 19–24 and accompanying text.

[64] *See* Proposing Release, *supra* note 15, at nn. 69 and 70 and accompanying text.

[65] An issuer's organizational documents must be filed as exhibits to the registration statement. *See* Item 60 of Regulation S–K [17 CFR 229.60].

[66] We note, for example, that Regulation AB generally requires asset-backed issuers to describe much of this information in their registration statements, although perhaps not with the same degree of specificity that could be required under this approach. *See, e.g.,* Item 1104(d) (requiring a description of the sponsor's material roles and responsibilities in its securitization program); Item 1107(b) (requiring a description of the permissible activities of the issuer); Item 1108(a)(1) (requiring a description of the roles, responsibilities and oversight requirements of the servicers involved in a transaction) [17 CFR 229.1104(d), 1107(b), 1108(a)(1)]. In addition, as discussed previously, under current Rule 3a–7, an issuer generally may acquire additional eligible assets or dispose of such assets only if that action complies with the terms and conditions set forth in the issuer's organizational documents . *See supra* note 45 and accompanying text.

asset-backed issuers that seek to rely on the rule.

• Is one of the possible approaches discussed above more consistent with investor protection than, or otherwise preferable to, the other? If so, which one and why? What would be the impact of such an approach on capital formation?

• What would be the potential economic impact of the approaches discussed above?

• If the rule were to impose specific requirements or limitations on the structure and operations of an asset-backed issuer relying on the rule, what should those requirements or limitations be, and what would be the likely benefits and costs of such requirements or limitations?

• Should the rule require an issuer's organizational documents to set forth the types of information suggested above? How would such a requirement change current practice?

• Rule 3a–7(a)(3)(i) currently provides that an issuer generally may acquire additional eligible assets or dispose of eligible assets only in accordance with the specific terms and conditions of the issuer's organizational documents. Should that condition be expanded to cover the initial transfer of eligible assets to the issuer at the time of securitization, in order to mitigate opportunities for dumping and other potential abuses by insiders that exist both at the time of the initial transfer of the assets to the issuer and over the course of the operation of the issuer? If the condition were so expanded, would it help mitigate such potential abuses?

• Are there other approaches that the Commission should consider that would adequately address Investment Company Act-related concerns such as self-dealing and overreaching, misvaluation, and inadequate asset coverage? [67] If so, what types of approaches, why and with what economic impact? We ask commenters to fully explain their views and, if appropriate, provide rule text and supporting data.

• Are there other Investment Company Act-related concerns that Rule 3a–7 should address besides self-dealing, misvaluation and inadequate asset coverage? If so, what are those concerns and how should the rule address them? For example, one of the Investment Company Act-related concerns is the pyramiding of investment companies.[68] Should Rule 3a–7 address this concern? [69] If so, why and how should the rule address it? Should the rule restrict the ability of an issuer relying on the rule to invest in other asset-backed issuers? If so, what restrictions should the rule impose?

b. Independent Review

The concept of independent oversight or independent review is fundamental to the regulatory framework of the Investment Company Act.[70] Registered investment companies typically rely for their structure and operations on third parties that have their own financial interests separate and distinct from those of the investment companies and their shareholders, presenting potential conflicts of interest that require independent oversight. The independent oversight in the case of registered management investment companies is provided by the company's board of directors, and in particular the independent board members, as required by the Act.[71]

Asset-backed issuers are similar to registered investment companies in that they also typically rely for their structure and operations on third parties that have their own financial interests separate and distinct from those of the asset-backed issuers and their fixed-income securities holders.[72] We are considering whether to replace the rating condition currently contained in Rule 3a–7, in part, with a condition that would provide for an independent review of the asset-backed issuer and its intended operations prior to the sale of the fixed-income securities. Such a condition could require the asset-backed issuer to obtain an opinion from an independent evaluator that the independent evaluator reasonably believes, based on information available at the time the fixed-income securities are first sold and taking into account the characteristics of the securitized assets underlying the offering, that the asset-backed issuer is structured and would be operated in a manner such that the expected cash flow generated from the underlying assets, would likely allow the asset-backed issuer to have the cash flow at times and in amounts sufficient to service expected payments on the fixed-income securities. Such an opinion would not serve as a guarantee that the securitization will produce such cash flow. Alternatively, the rule could require the issuer itself to provide a similar certification in its offering documents, but to do so only after considering the views of an independent evaluator that has reviewed the structure and the intended operations of the issuer. For purposes of such a condition, potentially any independent person, including an NRSRO, that has the expertise and experience in the structuring or evaluating of asset-backed issuers and their securities, could serve as the independent evaluator.

We note that, in the 2011 ABS Re-proposal, we proposed replacing the investment grade ratings criterion for shelf eligibility for asset-backed securities offerings with a requirement that a certification be provided by either the chief executive officer of the depositor or the executive officer in charge of securitization of the depositor.[73] As we stated in the 2011 ABS Re-proposal, such a certification may cause these officials to review more carefully the disclosure and the transaction, and to participate more extensively in the oversight of the transaction. In the 2011 ABS Re-proposal, we also requested comment on whether an asset-backed issuer should have the flexibility to engage an independent evaluator to perform the review necessary to give the certification, and the type of opinion that the independent evaluator would provide.[74]

[67] One approach to addressing these concerns might be to include a condition in Rule 3a–7 that provides for an independent third party review of the issuer's structure and intended operations. We discuss such a condition in the next section. *See infra* section III.A.2.b.

[68] *See* Section 1(b)(4) of the Investment Company Act. *Cf. Fund of Funds Investments,* Investment Company Act Release No. 26198 (Oct. 1, 2003) (''The complex structures that resulted from pyramiding created additional problems for shareholders. These structures permitted acquiring funds to circumvent investment restrictions and limitations, and made it impossible for shareholders to understand who really controlled the fund or the true value of their investments.'').

[69] We note, for example, that the Financial Crisis Inquiry Commission found that investments by issuers of collateralized debt obligations (''CDOs) in other CDOs magnified total leverage and increased exposure to loss. Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* (Jan. 2011) at 132–134, 155. *See also The Report of the Counterparty Risk Management Policy Group III, Containing Systemic Risk: The Road to Reform* (Aug. 6, 2008) at 55 (discussing CDOs that invested in other CDOs).

[70] *See generally* Section 1(b) of the Investment Company Act.

[71] *See* Section 10 of the Investment Company Act governing the composition of a registered investment company's board of directors.

[72] *See supra* note 25 and accompanying text.

[73] As proposed, such certification would state, among other things, that based on the officer's knowledge, ''taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed by this certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement.'' *See* 2011ABS Re-proposal, *supra* note 13 at proposed Item 601(b)(36) of Regulation AB.

[74] *See* 2011 ABS Re-proposal, *supra* note 13 at text following n. 58.

If Rule 3a–7 were to be amended to include a condition requiring independent review, the amendment would be premised on the need to address concerns arising under the Investment Company Act about self-dealing and overreaching by insiders.[75] Thus, the purpose of the independent review under Rule 3a–7 would be different from that which might be performed in connection with the certification requirement proposed in the 2011 ABS Re-proposal. Nevertheless, the scope of the review under any independent review provisions in the shelf eligibility conditions and those in Rule 3a–7 could be consistent so that one review could satisfy both purposes.[76]

We request comment on whether Rule 3a–7 should require an independent review of the structure and intended operations of the asset-backed issuer.

• Would such a review serve to address Investment Company Act-related concerns?

• What should be the scope of the independent review under Rule 3a–7? What should be the standard(s) for the conclusion(s) reached by the independent evaluator for purposes of Rule 3a–7?

• What should be the independence requirements for an entity to serve as an independent evaluator for purposes of Rule 3a–7? We note that the 2011 ABS Re-proposal requests comment on certain potential independence requirements for an independent evaluator, such as prohibitions on affiliation with the issuer or any person involved in the organization or operation of the issuer, on ownership of the issuer's securities or underlying assets, and on certain material business relationships.[77] Would similar requirements be appropriate in the context of Rule 3a–7?

• The 2011 ABS Re-proposal also requests comment on whether it would be appropriate to define an independent evaluator as a person that has the expertise and experience in the structuring or evaluating of asset-backed securities. Would this be an appropriate definition of an independent evaluator for purposes of Rule 3a–7?

• Should we impose any additional or different requirements on an independent evaluator? For example, should consideration be given to whether the independent evaluator is subject to Federal regulation or how the independent evaluator is regulated?

• What steps should the asset-backed issuer be required to take to determine whether a prospective independent evaluator meets the qualifications to serve as an independent evaluator under Rule 3a–7? Should the asset-backed issuer be able to rely on a statement of the prospective independent evaluator, for example, that the prospective independent evaluator has the required expertise and experience? Should the asset-backed issuer perform some level of due diligence?

• What types of entities may likely serve as independent evaluators under Rule 3a–7? We are interested in particular in hearing from commenters that may meet the possible independent evaluator qualifications discussed above whether they might be interested in serving as independent evaluators if such a condition were to be included in Rule 3a–7, and if not, why not.

• Should rating agencies be allowed to serve as independent evaluators under Rule 3a–7? Why or why not?

• If an independent evaluator condition were to be included in Rule 3a–7, should the rule also require the asset-backed issuer to include the independent evaluator's opinion as an exhibit to its registration statement thereby requiring the independent evaluator to consent to being named as an ''expert'' in the registration statement and being subject to potential liability under Section 11 of the Securities Act?

• What would be the economic impact of including an independent evaluator condition in Rule 3a–7 and what would be the factors affecting the economic impact? Would the economic impact depend on whether the independent evaluator is subject to expert liability? If so, how? How may the risk of expert liability affect the willingness of an entity to serve as an independent evaluator and the price it may charge for its services?

• Is the alternative that the asset-backed issuer itself must provide a certification about its structure and intended operations, but only after considering the views of an independent evaluator, preferable? Why or why not?

• If Rule 3a–7 were to include an independent evaluator condition, would there be circumstances in which compliance with such condition may not be necessary for investor protection? For example, should such a condition not apply with respect to an asset-backed issuer that offers and sells its securities solely to investors that meet certain objective standards, such as being ''qualified institutional buyers'' within the meaning of Rule 144A under the Securities Act? If such a condition should not apply to certain asset-backed issuers, should such issuers be required to disclose in their offering documents that they are not complying with the independent evaluator condition and explain why? Should such issuers be subject to other, alternative conditions under Rule 3a–7 that would address Investment Company Act-related concerns, including self-dealing and overreaching by insiders?

• Are there other considerations that should factor into the Commission's determinations on the appropriateness and the details of an independent review in the context of Rule 3a–7? We ask commenters to fully explain their views and provide supporting data, if appropriate.

c. Preservation and Safekeeping of Eligible Assets and Cash Flow

Like registered investment companies, asset-backed issuers are pools of financial assets that are subject to the risk of misappropriation. In addition, unless the asset-backed issuer is structured appropriately, its assets and cash flow might not be insulated in the event of the sponsor's or depositor's bankruptcy or insolvency. The issuer's assets and cash flow also might be endangered if the servicer or trustee commingles them with its own assets. The availability of the issuer's cash flow to the fixed-income securities holders also could be endangered if the cash flow is invested in a speculative manner.

Rule 3a–7 contains several conditions designed to address the safekeeping of the issuer's eligible assets and the cash flow derived from such assets. Under the rule, the issuer must take reasonable steps to cause an independent trustee to have a perfected security interest or ownership valid against third parties in the eligible assets.[78] The rule also provides for the cash flow from such assets to be deposited periodically in a segregated account maintained or controlled by the independent trustee ''consistent with the rating of the outstanding securities.'' [79] In addition, the rule's condition that the issuer's fixed-income securities generally receive a rating in one of the four highest rating categories also touches on concerns relating to the safekeeping of the issuer's assets and cash flow. For example, we understand that asset-backed securities often could not achieve an investment grade rating unless the issuer was structured in such

[75] As discussed above, within the framework of the Investment Company Act, these concerns are addressed through independent review. *See supra* note 70 and accompanying text.

[76] *See also infra* section III.A.2.d.

[77] 2011 ABS Re-proposal, *supra* note 13 at nn.60–61 and accompanying text.

[78] Rule 3a–7(a)(4)(ii).

[79] Rule 3a–7(a)(4)(iii).

a manner that the assets and cash flow are insulated in the event of the sponsor's or depositor's bankruptcy or insolvency.[80]

We ask for comment on whether Rule 3a–7 should be amended to strengthen the provisions relating to the preservation and safekeeping of the asset-backed issuer's assets and cash flow. For example, the current rule does not limit the practice of servicers commingling the cash flow of asset-backed issuers with their own assets for periods of time prior to transferring it to the trustee.[81] We ask for comment on whether such practice may be unnecessarily putting the cash flow at risk. The current rule also does not address the treatment of the cash flow when there is a timing mismatch between the receipt of collections from the eligible assets and the distributions to the fixed-income securities holders. Are there other aspects of the rule we should consider amending in order to help preserve and protect the asset-backed issuer's assets and cash flow? If so, please provide specific suggestions for such amendments, including, where possible, suggested rule text.

We also note the irregularities that had recently surfaced that have caused difficulties in determining the ownership of certain mortgages that had been securitized.[82] As discussed, under Rule 3a–7, the issuer must take reasonable steps to cause an independent trustee to have a perfected security interest or ownership valid against third parties in the eligible assets.[83] We ask for comment on whether and how this requirement in Rule 3a–7 should be strengthened in light of these events.

We invite commenters to provide us with information about current practices with respect to the safekeeping of eligible assets under Rule 3a–7.

- Does the current rule contain safeguards that adequately protect the eligible assets?
- Should stronger safeguards be adopted with respect to these assets? If so, what should these safeguards be?

We also invite commenters to provide us with information about current practices under Rule 3a–7 with respect to the management of the cash flow that is derived from an asset-backed issuer's eligible assets.

- How long do servicers typically hold the cash flow prior to transferring the cash flow to the trustee? What are the benefits, if any, to servicers from holding the cash flow? What are the benefits and risks to asset-backed issuers from servicers holding the cash flow?
- We note that the rule does not specify that the servicer must keep the cash flow in a segregated account prior to transferring the cash flow to the trustee. Should such a condition be included in the rule and what would be its economic impact if included? Is the answer dependent on the time period that the servicer has, under the asset-backed issuer's organizational documents or otherwise, in which to transfer the cash flow to the trustee?
- Should the rule be amended to prescribe a time period in which the servicer must transfer the cash flow to the trustee and what would be the economic impact of such a provision? If so, what should that time period be? Commenters suggesting specific time periods should address the costs and benefits associated with their suggestions.
- Regulation AB requires that servicers provide an annual assessment of compliance with servicing criteria enumerated in Item 1121(d) of Regulation AB, so that investors may identify those aspects of standard servicing criteria that are in material compliance in order to better evaluate servicing responsibilities and performance and reliability of the information they receive.[84] In particular, servicers must assess compliance with the servicing criterion that payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts within no more than two business days of receipt, or such other number of days as specified in the transaction agreements.[85] Consistent with this provision, should the time period set forth in Rule 3a–7 be no more than two business days of receipt? Why or why not? What would be the effect if the time period were greater than or less than two business days?

We are also interested in obtaining information about how the cash flow is invested under Rule 3a–7 and who receives the returns from such an investment.

- Should the rule contain a condition that restricts the manner in which the cash flow may be invested? If so, what should this condition provide?
- Should the rule limit who may receive the benefit of the returns of such investment? Why or why not? What economic benefits and costs would be associated with such a limitation?

As discussed previously, we understand that asset-backed securities often could not achieve an investment grade rating unless the issuer was structured in such a manner that the assets and cash flow are insulated in the event of the bankruptcy or insolvency of the sponsor or depositor.[86]

- Does our understanding hold true?
- Should the rule include a condition specifying that the eligible assets and the cash flow generated from such assets be available to pay the fixed-income securities consistent with their terms, notwithstanding the bankruptcy or insolvency of the sponsor or depositor?
- Should any such condition also extend to the bankruptcy of the servicer? Does the answer depend on whether the servicer needs to hold the eligible assets for servicing purposes and is not required to transfer the cash flow to the independent trustee immediately upon receipt? What would be the potential economic impact of so extending the condition?

The Commission also requests comment on any other concerns relating to the safekeeping of the issuer's assets and cash flow that we have not contemplated under Rule 3a–7.

- If there are such concerns, what are they and how should the rule address them?
- Does the asset-backed market generally impose safeguards that are intended to ensure the safety of the issuer's eligible assets and cash flow? Should the rule reflect these safeguards?

[80] *See, e.g.,* Proposing Release, *supra* note 15 at n.33 and accompanying text.

[81] Current Rule 3a–7(a)(4) differs significantly from the condition that was initially proposed. The Commission proposed that the cash flow derived from the eligible assets be transferred to the trustee within a reasonable period from the time of receipt. *See* Proposing Release, *supra* note 15 at nn.90–92 and accompanying text. The Commission explained that the proposed provision was intended to prohibit a servicer from commingling the cash flow with its own assets, arguing that ''investor protection concerns outweigh any benefit resulting from the commingling of a servicer's assets with those of the issuer.'' *Id.* at text following n.92. Commenters argued that transferring the cash flow ''within a reasonable period of time'' was inconsistent with industry practice and that whether a servicer commingled the cash flow with its own assets, and if so, for how long, depended on the type of assets being securitized and the capabilities of the servicer's computer systems to track the cash flow. *See* Adopting Release, *supra* note 4 at n.77 and accompanying text.

[82] *See, e.g., November Oversight Report—Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation,* Congressional Oversight Panel 19 (Nov. 16, 2010) (''Various commentators have begun to ask whether the poor recordkeeping and error-filled work exhibited in foreclosure proceedings, described above, is likely to have marked earlier stages of the process as well. If so, the effect could be that rights were not properly transferred during the securitization process such that title to the mortgage and the note might rest with another party in the process other than the trust.'')

[83] Rule 3a–7(a)(4)(ii).

[84] 17 CFR 229.1122(d).

[85] *See* Item 1122(d)(2)(i) of Regulation AB [17 CFR 229.1122(d)(2)(i)].

[86] *See supra* note 80.

If so, what are the safeguards, how should they be reflected, and what would be the economic impact of reflecting them in the rule?

d. Other Possible Investor Protections

The exclusion from the definition of investment company provided by Rule 3a–7 is one of many regulations under the Federal securities laws addressing asset-backed issuers. Asset-backed issuers also are subject to various regulations under the Securities Act and the Exchange Act. We recognize that there may be existing or proposed provisions under these other Federal securities laws applicable to asset-backed issuers which, although intended for different purposes, also may help mitigate potential Investment Company Act-related concerns. Such provisions could be considered for inclusion in Rule 3a–7 in lieu of the rating condition.[87]

i. Other Commission Rules

For example, Rule 193 under the Securities Act generally requires an asset-backed issuer to perform a review of the assets underlying any asset-backed securities that will be registered under the Securities Act that, at a minimum, provides reasonable assurance that the disclosure in the issuer's prospectus regarding the assets is accurate in all material respects.[88] Section 945 of the Dodd-Frank Act directed the Commission to enact Rule 193 so that due diligence was ''re-introduced'' into the offering process.[89] This provision, if included in Rule 3a–7, might help mitigate some of the concerns underlying the Investment Company Act, such as the ''dumping'' of assets and the potential opportunities for overreaching and self-dealing.

Similarly, as part of the 2011 ABS Re-proposal, we proposed to include, as part of the shelf eligibility requirements for asset-backed issuers, a requirement that the issuer's underlying transaction agreements provide for a ''credit risk manager'' to review the underlying assets in specified circumstances.[90] That proposal addresses concerns about enforceability of representations and warranties regarding the assets, but such a requirement also might serve to mitigate potential Investment Company Act abuses relating to misvaluation of assets and inadequate asset coverage for asset-backed securities and therefore could be considered for inclusion in Rule 3a–7.

As another example, we note that the Dodd-Frank Act added Section 27B to the Securities Act generally to prohibit an underwriter, placement agent, initial purchaser, sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security, as defined in the Exchange Act, from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity for a period of one year after the date of the first closing of the sale of the asset-backed security.[91] This provision ''prohibits firms from packaging and selling asset-backed securities to their clients and then engaging in transactions that create conflicts of interest between them and their clients.'' [92] To the extent that this provision also may help guard against certain of the Investment Company Act-related concerns, such as the potential for self-dealing and overreaching by insiders, it could be considered for incorporation into Rule 3a–7.

Yet another example of requirements under the Federal securities laws concerning certain asset-backed issuers that may be considered for inclusion in Rule 3a–7 are the risk retention requirements for sponsors of asset-backed issuers, such as the requirements recently proposed by the Commission in a joint rulemaking with other Federal regulators.[93] These requirements may be appropriate as conditions for issuers that wish to rely on Rule 3a–7, if they serve to mitigate the Investment Company Act-related concerns about self-dealing by insiders, misvaluation of assets, and the safekeeping of assets and cash flow.

We ask for comment on whether these or any other existing or proposed provisions under other Federal securities laws applicable to asset-backed issuers also may help mitigate potential Investment Company Act-related concerns and could serve, in whole or in part, as substitutes for the references to ratings in Rule 3a–7. Commenters should be specific in identifying the relevant provision and the Investment Company Act-related concern, and explaining how the provision may help mitigate the Investment Company Act-related concern.

ii. Eligibility to Use Rule 3a–7

Currently, any issuer generally may rely on Rule 3a–7 provided that it is in the business of purchasing or otherwise acquiring and holding ''eligible assets,'' issues securities which entitle their holders to receive payments that depend primarily on the cash flow from the eligible assets, and meets the other conditions of the rule. When the Commission adopted Rule 3a–7, the Commission stated that the definition of ''eligible assets'' in Rule 3a–7—in part, ''financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period''—was based on the definition of ''asset-backed security'' under the Securities Act.[94] We understand that asset-backed commercial paper programs that issue securities in reliance on an exemption from registration under the Securities Act, and other asset-backed issuers that offer and sell their securities in reliance

[87] We note that not all asset-backed issuers that rely on Rule 3a–7 are subject to the same provisions under the Federal securities laws. For example, asset-backed issuers that rely on Rule 3a–7 may include those issuers that offer and sell their securities under an exemption from registration under the Securities Act or that are not subject to the Exchange Act reporting requirements. Therefore, if we determine that certain existing or proposed provisions under the Federal securities laws help mitigate potential Investment Company Act-related concerns, such provisions may need to be included as conditions in Rule 3a–7 to ensure that all asset-backed issuers relying on the rule are subject to the same conditions, regardless of their status under the other Federal securities laws.

[88] 17 CFR 230.193.

[89] *See* Section 943 Release, *supra* note 9.

[90] *See* 2011 ABS Re-proposal, *supra* note 13 at section II.B.1.b.

[91] Section 621 of Dodd-Frank Act. The Dodd-Frank Act also directed the Commission to issue rules for the purpose of implementing this provision, and the prohibition described above takes effect only upon the effective date of such rules. *Id.*

[92] Letter from Senators Jeffrey Merkley and Carl Levin to Commission Chairman Mary Schapiro, *et al.* (Aug. 3, 2010) (''Merkley-Levin Letter'') at p. 1, available at *http://www.sec.gov/comments/df-title-vi/conflicts-of-interest/conflictsofinterest-2.pdf.*

[93] *Credit Risk Retention,* Securities Exchange Act Release No. 64148 (Mar. 30, 2011) [76 FR 24090 (Apr. 29, 2011)].

[94] *See* Adopting Release, *supra* note 4 at n.12 and accompanying text. Regulation AB generally defines ''asset-backed security'' as ''a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases.'' *See* Item 1101(c)(1) of Regulation AB. Regulation AB considers certain types of master-trusts and issuers with prefunding periods and revolving accounts to be discrete pools of assets. *See* Item 1101(c)(3) of Regulation AB. In the 2010 April ABS Proposal, the Commission proposed to restrict the use of Regulation AB by master trust issuers backed by non-revolving assets, limit the number of years for revolving periods of non-revolving accounts from three years to one year, and decrease the limit on the amount of prefunding permitted by the prefunding exception from 50% to 10%. *See* 2010 ABS Proposing Release, *supra* note 10 at section IV. The definition of ''asset-backed security'' in Regulation AB also contains limits on the amounts of delinquent and non-performing assets in the asset pool. *See* Item 1101(c)(2). The shelf eligibility requirements on Form S–3 further limits the amount of delinquent assets and certain leases that may be held in the asset pool. *See* Form S–3.

on an exemption from registration under the Securities Act, often rely on Rule 3a–7 to be excluded from regulation under the Investment Company Act. Conversely, an asset-backed issuer that cannot meet the conditions of Rule 3a–7 (and is unable to qualify for any other exclusion from regulation under the Investment Company Act, such as Section 3(c)(5), or register under the Act) generally may not register the issuance of its securities even if the issuer and its securities meet the other offering requirements under the Securities Act.

• We request comment on whether the requirements of Regulation AB or the shelf eligibility requirements may serve, in whole or in part, to address the Investment Company Act concerns underlying Rule 3a–7 and therefore be a basis for meeting some or all of the rule's conditions, including the rating condition and any conditions that may replace it. Should the conditions of Rule 3a–7 distinguish between issuers that meet the shelf eligibility requirements and those that do not? If so, why and how should the conditions differ? We ask commenters to be specific in their responses and to provide data and statistics, if possible.

• Would certain asset-backed issuers that currently are able to publicly offer their securities no longer be able to do so if Rule 3a–7 were limited to issuers that meet the shelf eligibility requirements? If so, please explain. With respect to such issuers, commenters also should address any alternative exclusion(s) from regulation under the Investment Company Act that may be available, and the advantages and disadvantages of the issuers' using these exclusions if Rule 3a–7 were not available to them. We ask commenters to provide data in support of their responses, if possible.

• Is our understanding correct that some asset-backed issuers that privately offer their securities rely on Rule 3a–7? If so, would certain of these issuers no longer be able to rely on Rule 3a–7 if the rule was limited in this manner? If not, why not? We also ask commenters to provide similar information and data about asset-backed issuers that rely on the private investment company exclusions from regulation under the Investment Company Act, and any alternative exclusion(s) from regulation under the Investment Company Act that may be available, and the advantages and disadvantages of the issuers' using these exclusions if Rule 3a–7 were not available to them. The Commission also requests that commenters provide any available data about the sizes and types of asset–backed issuers that privately offer their securities that rely on Rule 3a–7.

• What would be the effect on the asset-backed securities market in general, on capital formation, and on investors if the availability of Rule 3a–7 were limited to issuers of asset-backed securities as defined in Regulation AB or included the further limitations found in the shelf eligibility requirements?

• Are there alternative approaches that the Commission should consider to an issuer's eligibility to use Rule 3a–7 that would address Investment Company Act-related concerns? Commenters that offer alternative approaches should be as specific as possible in explaining their approach and the effect such an approach would have on asset-backed issuers, on the asset-backed securities market in general, on capital formation, and on investors.

3. Standard for Acquisition and Disposition of Eligible Assets

With respect to the type and amount of activity related to the acquisition and disposition of an issuer's eligible assets that may take place under Rule 3a–7, the Commission has stated that Rule 3a–7 was intended to permit only those activities ''that do not in any sense parallel typical 'management' of registered investment company portfolios.'' [95] Thus, according to the Adopting Release, permitted activities under the rule include selling or substituting eligible assets when documentation is defective or for nonconformity with representations or warranties, disposing of assets in default or in imminent default, and removing excess credit support.[96] We request comment on the management activities of asset-backed issuers under Rule 3a–7.

• What changes, if any, should be made to the rule's conditions addressing the acquisition and disposition of eligible assets? What would be the economic impact of any such changes?

• Does the current rule adequately preclude activities ''that do not in any sense parallel typical 'management' of registered investment company portfolios''? If not, should additional conditions be added to the rule that would limit the acquisition and disposition of the issuer's eligible assets, and if so, what types of conditions? What would be the economic impact of such conditions?

[95] *See supra* note 44 and accompanying text.

[96] *See* Adopting Release, *supra* note 4 at n.68 and accompanying text.

B. The Effect of the Exclusion Provided by Rule 3a–7

Current Rule 3a–7 excludes from the definition of investment company any issuer that meets the rule's conditions. The rule does not address how a holder of securities of a Rule 3a–7 issuer should treat those securities for purposes of determining the holder's own status under the Investment Company Act. In light of certain developments in the asset-backed securities markets in recent years, detailed below, we request comment whether we should consider limiting or clarifying the manner in which the exclusion provided by Rule 3a–7 may be used by certain holders of securities issued by Rule 3a–7 issuers.

1. Holders of an Asset-Backed Issuer's Securities

As a general matter, the status of an issuer under the Investment Company Act matters not only to the issuer itself, but also to the holders of the issuer's securities. A holder's own status under the Investment Company Act may depend on the investment company status of the issuers of securities that it owns.[97] When the Commission adopted Rule 3a–7, the Commission focused on providing an exclusion from regulation under the Act for the asset-backed issuer, and not on the manner in which such an exclusion may affect a holder of the asset-backed issuer's securities.

We are interested in better understanding the manner in which the exclusion provided by Rule 3a–7 affects the status under the Investment Company Act of various types of holders of securities issued by Rule 3a–7 issuers. For example, in the last decade, many asset-backed issuers that relied on Rule 3a–7 were established by companies that sought to capture, by holding the equity or residual interest in these issuers, the spread between the yield of the assets being securitized and the financing cost of the fixed-income securities being issued.[98] The potential

[97] For example, the holder may be an investment company under Section 3(a)(1)(C) of the Investment Company if it owns or proposes to acquire investment securities, which generally include, among others, securities issued by an investment company, having a value exceeding 40% of the value of the holder's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. *See supra* note 30.

[98] More generally, in 2007, for example, only approximately 11.5% of CDOs issued globally were issued to remove assets from the balance sheet of the originator. The rest of the CDO market consisted of arbitrage CDOs, which are CDOs that attempt to capture the difference between the yield of its assets and the financing costs of the CDO tranches. *See, e.g.,* Securities Industry and Financial Markets Association: Research at *http://archives1.sifma.org/story.asp?id=2375* (''SIFMA'').

for returns on such investments led to companies being established whose business focused on purchasing equity and residual interests in collateralized loan obligations (''CLOs'') and CDOs of issuers that relied on Rule 3a–7.[99] The activities of some of these companies suggest that they are in the business of investing in securities.[100] However, because current Rule 3a–7 excludes issuers relying on the rule from the definition of investment company, such companies that invest in Rule 3a–7 issuers may not meet the definition of investment company in the Investment Company Act.

Specifically, under the Investment Company Act, any company that holds 50% or more of the outstanding voting securities of an issuer may treat such issuer as its majority-owned subsidiary.[101] Securities of majority-owned subsidiaries that are not investment companies, in turn, are not ''investment securities'' [102] for purposes of determining whether the parent meets the definition of investment company in Section 3(a)(1)(C) of the Act. Since a Rule 3a–7 issuer is not an investment company by virtue of the exclusion provided by the rule,[103] any company that holds 50% or more of the outstanding voting securities of a Rule 3a–7 issuer may treat the Rule 3a–7 issuer as its majority-owned subsidiary and is not required to treat any of the securities issued by the Rule 3a–7 issuer as ''investment securities'' for purposes of determining the company's own status under Section 3(a)(1)(C) of the Investment Company Act. Such a company therefore may have virtually all of its assets invested in securities of Rule 3a–7 majority-owned subsidiaries and not meet the definition of investment company under Section 3(a)(1)(C).[104]

If the exclusion provided by Rule 3a–7 specified that an issuer relying on Rule 3a–7 would be deemed an investment company for the limited purpose of the definition of ''investment securities'' in Section 3(a)(2)(C)(i) of the Investment Company Act, any company that holds 50% or more of the outstanding voting securities of a Rule 3a–7 issuer would be required to treat such securities, as well as any other securities of that Rule 3a–7 issuer, as ''investment securities'' for purposes of determining its own status under Section 3(a)(1)(C) of the Investment Company Act.[105] With respect to certain types of holders of securities issued by Rule 3a–7 issuers, such as companies discussed above whose business focused on establishing Rule 3a–7 subsidiaries to capture the spread between the yield of the assets being securitized and the financing cost of the fixed-income securities being issued, and which may be engaged in the business of investing in securities, such an approach may serve to more accurately reflect their status under Section 3(a)(1)(C) of the Investment Company Act and afford their investors the appropriate protections.

The Commission requests comment on the extent to which various types of holders of securities of Rule 3a–7 issuers use the exclusion to determine their own status under the Investment Company Act.

- What would be the potential economic impact if the exclusion from the definition of investment company provided by Rule 3a–7 were modified so that it did not extend to the definition of ''investment securities'' in Section 3(c)(1)(C)(i)?
- Would such a modification adversely affect those sponsors that form Rule 3a–7 issuers to facilitate the operation of their non-investment company business? Are such sponsors typically invested in their Rule 3a–7 majority-owned subsidiaries to such an extent that this approach would cause a sponsor to have more than 40% of its assets in investment securities and therefore fall within the definition of investment company in Section 3(a)(1)(C)? [106]
- Rule 3a–7 alternatively could be recast such that a Rule 3a–7 issuer would be an investment company but would be exempted from the Act's requirements, provided that the issuer meets the rule's conditions. Under this approach, because the asset-backed issuer would not be excluded from the definition of investment company, but

[99] *See, e.g.,* Jody Shenn, *Bear Stearns Funds Own 67 Percent Stake in Everquest (Update3),* Bloomberg, May 11, 2007, *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=* (describing various investment vehicles formed to invest in residual interests of CDOs).

[100] In contrast, when Rule 3a–7 was adopted, most private sector sponsors of asset-backed issuers typically securitized financial assets that they themselves had originated to facilitate the financing and operation of their non-investment company businesses. For example, some sponsors securitized their financial assets in order to manage more effectively their loan portfolios and, in turn, their balance sheets. In addition, securitization allowed sponsors to gain access to alternative, usually cheaper, funding sources. Commercial banks and savings and loan associations also securitized financial assets to facilitate compliance with regulatory capital requirements. As the Commission noted when adopting Rule 3a–7, the purpose and operation of asset-backed issuers therefore were fundamentally different from investment companies. *See* Proposing Release, *supra* note 15 at n.18 and accompanying text; Protecting Investors Report, *supra* note 4 at nn.49–62 and accompanying text.

[101] Section 2(a)(24) of the Investment Company Act states that a ''majority-owned subsidiary'' of a person ''means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.'' Section 2(a)(42) of the Act defines ''voting security,'' in relevant part, to mean ''any security presently entitling the owner or holder thereof to vote for the election of directors of a company.''

[102] *See supra* note 18.

[103] *See* Rule 3a–7(a) (''Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets (and in activities related or incidental thereto), and who does not issue redeemable securities will not be deemed to be an investment company * * *'').

[104] We note that, depending on the facts and circumstances, some of these companies may meet the definition of investment company in Section 3(a)(1)(A). *See supra* note 18. Companies that meet the definition of investment company in Section 3(a)(1)(A) are subject to the requirements of the Investment Company Act unless they meet an exclusion or an exemption, even if they do not meet the other definitions of investment company in Section 3(a)(1).

We also note that the idea of a company being in the business of investing in securities, even though the securities the company holds are those of its non-investment company majority-owned subsidiaries, is not novel. We have concluded, for example, that a company may be a ''special situation investment company'' that should be regulated under the Investment Company Act, even though the company holds securities of its majority-owned subsidiaries that are not investment securities. *See Certain Prima Facie Investment Companies,* Investment Company Act Release No. 10937 (Nov. 13, 1979) [44 FR 66608 (Nov. 20, 1979)] at nn.18–20 and accompanying text. A special situation investment company generally is a company that secures control of other companies primarily for the purpose of making a profit in the sale of the controlled companies' securities. *Id.*

[105] *See supra* note 18. Under this approach, securities of a majority-owned subsidiary relying on Rule 3a–7 would be treated in the same manner as securities of a majority-owned subsidiary that is an investment company or that relies on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act. *See supra* notes 18, 30.

[106] Sponsors that are banks, bank holding companies, broker-dealers, savings and loans and insurance companies are excluded from the definition of the Investment Company Act by Section 3(c) of the Investment Company Act and would be unaffected by a provision narrowing the effect of the exclusion provided by Rule 3a–7. In addition, other sponsors could conclude, based on an appropriate analysis of their primary business, that they are not investment companies pursuant to Section 3(b)(1) of the Investment Company Act or seek a Commission order under Section 3(b)(2) of that Act. Section 3(b)(1) of the Investment Company Act generally excludes an issuer from the definition of investment company in Section 3(a)(1)(C) of the Act if it is primarily engaged, directly or through wholly-owned subsidiaries, in a business other than investing, reinvesting, owning, holding or trading securities. Section 3(b)(2) of the Investment Company Act generally excludes from the definition of investment company in Section 3(a)(1)(C) of the Act any issuer which the Commission, upon application by the issuer, finds and by order declares to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar type of businesses.

exempted from the Investment Company Act, a holder of the issuer's securities would be required to treat such securities as ''investment securities'' for purposes of determining the holder's own status under the Act, as under the approach discussed above. Is this approach preferable? If so, why?

• Are there reasons not to modify the exclusion provided by Rule 3a–7 to address this issue? Please explain and, if possible, provide data in support of your responses.

2. Eligible Portfolio Company

The Commission also has become aware of an interest among business development companies (''BDCs'') to sponsor and invest in securities of issuers relying on Rule 3a–7. Congress established BDCs in 1980 as a type of closed-end investment company the primary purpose of which was to make capital more readily available to small, developing and financially troubled businesses.[107] To accomplish this purpose, Congress added a special set of provisions to the Investment Company Act that govern closed-end investment companies that elect BDC status.[108] In amending the Investment Company Act, Congress underscored that the new provisions would apply only to BDCs that are operated for the purpose of investing in the securities of certain issuers and that make available significant managerial assistance to those issuers.[109] Accordingly, the Investment Company Act generally prohibits a BDC from making any investment unless, at the time of the investment, at least 70% of the BDC's total assets (other than certain specified non-investment assets) are invested in securities of certain specified issuers (''70% basket'').[110] The 70% basket includes, among other things, certain securities of ''eligible portfolio companies,'' as defined by the Act.[111] Among other criteria, issuers qualifying as eligible portfolio companies must be organized under the laws of, and have their principal place of business in, the United States,[112] and must not meet the definition of investment company in Section 3 of the Investment Company Act or be excluded from the definition of investment company under Section 3(c) of that Act.[113]

By virtue of the exclusion from the definition of investment company provided by Rule 3a–7, a BDC might seek to treat a Rule 3a–7 issuer as an eligible portfolio company, provided that certain other criteria are met.[114] As a general matter, the Commission presently does not believe that Rule 3a–7 issuers are the type of small, developing and financially troubled businesses in which Congress intended BDCs primarily to invest. Accordingly, the Commission requests comment on whether Rule 3a–7 should be amended to provide expressly that an issuer relying on Rule 3a–7 is an investment company for purposes of the definition of eligible portfolio company under the Investment Company Act.

• What would be the effect on BDCs if Rule 3a–7 were amended to expressly provide that an issuer relying on Rule 3a–7 is not an eligible portfolio company?

• What would be the effect on Rule 3a–7 issuers if Rule 3a–7 were amended to expressly provide that an issuer relying on Rule 3a–7 is not an eligible portfolio company?

• We understand that BDCs that invest in Rule 3a–7 issuers typically do not treat such issuers as eligible portfolio companies. Is our understanding correct? If not, please explain.

C. Asset-Backed Issuers Relying on Section 3(c)(5)

As noted above, certain asset-backed issuers rely on the exclusion from the definition of investment company in Section 3(c)(5) of the Investment Company Act rather than on Rule 3a–7.[115] Section 3(c)(5) was intended to exclude from the definition of investment company certain factoring, discounting and mortgage companies,[116] and did not specifically contemplate asset-backed issuers, which generally did not exist at the time Congress adopted the Investment Company Act in 1940.[117] Nevertheless, certain asset-backed issuers, including those that securitize retail automobile installment contracts, credit card receivables, trade receivables, boat loans or equipment leases, have sought to rely on the provisions of Section 3(c)(5).[118] In addition, many issuers of mortgage-backed securities have sought to rely on Section 3(c)(5). These asset-backed issuers include issuers of securities backed by whole residential mortgage loans and home equity loans (two of the most commonly securitized assets),[119] whole commercial mortgages, participated mortgage interests, and ''whole pool certificates'' [120] issued or

[107] Small Business Investment Incentive Act of 1980, Public Law 96–477, 94 Stat. 2275 (1980) (codified at scattered sections of the United States Code) (''SBIIA'').

[108] *See* Sections 54–65 of the Investment Company Act.

[109] *See* H.R. Rep. No. 1341, 96th Cong., 2d Sess. 22 (1980) (''BDC House Report'').

[110] Section 55(a) of the Investment Company Act. *See* BDC House Report, *supra* note 109 at 23 (''The restrictions are designed to assure that companies electing special treatment as [BDCs] are in fact those that [the SBIIA] is intended to aid—companies providing capital and assistance to small, developing or financially troubled businesses that are seeking to expand, not passive investors in large, well-established businesses.''). BDCs may invest in certain other assets that would not count toward the 70% basket, provided that such investments are consistent with the overall purpose behind the BDC provisions of the Investment Company Act. *Id.* at 39–40.

[111] Section 2(a)(46) of the Investment Company Act.

[112] Section 2(a)(46)(A) of the Investment Company Act.

[113] Section 2(a)(46)(B) of the Investment Company Act. Section 2(a)(46)(B) also includes as an eligible portfolio company a small BDC which is licensed by the Small Business Administration and which is a wholly-owned subsidiary of a BDC. In addition to meeting the requirements set forth in Sections 2(a)(46)(A) and 2(a)(46)(B), a company qualifying for eligible portfolio company status must also meet one of the criteria set forth in Section 2(a)(46)(C) or in Rule 2a–46 under the Investment Company Act.

[114] *See* Section 55(a) of the Investment Company Act.

[115] *See supra* note 30 discussing the 3(c)(5)(C) Concept Release. Section 3(c)(5) excludes from the definition of investment company ''[a]ny person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.''

[116] S. Rep. No. 1775, 76th Cong. 3d. 13 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 12 (1940); S. Rep. No. 184, 91st Cong., 1st Sess. 37 (1969); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 17 (1970). *See* Proposing Release, *supra* note 15 at text following n.5 (''section 3(c)(5)] * * * originally was intended to exclude issuers engaged in the commercial finance and mortgage banking industries.''). *See also* Section 3(c)(5)(C) Concept Release, *supra* note 30.

[117] *See* Kravitt, *supra* note 15 at 12.03[G][4] (''The exceptions stated in Section 3(c)(5) predate by many years the securitization industry. The 'original intent' of the drafters of Section 3(c)(5) could not possibly have anticipated financial products such as collateralized mortgage obligations and receivables-backed securities. As with many of the Section 3 exceptions, issuers that do not, or arguably do not, fall within the original intent of the provisions have attempted to rely on the * * * exception.'')

[118] *See* Kravitt, *supra* note 15 at 12.03[G]; Protecting Investors Report, *supra* note 4 at n.261 and accompanying text. Note, however, that an asset-backed issuer that securitizes these types of assets may be unable to rely on these exclusions if the issuer's structure allows for the holding of cash or similar instruments in such amounts that the issuer may not be ''primarily engaged'' in holding the asset being securitized. *See* Kravitt, *supra* note 15 at 12.03[G].

[119] *See* Kravitt, *supra* note 15 at 12.03[G].

[120] A whole pool certificate is a security that represents the entire ownership interest in a particular pool of mortgage loans. *See* Protecting Investors Report, *supra* note 4 at n.267.

guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

Unlike the exclusion provided by Rule 3a–7, the exclusion provided by Section 3(c)(5) is not subject to any conditions specifically addressing the Investment Company Act-related concerns presented by asset-backed issuers.[121] Whether an asset-backed issuer has the option of relying on Section 3(c)(5) as an alternative to Rule 3a–7 generally depends on whether the issuer is primarily engaged in purchasing or otherwise acquiring a particular type of financial assets.[122] Rule 3a–7, in contrast, was generally designed to encompass any asset-backed issuer that meets the rule's conditions, regardless of the type of financial assets that it holds.

When first considering Rule 3a–7 in 1992, the Commission noted that, absent a statutory amendment precluding asset-backed issuers from relying on Section 3(c)(5), asset-backed issuers that rely on that section and those that rely on Rule 3a–7 would be subject to somewhat disparate treatment based solely on the type of the financial assets that they held. Accordingly, when the Commission proposed Rule 3a–7 in 1992, it also requested comment on, among other things, whether it should seek statutory amendments to Section 3(c)(5) that would preclude asset-backed issuers from continuing to rely on the Section.[123] Most commenters then argued that it would be inappropriate to narrow the scope of Section 3(c)(5), at least until both the market and the Commission gained experience with Rule 3a–7.[124] In response to commenters' concerns, the Commission decided not to pursue any regulatory changes with respect to Section 3(c)(5) at that time.[125]

Now that the market and the Commission have gained almost twenty years of experience with Rule 3a–7, we believe that it is appropriate to revisit this issue as part of our review of the rule. We also believe that revisiting the ability of asset-backed issuers to rely on the exclusion provided by Section 3(c)(5) is appropriate in the aftermath of the recent financial crisis and the role that issuers of mortgage-backed securities have played in that crisis.[126] Accordingly, the Commission once again is seeking comment on whether Section 3(c)(5) should be amended to limit the ability of asset-backed issuers to rely on Section 3(c)(5).[127] The Commission also requests comment on whether it should engage in any rulemaking, consistent with Section 3(c)(5), that would define terms used in that section so as to limit its availability to those companies that are intended to be encompassed by the statutory exclusion. We also seek comment on whether there are any structural or operational reasons that make it necessary for certain asset-backed issuers to rely on Section 3(c)(5) rather than Rule 3a–7.

- If there are such structural or operational reasons, what are they?
- What types of asset-backed issuers rely on Section 3(c)(5)?
- What would be the effect on asset-backed issuers, the securitization market and on capital formation if asset-backed issuers could no longer rely on Section 3(c)(5)?
- Are there revisions to Rule 3a–7 that could be made to better facilitate asset-backed issuers' reliance on the rule rather than on Section 3(c)(5) and what would be the economic impact of such revisions?

Commenters also are requested to provide any other observations, suggestions and data on the interplay between Rule 3a–7 and Section 3(c)(5) today and as the asset-backed securities markets may develop in the future.

IV. General Request for Comment

In addition to the issues raised in this release, the Commission requests and encourages all interested persons to submit their views on any issues relating to the treatment of asset-backed issuers under the Investment Company Act. This release is not intended in any way to limit the scope of comments, views, issues or approaches to be considered. The Commission particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or issues raised in this release.

Dated: August 31, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22772 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[121] *See supra* section III.A. *See also supra* note 115.

[122] *See supra* note 115.

[123] Proposing Release, *supra* note 15 at section II.B.

[124] Adopting Release, *supra* note 4 at n.88 and accompanying text.

[125] *Id.* at text following n.89.

[126] *See generally* 2010 ABS Proposing Release, *supra* note 10.

[127] *See also* Section 3(c)(5)(C) Concept Release, *supra* note 30; 2011 ABS Re-proposal, *supra* note 13 at n.110 and accompanying text (requesting comment on whether compliance with Rule 3a–7 should be one of the shelf eligibility requirements).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket Nos. FDA–2011–C–0344 and FDA–2011–C–0463]

CooperVision, Inc.; Filing of Color Additive Petitions

Correction

In proposed rule document C1–2011–16089 appearing on page 49707 in the issue of Thursday, August 11, 2011, make the following correction:

On page 49707, in the first column, in the nineteenth line, ''methacryloxyethyl)phenlyamino]'' should read ''methacryloxyethyl)phenylamino]''.

[FR Doc. C2–2011–16089 Filed 9–6–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–137125–08]

RIN 1545–BI65

Certain Employee Remuneration in Excess of $1,000,000 Under Internal Revenue Code Section 162(m); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–137125–08) relating to the deduction limitation for certain employee remuneration in excess of $1,000,000 under the Internal Revenue Code. The document was published in the **Federal Register** on Friday, June 24, 2011 (76 FR 37034).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Ilya Enkishev at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 162 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG–137125–08) contains

an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG–137125–08), which was the subject of FR Doc. 2011–15653, is corrected as follows:

On page 37036, column 2, in the preamble, under the paragraph heading ''Proposed Effective/Applicability Date'', the language ''These regulations under section 162(m) are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.'' is removed and is replaced with the new language ''These proposed regulations will be effective upon publication in the **Federal Register** of a Treasury decision adopting these rules as final regulations.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration)

[FR Doc. 2011–22734 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking that was published in the **Federal Register** on July 27, 2007, providing guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). This document contains proposed regulations that provide guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The regulations affect estates and non-grantor trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by December 6, 2011. Outlines of topics to be discussed at the public hearing scheduled for December 19, 2011 must be received by December 7, 2011.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–128224–06), Room 5203, Internal Revenue Service, P.O. 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–128224–06), 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–128224–06). 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, Jennifer N. Keeney, (202) 622–3060; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard A. Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending 26 CFR part 1 under section 67 of the Internal Revenue Code (Code) by adding § 1.67–4 regarding which costs incurred by an estate or a non-grantor trust are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

Section 67(a) of the Code provides that, for an individual taxpayer, miscellaneous itemized deductions are allowed only to the extent that the aggregate of those deductions exceeds 2 percent of adjusted gross income. Section 67(b) excludes certain itemized deductions from the definition of ''miscellaneous itemized deductions.'' Section 67(e) provides that, for purposes of section 67, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual. However, section 67(e)(1) provides that the deductions for costs paid or incurred in connection with the administration of the estate or trust that would not have been incurred if the property were not held in such estate or trust shall be treated as allowable in arriving at adjusted gross income. Therefore, deductions described in section 67(e)(1) are not subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

A notice of proposed rulemaking (REG–128224–06, 2007–36 IRB 551) was published in the **Federal Register** (72 FR 41243) on July 27, 2007. The proposed regulations provide that a cost is fully deductible to the extent that the cost is unique to an estate or trust. If a cost is not unique to an estate or trust, such that an individual could have incurred the expense, then that cost is subject to the 2-percent floor. For this purpose, the proposed regulations clarify that it is the type of product or service provided to the estate or trust in exchange for the cost, rather than the description of the cost of that product or service, that is tested to determine the uniqueness of the cost. The proposed regulations also address costs subject to the 2-percent floor that are included as part of a comprehensive commission or fee paid to the trustee or executor (''Bundled Fiduciary Fee'').

Written comments were received in response to the notice of proposed rulemaking. A public hearing was held on November 14, 2007, at which several commentators offered comments on the notice of proposed rulemaking.

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of the William L. Rudkin Testamentary Trust* v. *Commissioner,* 552 U.S. 181, 128 S. Ct. 782 (2008), holding that fees paid to an investment advisor by a non-grantor trust or estate generally are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The Court reached this decision on a reading of section 67(e) that differed from that in the proposed regulations. The Court held that the proper reading of the language in section 67(e), which asks whether the expense ''would not have been incurred if the property were not held in such trust or estate,'' requires an inquiry into whether a hypothetical individual who held the same property outside of a trust ''customarily'' or ''commonly'' would incur such expenses. Expenses that are ''customarily'' or ''commonly'' incurred by individuals are subject to the 2-percent floor.

Following the Supreme Court's decision in *Knight,* the Internal Revenue Service (IRS) and the Treasury Department issued Notice 2008–32 (2008–12 IRB 593) (March 24, 2008) to provide interim guidance on the treatment of Bundled Fiduciary Fees. The Notice provided that taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under

section 67 for any taxable year beginning before January 1, 2008. In the Notice, the IRS and the Treasury Department reopened the comment period on the proposed regulations with regard to possible factors on which to base safe harbors for the allocation of a Bundled Fiduciary Fee between costs subject to the 2-percent floor and those exempt from the application of that floor. Written comments were received in response to the Notice. The IRS and the Treasury Department subsequently issued Notice 2008–116 (2008–52 IRB 1372) (December 29, 2008) extending the interim guidance provided in Notice 2008–32 to taxable years that begin before January 1, 2009, Notice 2010–32 (2010–16 IRB 594) (April 19, 2010) extending the interim guidance provided in Notice 2008–116 and Notice 2008–32 to taxable years that begin before January 1, 2010, and Notice 2011–37 (2011–20 IRB 785) (May 16, 2011) extending the existing interim guidance to taxable years that begin before the publication of final regulations in the **Federal Register**.

All comments were considered and are available for public inspection. Many of the comments recommended that the proposed regulations be withdrawn and that new proposed regulations be issued to allow the public to comment on the impact of the *Knight* decision on the regulations to be issued under section 67(e). After consideration of all of the comments received since the issuance of the proposed regulations, the proposed regulations published on July 27, 2007, are withdrawn and this document contains new proposed regulations.

Explanation of Provisions

In General

In *Knight,* the Supreme Court held that the deductibility of an expense under section 67(e)(1) depends upon whether the cost is ''commonly'' or ''customarily'' incurred when such property is held instead by an individual. In other words, section ''67(e)(1) excepts from the 2-percent floor only those costs that it would be *un*common (or unusual, or unlikely) for such a hypothetical individual'' holding the same property to incur (emphasis in original). In applying this interpretation of the statute to investment advisory fees incurred by a trust, the Court held that such fees generally are not uncommonly incurred by individual investors and thus are subject to the 2-percent floor. The Court noted, however, that it is conceivable ''that a trust may have an unusual investment objective, or may require a specialized balancing of the interests of various parties, such that a reasonable comparison with individual investors would be improper.'' The Court went on to provide that, ''in such a case, the incremental cost of expert advice beyond what would normally be required for the ordinary taxpayer would not be subject to the 2-percent floor.'' The Court held that the investment advisory fees of the trust in *Knight* properly were subject to the 2-percent floor, and that the trustee did not assert any such unusual facts that would have brought this cost within the exception.

These proposed regulations reflect the reasoning and holding in *Knight* and provide guidance relating to the limited portion of the cost of investment advice that is not subject to the 2-percent floor. To the extent that a portion (if any) of an investment advisory fee exceeds the fee generally charged to an individual investor, and that excess is attributable to an unusual investment objective of the trust or estate or to a specialized balancing of the interests of various parties such that a reasonable comparison with individual investors would be improper, that excess is not subject to the 2-percent floor. Thus, where the costs charged to the trust do not exceed the costs charged to an individual investor, the cost attributable to taking into account the varying interests of current beneficiaries and remaindermen is included in the usual investment advisory fees and is not the type of cost that is excluded from the 2-percent floor under this narrow exception. Individual investors commonly have investment objectives that may require a balance between investing for income and investing for growth and/or a specialized approach for particular assets. Comments are requested on the types of incremental charges, as described in this paragraph, that may be incurred by trusts or estates, as well as a specific description and rationale for any such charges.

Many of the comments received in response to Notice 2008–32 highlighted the legislative intent of the provision imposing the 2-percent floor for miscellaneous itemized deductions. The commentators noted that the intent was to simplify recordkeeping, reduce taxpayer errors, ease administrative burdens for the IRS, and reduce taxpayer errors in distinguishing between nondeductible personal expenditures and deductible miscellaneous itemized deductions. The IRS and the Treasury Department recognize the administrative difficulty of determining whether every type of cost incurred by a trust or estate is the type of cost that would be incurred commonly or customarily by individuals owning the same property. Therefore, the proposed regulations provide simplified rules for the application of section 67(e).

Several commentators questioned the authority of the IRS and the Treasury Department to require the unbundling of fiduciary commissions. However, the *Knight* decision posited just such an unbundling in the case of investment advisory costs rendered for certain services, the cost of which exceeds the costs charged to an individual investor. In determining whether a cost is subject to the 2-percent floor, the relevant cost at issue under section 67(e)(1) should be defined by reference to the products or services that were provided in exchange for that cost, rather than the label that is given to the cost. Therefore, if a fiduciary is performing services that are commonly or customarily performed by an investment advisor retained by an individual investor, then the costs attributable to those services are subject to the 2-percent floor.

Many of the comments received in response to Notice 2008–32 objected to a rule that would require any unbundling of a unitary fee due to the cost and administrative difficulty of implementing a process to track which portions of a single fee are subject to the 2-percent floor. Some commentators anticipated that such a rule would require corporate trustees to invest in expensive software to track and measure the value of the various types of services provided on a trust-by-trust and year-by-year basis.

These proposed regulations do not require the allocation described in the July 2007 proposed regulations. Instead, the proposed regulations apply section 67(e) as interpreted by the Supreme Court in *Knight,* while also addressing the Government's and taxpayers' interests in reducing the administrative burden of complying with the tax law. The proposed regulations limit the costs that are subject to allocations pursuant to section 67(e) and allow the use of any reasonable method to perform such allocations.

Specifically, the proposed regulations provide that the portion of a bundled fee attributable to investment advice (including any related services that would be provided to any individual investor as part of the investment advisory fee) will be subject to the 2-percent floor. In addition, the proposed regulations provide that, except for the portion so allocated to investment advice, a fiduciary fee not computed on an hourly basis is fully deductible with certain exceptions. The exceptions are

payments made to third parties out of the bundled fee that would have been subject to the 2-percent floor if they had been paid directly by the non-grantor trust or estate, and any payments for expenses separately assessed (in addition to the usual or basic fiduciary fee or commission) by the fiduciary or other service provider that are commonly or customarily incurred by an individual owner of such property. An example of such a separately assessed expense subject to the 2-percent floor might be an additional fee charged by the fiduciary for managing rental real estate owned by the non-grantor trust or estate.

The proposed regulations allow the fiduciary and/or return preparer to use any reasonable method to make these allocations. However, the amount of each payment (if any) out of the fiduciary's fee or commission to a third party for expenses subject to the 2-percent floor, and of each separately assessed expense that is commonly or customarily incurred by an individual owner of such property, is readily identifiable without any discretion on the part of the fiduciary. Therefore, the reasonable method standard does not apply to these amounts that are to be deducted from the portion of the bundled fiduciary fee that is not subject to the 2-percent floor.

Comments are requested on the types of methods for making a reasonable allocation, including possible factors on which a reasonable allocation is most likely to be based, and on the related substantiation that will be needed to satisfy the reasonable method standard proposed in these regulations. Specifically, the IRS and the Treasury Department are interested in methods for reasonably estimating the portion of a bundled fee that is attributable to investment advice. For methods based in whole or in part on time devoted to providing investment advice, the IRS and Treasury Department ask for suggestions for alternatives to contemporaneous time records for specific activities that could be used to substantiate the reasonableness of the allocation. The IRS and Treasury Department have considered comments regarding possible numerical or percentage safe harbors in response to Notice 2008–32. Commentators noted that, in many cases, fiduciaries could not rely on safe harbors because their fiduciary duties would require them to make a more accurate estimate so as to not harm the trust or their beneficiaries. In addition, safe harbors could increase complexity by requiring complicated anti-abuse rules. Therefore, comments are requested on methods other than numerical or percentage safe harbors.

Effective/Applicability Dates

Notice 2011–37 provides that taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under section 67 for taxable years beginning before the date that these regulations are published as final regulations in the **Federal Register**.

Availability of IRS Documents

The IRS notices cited in the preamble are published in the Cumulative Bulletin and are available at *http://www.irs.gov.*

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 these 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), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department also request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 19, 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 at 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 Internal Revenue Building lobby 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 by December 6, 2011 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 7, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of 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 Jennifer N. Keeney, Office of the Associate Chief Counsel (Passthroughs and Special Industries). 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.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking amending 26 CFR parts 1 and 301 that was published in the **Federal Register** on July 27, 2007, 72 FR 41243 (REG–128224–06), is withdrawn.

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 1.67–4 is added to read as follows:

§ 1.67–4 Costs paid or incurred by estates or non-grantor trusts.

(a) *In general.* Section 67(e) provides an exception to the 2-percent floor on miscellaneous itemized deductions for costs that are paid or incurred in connection with the administration of an estate or a trust not described in § 1.67–2T(g)(1)(i) (a non-grantor trust) and which would not have been incurred if the property were not held in such estate or trust. A cost is subject to the 2-percent floor to the extent that it is included in the definition of

miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property.

(b) *''Commonly'' or ''Customarily'' Incurred*—(1) *In general.* In analyzing a cost to determine whether it commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust in exchange for the cost, rather than the description of the cost of that product or service, that is determinative. In addition to the types of costs described in paragraphs (b)(2), (3) and (4) of this section, costs that are incurred commonly or customarily by individuals also include expenses that do not depend upon the identity of the payor (in particular, whether the payor is an individual or instead is an estate or trust). Such commonly or customarily incurred costs include, but are not limited to, costs incurred in defense of a claim against the estate, the decedent, or the non-grantor trust that are unrelated to the existence, validity, or administration of the estate or trust.

(2) *Ownership costs.* Ownership costs are costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property, such as condominium fees, real estate taxes, insurance premiums, maintenance and lawn services, automobile registration and insurance costs, and partnership costs deemed to be passed through to and reportable by a partner. For purposes of section 67(e), ownership costs are commonly or customarily incurred by a hypothetical individual owner of such property.

(3) *Tax preparation fees.* The application of the 2-percent floor to the cost of preparing tax returns on behalf of the estate, decedent, or non-grantor trust will depend upon the particular tax return. All estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. The costs of preparing other individual income tax returns, gift tax returns, and tax returns for a sole proprietorship or a retirement plan, for example, are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

(4) *Investment advisory fees.* Fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and therefore are subject to the 2-percent floor. However, certain incremental costs of investment advice beyond the amount that normally would be charged to an individual investor are not subject to the 2-percent floor. For this purpose, such an incremental cost is a special, additional charge added solely because the investment advice is rendered to a trust or estate instead of to an individual, that is attributable to an unusual investment objective or the need for a specialized balancing of the interests of various parties (beyond the usual balancing of the varying interests of current beneficiaries and remaindermen), in each case such that a reasonable comparison with individual investors would be improper.

(c) *Bundled fees*—(1) *In general.* If an estate or a non-grantor trust pays a single fee, commission, or other expense (such as a fiduciary's commission, attorney's fee, or accountant's fee) for both costs that are subject to the 2-percent floor and costs (in more than a de minimus amount) that are not, then the single fee, commission, or other expense (bundled fee) must be allocated, for purposes of computing the adjusted gross income of the trust or estate in compliance with section 67(e), between the costs subject to the 2-percent floor and those that are not. Out-of-pocket expenses billed to the trust or estate are treated as separate from the bundled fee.

(2) *Exception.* If a bundled fee is not computed on an hourly basis, only the portion of that fee that is attributable to investment advice is subject to the 2-percent floor; the remaining portion is not subject to that floor. In addition, payments made from the bundled fee to third parties that would have been subject to the 2-percent floor if they had been paid directly by the non-grantor trust or estate are subject to the 2-percent floor, as are any fees or expenses separately assessed by the fiduciary or other payee of the bundled fee (in addition to the usual or basic bundled fee) for services rendered to the trust or estate that are commonly or customarily incurred by an individual.

Example. A corporate trustee charges a percentage of the value of the trust income and corpus as its annual commission. In addition, the trustee bills a separate amount to the trust each year as compensation for leasing and managing the trust's rental real estate. The separate real estate management fee is subject to the 2-percent floor because it is a fee commonly or customarily incurred by an individual owner of rental real estate.

(3) *Reasonable Method.* Any reasonable method may be used to allocate a bundled fee between those costs that are subject to the 2-percent floor and those costs that are not, including without limitation the allocation of a portion of a fiduciary commission that is a bundled fee to investment advice. The reasonable method standard does not apply to determine the portion of the bundled fee attributable to payments made to third parties for expenses subject to the 2-percent floor or to any other separately assessed expense commonly or customarily incurred by an individual, because those payments and expenses are readily identifiable without any discretion on the part of the fiduciary or return preparer.

(d) *Effective/applicability date.* These regulations apply to taxable years beginning on or after the date that these regulations are published as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–22732 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0917; FRL–9460–7]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to Alaska's State Implementation Plan (SIP) relating to the motor vehicle inspection and maintenance program (I/M) for control of carbon monoxide (CO) in Anchorage. The State of Alaska submitted two revisions to the Alaska SIP: a November 13, 2009, submittal containing revisions to the statewide I/M program and a September 29, 2010, submittal discontinuing the I/M program in Anchorage as an active control measure in the SIP and shifting it to a contingency measure. The State's submittals include a revised a CO emissions inventory and motor vehicle emissions budget. EPA is proposing to approve the 2010 submittal because it satisfies the requirements of the Clean Air Act (CAA or the Act). EPA is not taking action on the 2009 submittal because the 2010 submittal supersedes the 2009 revision.

DATES: Written comments must be received on or before October 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0917, by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Mail:* Claudia Vergnani Vaupel, U.S. EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Hand Delivery:* US EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Claudia Vergnani Vaupel, Office of Air Waste, and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0917. The 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at *telephone number:* (206) 553–6121, *e-mail address: vaupel.claudia@epa.gov,* or Krishna Viswanathan at *telephone number:* (206) 553–2684, *e-mail address: viswanathan.krishna@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

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I. What is EPA's proposed action?
II. What is the background for this proposed action?
III. What changes to the Alaska SIP were submitted for EPA approval?
IV. What criteria apply to Alaska's request?
V. What is EPA's analysis of Alaska's SIP revision?
VI. What are EPA's conclusions concerning the removal of the I/M program in Anchorage?
VII. Statutory and Executive Order Reviews

I. What is EPA's proposed action?

EPA is proposing to approve revisions to the Alaska I/M program contained in the State's September 29, 2010, submittal. The submittal contains substantial revisions to the Anchorage CO maintenance plan that remove the I/M program as an active control measure for CO in the SIP and move it to the contingency measures portion of the SIP. Upon final approval of this revision by EPA, the I/M program in Anchorage will no longer be an active control measure in the SIP, but will be a contingency measure that may be implemented in the future if the need arises.

II. What is the background for this proposed action?

Anchorage, Alaska, was first declared a nonattainment area for CO and classified as moderate on January 27, 1978. The Municipality of Anchorage prepared a plan to attain the CO National Ambient Air Quality Standard (NAAQS) [1] by December 31, 1987; however, Anchorage failed to achieve attainment by December 31, 1987. The CAA was amended in November 1990, and EPA designated Anchorage as a moderate nonattainment area for CO and required submission of a revised air quality plan to bring Anchorage into attainment by December 31, 1995. EPA approved the plan in 1995, however, two violations of the NAAQS in 1996 resulted in EPA reclassifying Anchorage to serious nonattainment on July 13, 1998, with an attainment date of December 31, 2000. The State submitted a new plan on January 4, 2002, and EPA proposed approval of the plan (67 FR 38218) on June 3, 2002. On September 18, 2002, EPA approved the Anchorage CO attainment plan (67 FR 58711).

On February 18, 2004, the State submitted a maintenance plan and a redesignation request for the Anchorage CO nonattainment area. EPA proposed approval of the Anchorage CO maintenance plan on May 10, 2004 (69 FR 25869) and approved the plan on June 23, 2004 (69 FR 34935). The maintenance plan relied on control strategies needed to assure maintenance of the CO NAAQS. The strategy focused on the Federal Motor Vehicle Emission Control Program, an I/M program, expanded wintertime transit service, and promotion of engine pre-heaters.

On March 29, 2002, and December 11, 2006, the State submitted revisions to the CO SIP. The 2002 submittal revised the statewide I/M regulations to provide for electronic vehicle inspection renewal and to remove the requirement for a paper certificate to be maintained in the vehicle. The 2006 submittal revised the statewide I/M regulations to lengthen the time period before which new vehicles were required to obtain their first certificate of inspection from two years to four years. Each of the submittals also contained minor revisions that were administrative in nature. On September 15, 2009, EPA proposed to approve the State's submittals (74 FR 47154) and finalized the approval on April 21, 2010 (75 FR 13436).

III. What changes to the Alaska SIP were submitted for EPA approval?

The State has submitted two revisions to the Anchorage CO maintenance plan: a November 13, 2009, submittal containing revisions to the statewide I/M program and a September 29, 2010, submittal discontinuing the I/M program in Anchorage as an active

[1] The national 8-hour CO ambient standard is attained when the highest 8-hour CO concentration of 9 parts per million (ppm) is exceeded no more than one time in a calendar year. EPA has proposed to retain the current standard of 9 ppm, based on the latest review of the CO NAAQS (76 FR 8158, February 11, 2011).

control measure in the SIP and shifting it to a contingency measure.

The 2010 submittal supersedes the 2009 submittal with a significant revision to the Anchorage CO maintenance plan that will remove the I/M program as an active control measure in the SIP upon final approval of this revision by EPA. The 2010 submittal updates the 2007–2023 emissions inventory to account for the removal of the I/M program after 2011 and includes a revised motor vehicle emissions budget. The submittal moves the I/M program as an active control measure in the SIP and shifts it to a contingency measure that can be implemented should a violation of the CO standard occur. The 2010 submittal also includes the contingency measures that were updated in the 2009 submittal. In addition, the 2010 submittal establishes CO background values to be used in future CO project-level conformity analyses.[2]

Alaska's 2010 SIP amendment submittal is reviewed below. The EPA has also prepared a Technical Support Document (TSD) with more detailed analysis of the SIP revisions the State submitted for approval. The TSD is available for public review as part of the docket for this action.

IV. What criteria apply to Alaska's request?

The Anchorage CO maintenance plan relies on control strategies needed to assure maintenance of the NAAQS for CO. As stated earlier in this document, one of the primary control measures is an I/M program. The I/M program may be revised or removed as an active control measure in the SIP, provided the State can satisfy the requirements of CAA section 110(l), which states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

EPA must evaluate whether the State's proposed revisions will interfere with attainment or maintenance of any NAAQS and any other applicable requirement of the Act. In addition, although EPA may approve removal of a control measure with such a demonstration, any measure that is removed from the active portion of a SIP must be retained as a contingency measure under section 175A(d) of the Act.[3] EPA's review concerns the removal of the I/M program. We are not acting on the State's addition of CO background concentrations for CO project-level conformity analyses.

V. What is EPA's analysis of Alaska's SIP revision?

To satisfy section 110(l) of the Act, the State submitted a technical analysis using probabilistic rollback modeling that demonstrates that the State will continue to maintain the CO standard in Anchorage without the I/M program in place. All of the technical work contained in the State's submittal was performed using similar methodology that the State used to demonstrate maintenance in the Anchorage maintenance plan that EPA approved in 2004. Where data was available, emissions inventory and modeling inputs were updated with more recent information. This is explained further in our review and analysis of the State's submittal below and in the TSD for this proposed action. The Anchorage CO maintenance area is well within the attainment limits for all of the other criteria pollutants that are monitored in the area.[4] Based on this information, EPA concludes that removing the I/M program will not interfere with attainment or maintenance of other NAAQS.

A. Emissions inventory

The State submitted an updated emissions inventory for the period 2007–2023. The inventory was prepared in accordance with EPA's CO emissions inventory guidance.[5] The inventory included emissions for stationary sources, area sources, non-road mobile sources and on-road mobile sources on a typical 24-hour winter day. The State prepared an area-wide inventory of the Anchorage CO maintenance area and a micro-inventory of the area surrounding the Turnagain monitoring station in west Anchorage. The Turnagain station exhibits the highest CO concentrations of the current monitoring network; it has been shown to be approximately 20% higher than the next highest site. The Turnagain micro-inventory provides added insight into the sources of CO surrounding the monitor and guided the State in developing control strategies for the Anchorage CO maintenance area. The State projected the area-wide and Turnagain inventories from the 2007 base year inventory to the years 2008–2023. The complete inventory is included in the State's submittal. The TSD for this proposed action contains a detailed discussion and table of emissions from the 2007–2023 inventory.

Area-wide Emissions Inventory

In the 2010 submittal, the area-wide inventory depicts elimination of the I/M program starting in 2011. Without an I/M program, total area-wide CO emissions are projected to decline by 3.5 tons per day (tpd) (3.5%) between the 2007 base year (101 tpd) and the 2023 horizon planning year (97.5 tpd). This is caused by a 16% reduction in on-road emissions (from 51.04 tpd to 42.85 tpd) during this timeframe. The primary driver of lower on-road emissions is a sustained reduction in average in-use emission rates as newer, cleaner vehicles continue to replace older, higher emitting vehicles. Projections from the area-wide emissions inventory indicate that CO emissions reductions from 2007–2023 are expected to occur in Anchorage either with or without the I/M program in place.

Turnagain Micro-Inventory

The Turnagain micro-inventory represents the area near the Turnagain monitoring station, located in the Spenard-area neighborhood, which the State has identified as having the highest CO concentrations of all the monitoring stations in Anchorage. Maximum 8-hour concentrations were typically 10 to 20% higher than the next highest site, Garden, in east Anchorage. During a 1997–98 CO Saturation Study, 8-hour CO concentrations at the Turnagain site were the highest among the 20 sites included in the study. The State provided support to establish that the probability of exceeding the NAAQS at the Turnagain station at current CO emission levels is about 1 in 100 while the probability of violating at the Garden station is less than 1 in 1,000. For this reason, the State prepared a micro-inventory of the area surrounding the Turnagain monitoring site for the maintenance demonstration. In order to perform this demonstration, CO emissions were estimated from the 2007 base year and projected through 2023. Emissions are projected to decrease by about 12% in the Turnagain micro-inventory area without an I/M program. The micro-inventory trends are consistent with the area-wide trends.

[2] There is no requirement to establish CO background values for project-level conformity analyses in the SIP. EPA is not proposing to take action on this component of the 2010 submittal.

[3] See September 4, 1992 memorandum from John Calcagni to the EPA Air Division Directors (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division).

[4] See air quality monitoring data reports in the docket.

[5] Emissions Inventory Requirements for Carbon Monoxide State Implementation Plans EPA–450/4–91–011.

B. Maintenance Demonstration

Because the Turnagain monitoring site exhibits the highest CO concentrations in the monitoring network, the State used the micro-inventory from the Turnagain area in the maintenance demonstrations. The State used a probabilistic roll-forward approach to demonstrate maintenance with the CO standard. A detailed discussion of this methodology and results can be found in the State's submittal and in EPA's TSD for this proposed action.

Consistent with methods used in previous plans submitted by the State and approved by EPA, at least a 90% confidence interval is desirable for a long-term demonstration of attainment for a maintenance plan. Based on the modeling results contained in the State's submittal, the probability of attainment is 99% or higher for all years in the State's maintenance demonstration. In addition, the State performed a sensitivity analysis that assumed three times higher rates of growth in vehicle travel than projected and a 2% per annum growth in wood burning. The probability of compliance with the higher rates remains at 99% or greater each year through 2023 with or without an I/M program. EPA's evaluation of the probabilistic rollback modeling in the State's 2010 submittal concludes that the Anchorage area will continue to attain and maintain the CO standard through the year 2023 without the I/M program in place. Therefore, EPA is proposing to approve this modification to the State's CO SIP.

C. Contingency Measures

As a primary control strategy in the current CO SIP, the I/M program for Anchorage must be retained as a contingency measure. In addition to this contingency measure, the previously approved contingency measures in the SIP continue to apply. As stated above, section 175A(d) of the Act requires that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area to attainment. To satisfy this requirement, the I/M program will no longer serve as an active control measure in the SIP and will shift to a contingency measure that will be available for implementation if needed to ensure continued maintenance of the CO NAAQS. As documented in the State's 2010 submittal, Anchorage will retain the local legal authority necessary to implement the I/M program as a contingency measure. Similarly, the State will retain its authority to implement the I/M program.

The 2009 submittal, for which EPA is not taking action, updated the contingency measures section of the Anchorage CO maintenance plan. EPA is proposing to approve the contingency measures specified in the 2010 submittal, which include some that were originally included in the State's 2009 submittal. The revised CO contingency measures that EPA is proposing to include in this action include the following strategies: Increase public awareness and education, transit, carpool, and vanpool promotion efforts; curtail or limit the use of fireplaces, wood stoves and other wood burning appliances when high CO is predicted; promote increase in transit ridership among commuters by offering reduced fares or free transit fares for employees of companies that contribute to subsidy.

D. Conformity Budget

Under section 176 of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under 23 U.S.C. or the Federal Transit Act must conform to an approved SIP. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years. A motor vehicle emissions budget applies as a ceiling on emissions in the year for which it is defined, and for all subsequent years until another year for which a budget is defined or until a SIP revision modifies the budget.

The State's submittal establishes a new on-road motor vehicle emissions budget for the Anchorage area to be used for transportation conformity and regional conformity analyses. Once the motor vehicle emissions budget is approved by EPA, emissions modeled from the transportation network reflected in the Anchorage Long Range Transportation Plan and Transportation Improvement Program (TIP) must be less than or equal to the approved motor vehicle emissions budget. For projects not from a conforming TIP, the additional emissions from the project together with the TIP emission must be less than or equal to the budget.

Consistent with the previously approved Anchorage CO maintenance plan, the motor vehicle emissions budget is based on emissions inventories and attainment thresholds calculated using a hybrid method that combined measured idle test data and plug-in data with outputs from MOBILE6.2. The maintenance plan sets out a means for agencies to compute emissions for use in TIP and project conformity determinations.

The Anchorage motor vehicle emissions budget is based on the emission inventories and attainment projections found in the State's submittal. The State used the most recent population, employment, and land use assumptions and forecasts to generate the 2007 base year CO inventory and forecasts through 2023. This motor vehicle emissions budget applies for each of the years listed in the table below. The values presented are based upon the 90% confidence level target for maintenance plans.

ANCHORAGE MOTOR VEHICLE EMISSIONS BUDGET

Calendar year	CO Emissions (tpd)
2007	92.1
2008	91.7
2009	91.2
2010	90.8
2011	90.3
2012	89.9
2013	89.4
2014	89.0
2015	88.5
2016	88.0
2017	87.6
2018	87.0
2019	86.4
2020	85.8
2021	85.2
2022	84.6
2023	84.0

Based on this analysis, EPA concludes that the conformity budget in the 2010 submittal meets the purpose of section 176(c)(2)(A) and meets the criteria contained in the conformity rule 40 CFR 93.118(e)(4). Accordingly, EPA is proposing to approve the conformity budget contained in the State's 2010 submittal.

VI. What are EPA's conclusions concerning the removal of the I/M program in Anchorage?

The State's forecast and analysis of motor vehicle pollutant emissions show that CO concentrations will decline substantially in Anchorage through 2023 without the I/M program in place. The Anchorage CO maintenance area is well within the attainment limits for all of the criteria pollutants that are monitored in the area. Based on this information, EPA concludes that removing the I/M program will not interfere with attainment or

maintenance of CO or any other NAAQS in the area. EPA finds that the 2010 submittal meets the requirements of section 110(l) of the Act and proposes to approve it. EPA is not proposing to take action on the State's CO background concentrations for CO project-level conformity analyses.

VII. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 25, 2011.

Michael A. Bussell,

Acting Regional Administrator, Region 10.

[FR Doc. 2011–22841 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0082; FRL–8886–7]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 7, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov* or e-mail. The *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 *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Antimicrobials Division (7510P), Biopesticides and Pollution Prevention Division (7511P), and Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP 1E7863.* (EPA–HQ–OPP–2011–0433). Interregional Research Project Number 4 (IR–4), 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide dinotefuran, (*RS*)-1-methyl-2-nitro-3-((tetrahydro-3-furyl)methyl)guanidine, including its metabolites and degradates, in or on berry, low growing, except strawberry, subgroup 13–07H at 0.2 parts per million (ppm); watercress at 5.0 ppm; onion, green, subgroup 3–07B at 6.0 ppm; onion, bulb, subgroup 3–07A at 0.07 ppm; peach at 0.9 ppm; vegetable, tuberous and corm, subgroup 1C at 0.05 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.9 ppm; and tea, plucked leaves at 25.0 ppm. Mitsui Chemicals Agro, Inc. has submitted practical analytical methodology for detecting and measuring levels of dinotefuran and its metabolites, 1-methyl-3-(tetrahydro-3-furymethyl)-urea (UF) and 1-methyl-3-(tetrahydro-3-furymethyl) guanidine (DN), in or on raw agricultural commodities. The high performance liquid chromatography (HPLC) method was validated for determination of dinotefuran, DN and UF in or on tomatoes and peppers, cucurbits, brassica, grapes, potatoes, mustard greens, and lettuce for raw agricultural commodity matrices and in or on

tomato paste and puree, grape juice and raisins and potato chips, granules, and wet peel for processed commodity matrices. After extraction with a water/acetonitrile mixture and clean up with hexane and extraction columns, concentrations of dinotefuran and its metabolites were quantified after HPLC separation by tandem mass spectrometry (MS/MS) detection. Contact: Sidney Jackson, (703) 305–7610, e-mail address: *jackson.sidney@epa.gov.*

2. *PP 1E7881.* (EPA–HQ–OPP–2011–0541). IR–4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for combined residues of the insecticide fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino] oxy]methyl]benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl) methylene]amino]oxy]methyl]benzoate, in or on avocado at 0.20 ppm; sapote, black at 0.20 ppm; canistel at 0.20 ppm; sapote, mamey at 0.20 ppm; mango at 0.20 ppm; papaya at 0.20 ppm; sapodilla at 0.20 ppm; star apple at 0.20 ppm; bean, snap at 0.40 ppm; and tea, plucked leaves at 15 ppm. An enforcement method has been developed which involves extraction of fenpyroximate from crops with acetone, filtration, partitioning and cleanup, and analysis by gas chromatography (GC) using a nitrogen/phosphorous detector (NPD). Contact: Sidney Jackson, (703) 305–7610, e-mail address: *jackson.sidney@epa.gov.*

3. *PP 1E7898.* (EPA–HQ–OPP–2011–0657). IR–4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, in cooperation with Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro NC 27419, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide S-metolachlor (free and bound), S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl) amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, in or on cilantro, leaves, fresh at 8.0 ppm; cilantro, leaves, dried at 8.0 ppm; coriander, seed at 0.13 ppm, and beet, garden, leaves at 1.8 ppm. Syngenta has developed and validated analytical methodology for enforcement purposes. This method has been submitted to the Agency and is in Pesticide Analytical Method Vol. II (PAM II), Method I. An extensive database of method validation data using this method on various crop commodities is available. Contact: Sidney Jackson, (703) 305–7610, e-mail address: *jackson.sidney@epa.gov.*

4. *PP 1E7904.* (EPA–HQ–OPP–2011–0665). IR–4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide emamectin benzoate, 4′-epi-methylamino-4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′deoxyavermectin B_{1b} benzoate), and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide, in or on vegetable, cucurbit, group 9 at 0.03 ppm. Adequate analytical methods (HPLC-fluorescence methods) are available for enforcement purposes. Contact: Andrew Ertman, (703) 308–9367, e-mail address: *ertman.andrew@epa.gov.*

5. *PP 1G7889.* (EPA–HQ–OPP–2011–0674). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish temporary tolerances in 40 CFR part 180 for residues of the fungicide acibenzolar S-methyl for an experimental use permit (EUP), in or on apple, grapefruit, and pears at 0.05 ppm. Syngenta Analytical Method AG–671A is a practical and valid method for the determination and confirmation of acibenzolar S-methyl (CGA245704) in raw agricultural commodities (RACs) and processing substrates from the tobacco, leafy (including Brassica) and fruiting vegetable crop groups at a limit of quantitation (LOQ) of 0.02 ppm. The method involves extraction, solid phase cleanup of samples with analysis by HPLC with ultraviolet (UV) detection or confirmatory LC/MS. Contact: Rose Mary Kearns, (703) 305–5611, e-mail address: *kearns.rosemary@epa.gov.*

Amended Tolerance

PP 1E7881. (EPA–HQ–OPP–2011–0541). IR–4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.566 for combined residues of the insecticide fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino] oxy]methyl]benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl) methylene]amino]oxy]methyl]benzoate, in or on cucumber from 0.10 ppm to 0.25 ppm; fruit, citrus, citrus, group 10–10 tolerance at 0.60 ppm; vegetable, fruiting, group 8–10 tolerance at 0.20 ppm; and fruit, pome, group 11–10 tolerance at 0.40 ppm. An enforcement method has been developed which involves extraction of fenpyroximate from crops with acetone, filtration, partitioning and cleanup, and analysis by GC using a nitrogen/phosphorous detector (NPD). Contact: Sidney Jackson, (703) 305–7610, e-mail address: *jackson.sidney@epa.gov.*

New Tolerance Exemption

PP 0F7747. (EPA–HQ–OPP–2011–0139). Pace Chemicals Ltd., 8321 Willard St., Burnaby, British Columbia, V3N 2X3, c/o Eliot Harrison, Lewis & Harrison LLC, 122 C St. NW., Suite 740, Washington, DC 20001, requests to establish an exemption from the requirement of a tolerance for residues of the antimicrobial dimethyl didecyl ammonium chloride (DDAC), in or on Brassica (broccoli seeds). DDAC was extracted from the crop matrix with acetonitrile followed by shaking with steel balls to pulverize the plant material. The extract was diluted with acetonitrile and centrifuged, then evaporated to 1 milliliter (ml) under a nitrogen stream. The extract is analyzed using LC–MS/LC. Contact: Tracy Lantz, (703) 308–6415, e-mail address: *lantz.tracy@epa.gov.*

Amended Tolerance Exemption

1. *PP 1E7893.* (EPA–HQ–OPP–2011–0604). Cognis Corporation, c/o Lewis & Harrison LLC, 122 C Street, NW., Suite 740, Washington, DC 20001, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.910 and 40 CFR 180.930 to set maximum use levels of 2-ethylhexanol (CAS No. 104–76–7) of 20% in pesticide formulations when used as a pesticide inert ingredient. The petitioner believes no analytical method is needed because this information is not required for a tolerance exemption. Contact: John Redden, (703) 305–1969, e-mail address: *redden.john@epa.gov.*

2. *PP 1F7896.* (EPA–HQ–OPP–2011–0669). AgraQuest, Inc., 1540 Drew Ave., Davis, CA 95618, requests to amend/expand an existing exemption from the requirement of a tolerance in 40 CFR 180.1209 by including the residues of the microbial pesticide *Bacillus subtilis* strain QST 713 variant Soil when used in or on all food commodities. An analytical method for detecting *Bacillus subtilis* strain QST 713 variant Soil is not applicable. It is expected that, when used as proposed, *Bacillus subtilis* strain QST 713 variant Soil would not result in residues that are of toxicological concern. Contact: Michael Glikes, (703) 305–6231, e-mail address: *glikes.michael@epa.gov.*

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–22845 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF JUSTICE

41 CFR Part 128–1

[Docket No. FBI 151]

RIN 1110–AA32

Federal Bureau of Investigation Anti-Piracy Warning Seal Program

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Proposed rule.

SUMMARY: The Federal Bureau of Investigation (FBI) is proposing a new regulation providing a general authorization for use of the FBI Anti-Piracy Warning Seal (APW Seal). The proposed rule will provide access to the APW Seal to all copyright holders, subject to specific conditions of use.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before November 7, 2011. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: Comments may be mailed to the Access Integrity Unit, *Attn:* Lori L. Bokey c/o Federal Bureau of Investigation, CJIS Division, Module C–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. To ensure proper handling, please reference Docket No. FBI 151 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John C. Allender, FBI Office of the General Counsel, telephone number 202–324–8088.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

The reason the Department is requesting electronic comments before Midnight Eastern Time at the end of the day the comment period closes is that the inter-agency Regulations.gov/Federal Docket Management System (FDMS), which receives electronic comments, terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which, as stated above, will be considered as timely filed if they are postmarked before midnight on the day the comment period closes.

Discussion. The FBI's Anti-Piracy Warning (APW) Seal is a modified image of the FBI's Official Seal with the words ''FBI Anti-Piracy Warning'' superimposed on it. On November 17, 2003, the Attorney General approved the APW Seal, then referred to as the ''FBI Intellectual Property Rights Seal,'' as an official insignia of the FBI to be used by the FBI and FBI-authorized entities as part of a copyright anti-piracy awareness campaign. This approval brought the APW Seal within the protection of Title 18 U.S. Code, Section 701, which provides criminal sanctions for the unauthorized uses of such insignia.

The APW Seal was designed to graphically enhance the impact of language warning users of copyrighted media about the potential consequences of intellectual property crime, and the FBI's role in investigating such crime. It serves as a vivid and widely recognizable reminder of the FBI's authority and mission with respect to the protection of intellectual property rights.

Beginning in December 2003, the FBI implemented a pilot program in which the FBI entered into separate Memoranda of Understanding with each of five entertainment and software industry associations. Members of these associations were able to request approval to use the APW Seal from the association, and the association administered the process and record-keeping. Largely as a result of this program, the APW Seal and its anti-piracy message have reached a large segment of the public. Unfortunately, the pilot program also had the effect of excluding non-members of these five associations from being able to use the APW Seal on their works.

In order to enhance the availability, use, and effectiveness of the APW Seal on lawful, copyright-protected works, this rule proposes to replace the pilot program with a regulation governing the use of the APW Seal. The image of the APW Seal will be made available on the FBI's website, and it may be downloaded for use on eligible works as specified in the text of the proposed regulation below. There will be no fee associated with using the APW Seal. This regulation will be a significant improvement over the current program, which has tended to limit the use of the APW Seal and requires each user to enter into a written agreement governing the use.

Regulatory Certifications

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that this rule will not have a

significant economic impact on a substantial number of small entities. Subject to the terms and conditions set forth, this rule merely allows copyright holders to use the APW Seal on copyrighted works to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation and in accordance with Executive Order 13563 ''Improving Regulation and Regulatory Review'' section 1(b) General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both 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. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This proposed rule 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in 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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the U.S. economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. Subject to the terms and conditions set forth, this rule merely allows copyright holders to use the APW Seal on copyrighted works to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

List of Subjects in 41 CFR Part 128–1

Government property, Seals and insignia, Copyright, Intellectual property.

Accordingly, for the reasons set forth in the preamble, part 128–1 of chapter 128 of Title 41 of the Code of Federal Regulations is amended as follows:

PART 128–1—[AMENDED]

1. The authority citation for part 128–1 is revised to read as follows:

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c), 41 CFR 101–1.108, and 28 CFR 0.75(j), unless otherwise noted.

2. A new § 128–1.5009 is added to read as follows:

§ 128–1.5009 Authorization for Use of the Federal Bureau of Investigation Anti-Piracy Warning Seal.

(a) *Purpose.* The Federal Bureau of Investigation (FBI) Anti-Piracy Warning Seal (''APW Seal'') is an official insignia of the FBI and the United States Department of Justice. The purpose of the APW Seal is to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

(b) The ''APW Seal'' is a modified image of the Official FBI Seal with the words ''FBI ANTI-PIRACY WARNING'' displayed horizontally across its center in an enclosed border, whether rendered in color, black and white, outline, or otherwise.

(c) The APW Seal has been approved by the Attorney General as an official insignia of the FBI within the meaning of Title 18 United States Code, Section 701, which provides criminal sanctions for unauthorized uses of such insignia.

(d)(1) The regulations in this section authorize use of the APW Seal by copyright holders on copyrighted works including, but not limited to films, audio recordings, electronic media, software, books, photographs, etc., subject to the terms and conditions set forth in this paragraph.

(2) Use of the APW Seal or of the authorized warning language in a manner not authorized under this section may be punishable under Title 18 United States Code, Sections 701, 709, or other applicable law.

(e) Conditions regarding use of the APW Seal.

(1) The APW Seal may only be used on works subject to protection as intellectual property under U.S. Criminal Code provisions such as those in Title 18 U.S. Code, Sections 2319, 2319A, and 2319B.

(2) The APW Seal may only be used immediately adjacent to the authorized warning language. ''Authorized warning language'' refers to the language set forth in paragraph (e)(2)(A) of this section, or alternative language specifically authorized in writing for this purpose by the Director of the FBI or his or her designee and posted on the FBI's official public Internet Web site (*http://www.fbi.gov*).

(A) ''The unauthorized reproduction or distribution of a copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by fines and federal imprisonment.''

(3) The APW Seal image must be obtained from the FBI's official public Internet Web site (*http://www.fbi.gov*). The APW Seal image may not be animated or altered except that it may be rendered in outline, black and white, or grayscale.

(4) In programming or reproducing the APW Seal in or on a work, users are encouraged to employ industry-recognized copyright anti-circumvention or copy protection

techniques to discourage copying of the FBI APW Seal, except that such techniques need not be used if no other content or advertising programmed into the same work on the same media utilizes such copyright anti-circumvention or copy protection techniques.

(f) Prohibitions regarding use of the APW Seal.

(1) The APW Seal may not be used in a manner indicating FBI approval, authorization, or endorsement of any communication other than the authorized warning language. No other text or image that appears on the same screen, page, package, etc., as the APW Seal or authorized warning language shall reference, contradict, or be displayed in a manner that appears to be associated with, the APW Seal or authorized warning language, except as authorized in writing by the Director of the FBI or his or her designee and posted on the FBI's official public Internet Web site (*http://www.fbi.gov*).

(2) The APW Seal may not be used on any work whose production, sale, distribution by United States mail or in interstate commerce, or public presentation would violate the laws of the United States including, but not limited to, those protecting intellectual property and those prohibiting child pornography and obscenity.

(3) The APW Seal may not be forwarded or copied except as necessary to display it on an eligible work.

(4) The APW Seal shall not be used in any manner:

(A) Indicating that the FBI has approved, authorized, or endorsed any work, product, production, or private entity, including the work on which it appears;

(B) Indicating that the FBI has determined that a particular work or portion thereof is entitled to protection of the law; or,

(C) Indicating that any item or communication, except as provided herein, originated from, on behalf of, or in coordination with the FBI, whether for enforcement purposes, education, or otherwise.

Dated: August 29, 2011.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. 2011–22877 Filed 9–6–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD11

Maintenance of and Access to Records Pertaining to Individuals; Proposed Exemption

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

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to add a system of records relating to suspicious activity reporting to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

DATES: Comments are due October 7, 2011. If no comments are received by the due date, the proposal will take effect as proposed and comments addressed accordingly. If comments are received by the due date, the proposal will still take effect as proposed and the comments addressed accordingly.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number [OST–1996–1437] by any of the following methods:

Web site: http://www.regulations.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

ADDRESSES: You may submit comments and reply comments using any one of the following methods:

Initial comments will be made available promptly electronically, online on *http://www.regulations.gov,* or for public inspection in room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. In order to allow sufficient opportunity for interested parties to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments.

ADDRESSES: You may submit comments and reply comments identified by docket number OST–1996–1437 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *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.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Claire Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 at (202) 366–1835.

SUPPLEMENTAL INFORMATION: It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(j) or (k)) both in the system notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR part 10, Appendix A). This amendment proposes exemption from certain portions of the Privacy Act of a proposed record system—the Suspicious Activity Reporting (SAR) database—to be used to track observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity. To aid in the law enforcement aspects of SAR, DOT proposes to treat it as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), to the extent that SAR contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).[1]

[1] *(c)(3)*—An agency making disclosures of information that is covered by the Privacy Act must keep an accounting of those disclosures and, under (c)(3), make that accounting available to the subject upon the subject's request. The exemption from (c)(3) means that, although we still have to maintain the accounting, we do not have to provide it to the subject.

(d)—One of the essential elements of the Privacy Act is the subject's right of access to information in any file covered by the Privacy Act that is retrieved by the subject's name or other personal identifier, such as social security number. In this way, the subject can test the validity of the information. The exemption from (d) means that we do not have to grant the subject access to the information.

(e)(1)—Another essential element of the Privacy Act is to limit the collection and maintenance of

Analysis of Regulatory Impacts. This proposal is not a ''significant regulatory action'' within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals that is maintained by the Federal Government.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for Federalism to warrant preparation of a Federalism Assessment.

Collection of Information. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, $100 million or more in any one year (adjusted for inflation) the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

List of Subjects in 49 CFR Part 10

Authority delegations (government agencies); Organization and functions (government agencies); Penalties; Privacy; Transportation Department.

In consideration of the foregoing, DOT proposes to amend Part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 would continue to read as follows:

Authority: Pub. L. 93–579; 49 U.S.C. 322.

2. The Appendix would be amended by inserting in of Part II.A. a new paragraph 8, immediately following paragraph 7, to read as follows:

Appendix A—Exemptions.

Part II. Specific exemptions. A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

* * * * *

8. Suspicious Activity Reporting (SAR) database, maintained by the Office of Intelligence, Security, and Emergency Response, Office of the Secretary.

Issued in Washington, DC, on: August 31, 2011.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2011–22729 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–62–P

information subject to the Act to information that is relevant and necessary to carry out a lawful activity of the agency that collects or maintains the information. The exemption from (e)(1) means that we are not limited to information that is relevant and necessary. In practical terms, the subject may contest the relevancy and necessity of any information in the file; however, given the exemption from (d), above, the subject has no way to verify what is in the file, so is unable to contest its relevancy or necessity. Hence, a formal exemption from (e)(1) is not needed.

(e)(4)(G), (H), and (I)—To equip a subject to verify information in a file, we are required by the Privacy Act to publish in the public notice of the existence of the information procedures informing subjects how to learn from us whether we have records on them, procedures on how subjects can gain access to their files, and procedures to identify for subjects the categories of record sources in the file. The exemption from (e)(4)(G), (H), and (I) means that we need not publish these procedures for this file. Again, if we do not have to grant access, these provisions have no meaning.

(f)—We are also required to publish regulations governing how subjects can learn if they are included in any of our Privacy Act files, how they must prove their identities before we can grant them access, and governing access to their files, their rights to have information in the files amended and their rights to appeal our refusal to grant access and make amendments. Since there is no right to access, these derivative rights, as with the others, are moot.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 269

[Docket No. FRA–2009–0108; Notice No. 1]

RIN 2130–AC19

Alternate Passenger Rail Service Pilot Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM is in response to a statutory mandate that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. The proposed rule would develop this pilot program in conformance with the statutory directive.

DATES: *Written Comments:* Written comments on the proposed rule must be received by November 7, 2011. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA anticipates being able to determine these matters without a public hearing. However, if prior to October 7, 2011, FRA receives a specific request for a public hearing accompanied by a showing that the party is unable to adequately present his or her position by written statement, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket Number FRA–2009–0108, may be submitted by any of the following methods:

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information. Please see the Privacy Act heading later in this document for more Privacy Act information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

Alexander Roth, Office of Railroad Policy and Development, FRA, 1200 New Jersey Ave., SE., Washington, DC 20590 (Telephone 202–493–6109), or Zeb Schorr, Attorney-Advisor, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6072).

SUPPLEMENTARY INFORMATION:

I. Notice of Proposed Rulemaking

A. Statutory Background

The proposed rule is in response to a statutory mandate—specifically, § 214 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Public Law No. 110–432, Division B (Oct. 16, 2008)—that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of PRIIA. Section 214 further provides that those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702 are eligible for the pilot program, and that the program not be made available to more than two routes.

Section 214 also provides for, among other things, the following: The establishment of a petition, notification, and bid process through which FRA would evaluate bids to provide passenger rail service over particular routes by interested rail carriers and Amtrak; FRA's selection of a winning bidder by, among other things, evaluating the bids against the financial and performance metrics developed under section 207 of PRIIA; FRA's execution of a contract with the winning bidder awarding the right and obligation to provide passenger rail service over the route, along with an operating subsidy, as well as requiring compliance with the minimum standards established under section 207 of PRIIA, among other things; that Amtrak must provide access to its reservation system, stations, and facilities to a winning bidder; that employees used in the operation of a route under the pilot program would be considered an employee of that rail carrier and would be subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak; that the winning bidder must provide hiring preference to displaced qualified Amtrak employees; that the winning bidder would be subject to the grant conditions under 49 U.S.C. 24405; and that, if a winning bidder ceases to operate the service or to otherwise fulfill their obligations, the FRA Administrator, in collaboration with the Surface Transportation Board, would take any necessary action to enforce the contract and to ensure the continued provision of service.

B. Adequate Resources Certification

Section 214 provides that, before FRA may take any action allowed under 49 U.S.C. 24711, the Secretary of Transportation (Secretary) must certify that the FRA Administrator has sufficient resources that are adequate to undertake the pilot program. FRA understands this requirement to mean that FRA may not proceed with any action under a pilot program developed by this proposed rulemaking until the Secretary has issued such a certification.

It should also be noted that section 214 requires FRA to award to a winning bidder, among other things, an operating subsidy. 49 U.S.C. 24711(a)(5)(B). PRIIA did not authorize funds for FRA to use to pay for any such operating subsidy, or any other costs arising from the proposed pilot program; nor did Congress appropriate funds for the pilot program.

This proposed rulemaking would incorporate the adequate resources certification requirement by providing, in § 269.3(a), that the part would not be applicable to any railroad, unless and until the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program. Only upon such certification would the proposed pilot program become available. As described below, the time period within which petitions may be filed with FRA would be triggered by FRA providing notice of the Secretary's certification.

C. Timeline Established by the Proposed Rule

The proposed rule would establish deadlines for filing petitions, filing bids, and FRA's execution of contract(s) with any winning bidders. As to the filing of petitions, § 269.7(b) of the proposed rule would require a petition to be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification that the FRA Administrator has sufficient resources that are adequate to undertake the pilot program. This deadline is necessary in order to comply with the statutory mandate. Specifically, 49 U.S.C. 24711(a)(4) requires FRA to, as relevant here, ''give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under section 24710'' of title 49 of the United States Code. In order to comply with this statutory directive to ''give preference'' to ''the five worst performing Amtrak routes,'' FRA must be able to evaluate all bids at the same time. Section 269.7(b)'s proposed petition deadline would enable FRA to evaluate all bids at the same time and to ''give preference'' where appropriate as directed by the statute.

In addition, §§ 269.3(c) and 269.7(d) of the proposal would also take into consideration the possibility that the period during which a railroad may provide passenger rail service under this proposed pilot program, which is currently set by statute to expire on October 16, 2013, is extended by statute. In that event, the proposed rule would require petitions to be filed with FRA no later than 60 days after the enactment of such statutory authority and would require such petitions to otherwise comply with the requirements of this part.

As to the filing of bids, proposed § 269.9 would require the Petitioner and Amtrak to both file bids with FRA no later than 60 days after the petition deadline established by proposed § 269.7(b). Proposed § 269.9(b) articulates the bid requirements. The 60-day time period would give a bidder sufficient time to prepare a bid that satisfies the bid requirements, while also limiting the duration of the bid process.

Lastly, as to the award and execution of contracts with winning bidders, proposed § 269.13 would require FRA to execute a contract with the winning bidder(s) no later than 90 days after the bid deadline established by proposed § 269.9. Section 214 of PRIIA requires

FRA to ''execute a contract within a specified, limited time.'' 49 U.S.C. 24711(a)(5). The 90-day time period is a limited period for FRA and the winning bidder(s) to execute an agreement(s) that satisfies the proposed requirements of § 269.13, including FRA's obligation of an operating subsidy in compliance with the statutory requirements.

II. Section-by-Section Analysis

Section 269.1 Purpose

This section provides that the proposed rule would carry out the statutory mandate set forth in 49 U.S.C. 24711 that requires FRA to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

Section 269.3 Application

Paragraph (a) of this section provides that the proposed rule would not apply to any railroad, unless and until the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program. This section also states that, upon receipt, FRA will provide notice of the certification on the FRA public Web site. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(e). In addition, as discussed in § 269.7(a) of the proposal, FRA's notice of the Secretary's certification will trigger the 45-day deadline by which an eligible railroad may petition FRA under the pilot program.

Paragraph (b) of this section provides that the proposed pilot program would not be made available to more than two Amtrak intercity passenger rail routes. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(b).

Paragraph (c) of this section proposes that any rail carrier or rail carriers awarded a contract to provide passenger rail service under the pilot program would only be able to provide such service for a period not to exceed five years after October 16, 2008 (the date of PRIIA's enactment), or a later date authorized by statute. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). In addition, this proposed section also takes into consideration the possibility that the 5-year limitation period established in PRIIA is extended by statute.

Section 269.5 Definitions

This section contains the definitions that FRA proposes to employ in this rule. This section proposes definitions the following terms: Act; Administrator; Amtrak; File and filed; Financial plan; FRA; Operating plan; Passenger rail service route; Petitioner; Railroad, and Secretary. Among other definitions, this section proposes to define ''passenger rail service route'' to mean those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702. This definition is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). In addition, this section proposes to define ''railroad'' to mean a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5). This definition is based on the statutory directive contained in 49 U.S.C. 24711(a)(1) and (c)(3).

This section also proposes to define ''financial plan'' to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan's contents. In addition, this proposed section defines ''operating plan'' to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents. The proposed rule would require bidders to include a financial plan and an operating plan—as those terms are defined here—in their bids. These proposed definitions would ensure that bids contain sufficient information to be evaluated.

Section 269.7 Petitions

Paragraph (a) of this section proposes that a railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in section 269.3(c). This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). This paragraph would not require a railroad own all of the infrastructure over which Amtrak operates a passenger rail service route in order to file a petition.

Paragraph (b) of this section proposes that a petition submitted to FRA under this rule must: Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to proposed § 269.3(a); describe the petition as a ''Petition to Provide Passenger Rail Service under 49 CFR part 269''; and describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace. This proposed paragraph is intended to ensure that a petition would provide clear notice to FRA.

Paragraph (c) of this section proposes that, in the event that a later statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program, petitions would have to be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and that the petition must otherwise comply with the requirements of the pilot program. This proposed paragraph takes into consideration the possibility that the 5-year limitations period established in PRIIA is extended by statute.

Section 269.9 Bid Process

Paragraph (a) of this section proposes that FRA would notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(2).

Paragraph (b) of this section describes the proposed bid requirements, including a requirement that such bids must be filed with FRA no later than 60 days after the petition deadline established by proposed § 269.7. Paragraph (b) further proposes that such bids must: (1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements described in proposed § 269.13(b); (2) describe how the bidder would operate the route (including an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad), and, if the bidder intends to generate any revenues from ancillary activities (*i.e.,* activities other than

passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to section 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts; (3) describe what Amtrak passenger equipment would be needed, if any; (4) describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments; (5) contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and (6) describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to section 207 of the Act (at a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: a projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to section 207 of the Act; and the net cash used in operating activities per passenger-mile attributable to the route). This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(3) and (a)(6).

Paragraph (c) of this section proposes that FRA could request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA would establish a deadline by which the supplemental information must be submitted to FRA. This proposed paragraph allows FRA to request additional information where the information provided in a bid prevents FRA from adequately evaluating the proposal.

Section 269.11 Evaluation

This section proposes that FRA would select a winning bidder by evaluating the bids against the financial and performance metrics developed under section 207 of PRIIA and the requirements of this proposed part, and would give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(4).

Section 269.13 Award

Paragraph (a) of this section proposes that FRA would execute a contract with the winning bidder(s) consistent with the requirements of proposed § 269.13 and as FRA may otherwise require, no later than 90 days after the bid deadline established by proposed § 269.9(b). This paragraph also provides that FRA would provide timely notice of these selections to all petitioners and to Amtrak. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(5).

Paragraph (b) of this section proposes that, among other things, such a contract would: (1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under section 207 of PRIIA; (2) award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation; (3) condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; (4) condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under section 207 of PRIIA and such additional performance standards as FRA may establish; and (5) subject the winning bidder to the grant conditions established by 49 U.S.C. 24405. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(5), (c)(1), and (c)(4).

Paragraph (c) of this section proposes that the winning bidder would make their staffing plan, submitted as required by proposed § 269.9(b)(4), available to the public after the bid award. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(6).

Section 269.15 Access to Facilities; Employees

Paragraph (a) of this section proposes that, if an award under proposed § 269.13 is made to a rail carrier other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract, in accordance with section 217 of PRIIA, necessary to carry out the purposes of the proposed rule. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(2).

Paragraph (b) of this section proposes that the employees of any person used by a rail carrier in the operation of a route under the proposed rule would be considered an employee of that carrier and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under § 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(3).

Paragraph (c) of this section proposes that a winning bidder would provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(4).

Section 269.17 Cessation of Service

This section proposes that, if a rail carrier awarded a route under this rule ceases to operate the service or fails to fulfill its obligations under the contract required under proposed § 269.13, the Administrator, in collaboration with the Surface Transportation Board, will take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. This section further proposes that the entity providing service would either be Amtrak or a rail carrier eligible for the pilot program under proposed § 269.7. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(d).

III. Regulatory Impact and Notices

1. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Order 12866, Executive Order 13563, and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA

has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2009–0108.

As part of the regulatory impact analysis, FRA has generally assessed quantitative measurements of the cost and benefit streams expected to result from the adoption of a proposed rule. However, in this case, due to the limited number of routes that would be awarded under the pilot program (only two routes could be awarded), and the short timeframe in which this pilot program would operate (until 2013), it is not feasible to perform an analysis for an extended period.

There are no alternate service provider railroad regulatory costs because the program is voluntary with respect to such rail carriers. Regulatory costs would be triggered for Amtrak should one or more alternative service providers bid on routes. For informational purposes, FRA has included in Appendices of the RIA the estimated average costs for both a railroad and Amtrak to participate in the pilot program. FRA estimates the average cost for each individual railroad to participate in the program and to submit the required bid proposal (the majority of the cost) at about $300,000 per route, and the average cost for Amtrak at about $150,000 per route (regardless of how many individual railroads bid on the individual Amtrak route). Railroads that participate voluntarily would do so because they consider the benefits to exceed the costs. Thus, any participation would be cost beneficial with respect to the voluntary participant. Any potential costs to Amtrak are regulatory costs that would not be incurred in absence of this proposed rule or the costs associated with developing bids for up to two routes.

Given that this pilot program is voluntary for potential alternate service providers and is not currently funded by Congress, FRA estimates that this proposed regulation would not result in any benefits or costs.

2. Regulatory Flexibility Act

To ensure potential impacts of rules on small entities are properly considered, FRA developed this proposed rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

Purpose

As noted earlier in this NPRM, the purpose of this proposed rulemaking is to respond to a statutory mandate to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of PRIIA. The proposed rule would develop this pilot program in conformance with the statutory directive.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to § 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, App. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.* Additionally, section 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Such governments would not be directly impacted by this proposal.

Rationale for Choosing Regulatory Action and Legal Authority

FRA is initiating this NPRM in response to a statutory mandate set forth in section 214 of PRIIA. Section 214 requires FRA to complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of PRIIA. This proposed rule develops this pilot program in conformance with the statutory directive.

Description of Regulated Entities and Impacts

This proposed rule would be applicable to railroads that own infrastructure upon which Amtrak operates those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702, which may include small railroads. ''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121 subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003) (codified at Appendix C to 49 CFR part 209). The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator

formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for the proposed rule.

Minimum Requirements for Pilot Program Applications

Small railroads face the same requirements for entry in the pilot program as other railroads. The railroad must own infrastructure upon which Amtrak operates those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702.

Disclosure of Assumptions

The purpose of this economic analysis is to provide pertinent information on the effects of the proposed regulation, part 269, ''Alternate Passenger Rail Service Pilot Program.'' FRA believes that the proposed regulation will not have any effect on small railroads since participation in the pilot program is voluntary, only two routes are available for award, the program expires in 2013, and it is unlikely that federal funding that is not currently available will be available for the program. FRA does not anticipate that any small railroads would be interested in taking over such an existing, eligible Amtrak route.

Criteria for Substantial Number

This proposed regulation is voluntary for all rail carriers, except Amtrak, which would be impacted only if another carrier petitions to participate in the pilot program. Therefore, there are no mandates placed on large or small railroads. Consequently, this proposed regulation would not affect a substantial number of small entities, and most likely will not impact any small entities.

Criteria for ''Significant Economic Impacts''

The factual basis for the certification that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities is that the proposed pilot program is voluntary for all rail carriers except Amtrak; and no small entities are anticipated to apply. Therefore, this proposed regulation would have no economic impact on small entities.

FRA notes that this proposed regulation does not disproportionately place any small railroads that are small entities at a significant competitive disadvantage. Small railroads are not excluded from participation, so long as they are eligible. This proposed regulation and the underlying statute are aimed at railroads taking over an entire route. If Amtrak uses 30 miles of a small railroad's infrastructure in a route that is 750 miles long, the small railroad could not apply to take over just its own segment, but would have to apply to take over the whole route. Thus, the ability to bid on a route is not constrained by a railroad's size.

Request for Comments

FRA invites comments from all interested parties on this certification. FRA also requests comments on the threshold economic analysis and its underlying assumptions. FRA particularly encourages small entities that could potentially be impacted by the proposed amendments to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official U.S. Department of Transportation (DOT) docket.

Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities. The proposed rule does not require, or otherwise impose, any requirements upon any small entities. Instead, this proposal develops a pilot program under which an eligible small entity may voluntarily elect to participate. Furthermore, the proposed rule would establish a very limited pilot program that would apply to no more than two Amtrak routes. FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination for certification of the final rule.

3. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 and OMB's Implementing Guidance at 5 CFR 1320.3(c), ''collection of information means, except as provided in section 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' FRA expects that the requirements of this proposed rule will affect less than 10 railroads or ''persons'' as defined in 5 CFR 1320.(c)(4). Consequently, no information collection submission is necessary, and no approval is being sought from the Office of Management and Budget (OMB) at this time.

4. Environmental Impact

FRA has evaluated this NPRM in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because the proposed rulemaking would not result in a change in current passenger service; instead, the program would only potentially result in a change in the operator of such service. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

5. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism 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 State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this NPRM in accordance with the principles and

criteria contained in Executive Order 13132. This NPRM complies with a statutory mandate, and FRA believes it is in compliance with Executive Order 13132.

This NPRM will not have a substantial effect 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 addition, this NPRM will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

6. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This proposed rule would not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

7. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as 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)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

8. Privacy Act Information

Interested parties should be aware that anyone is able to search the electronic form of all written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 269

Railroads; Railroad employees.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

1. Add a new part 269 to read as follows:

PART 269—ALTERNATE PASSENGER RAIL SERVICE PILOT PROGRAM

Sec.
269.1 Purpose.
269.3 Application.
269.5 Definitions.
269.7 Petitions.
269.9 Bid Process.
269.11 Evaluation.
269.13 Award.
269.15 Access to facilities; employees.
269.17 Cessation of service.

Authority: Sec. 214, Div. B, Pub. L. No. 110–432; 49 U.S.C. 24711; and 49 CFR 1.49.

§ 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in 49 U.S.C. 24711 requiring FRA to develop a pilot program that permits a railroad that owns infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

§ 269.3 Application.

(a) *Certification.* This part will not be applicable to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program developed by this part. FRA will provide notice of the certification on the FRA public Web site upon receipt.

(b) *Route Limitations.* The pilot program developed by this part will not be made available to more than two Amtrak intercity passenger rail routes.

(c) *Time Limitations.* Any railroad awarded a contract to provide passenger rail service under the pilot program developed by this part shall only provide such service for a period not to exceed either five years after October 16, 2008, or a later date authorized by statute.

§ 269.5 Definitions.

As used in this part—

Act means the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432, Division B (Oct. 16, 2008)).

Administrator means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

Amtrak means the National Railroad Passenger Corporation.

File and Filed mean submission of a document under this part on the date the document was postmarked, or the date the document was e-mailed to FRA.

Financial plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: an annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan's contents.

FRA means the Federal Railroad Administration.

Operating plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: a complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between

each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents.

Passenger rail service route means those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) or in 49 U.S.C. 24702.

Petitioner means a railroad, other than Amtrak, that has submitted a petition to FRA under section 269.7 of this part.

Railroad means a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5).

Secretary means the Secretary of the U.S. Department of Transportation.

§ 269.7 Petitions.

(a) *In General.* A railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c).

(b) *Petition Requirements.* Each petition shall:

(1) Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to § 269.3(a) using the following method: e-mail to *Priia214@dot.gov.;*

(2) Describe the petition as a ''Petition to Provide Passenger Rail Service under 49 CFR part 269''; and

(3) Describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace.

(c) *Future Petitions.* In the event that a statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program developed by this part, petitions under this section shall be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and shall otherwise comply with the requirements of this part.

§ 269.9 Bid Process.

(a) *Amtrak Notification.* FRA will notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition.

(b) *Bid Requirements.* A petitioner and Amtrak must both file a bid with FRA to provide passenger rail service over the route to which the petition relates no later than 60 days after the petition deadline established by § 269.7 using the following method: e-mail to *Priia214@dot.gov.* Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements described in § 269.13(b);

(2) Describe how the bidder would operate the route. This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad. In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.,* activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to § 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts;

(3) Describe what Amtrak passenger equipment would be needed, if any;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and

(6) Describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to § 207 of the Act. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: a projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to § 207 of the Act; and the net cash used in operating activities per passenger-mile attributable to the route.

(c) *Supplemental Information.* FRA may request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA will establish a deadline by which the supplemental information must be filed with FRA.

§ 269.11 Evaluation.

FRA will select a winning bidder by evaluating the bids against the financial and performance metrics developed under § 207 of the Act and the requirements of this part, and will give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710.

§ 269.13 Award.

(a) *Award.* FRA will execute a contract with the winning bidder(s), consistent with the requirements of this section and as FRA may otherwise require, no later than 90 days after the bid deadline established by § 269.9(b). FRA will provide timely notice of these selections to all petitioners and Amtrak.

(b) *Contract Requirements.* Among other things, the contract between FRA and a winning bidder shall:

(1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under § 207 of the Act, for a duration consistent with § 269.3(c);

(2) Award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation;

(3) Condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(4) Condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under § 207 of the Act and such additional performance standards as FRA may establish; and

(5) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405.

(c) *Staffing Plan Publication.* The winning bidder shall make their staffing plan required by § 269.9(b)(4) available to the public after the bid award.

§ 269.15 Access to facilities; employees.

(a) *Access to Facilities.* If the award under § 269.13 is made to a railroad other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract under this part, in accordance with § 217 of the Act, necessary to carry out the purposes of this part.

(b) *Employees.* The employees of any person used by a railroad in the operation of a route under this part shall be considered an employee of that railroad and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under § 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees who provide food and beverage service.

(c) *Hiring Preference.* The winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder.

§ 269.17 Cessation of service.

If a railroad awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a railroad eligible for this pilot program under § 269.7.

Issued in Washington DC on August 29, 2011.

Karen J. Rae,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 2011–22699 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–06–P

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; Extension of Public Comment Period on Proposed Rule for a 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, extension of public comment period.

SUMMARY: NMFS is extending the date by which public comments are due concerning proposed regulations to 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). NMFS published the proposed rule on July 22, 2011 and announced that the public comment period would end on September 6, 2011. With this notice, NMFS is extending the comment period to September 21, 2011.

DATES: The deadline for receipt of comments on the proposed rule published on July 22, 2011 (76 FR 44156), is extended from September 6, 2011, to September 21, 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 proposed rule and 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.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 2011, NMFS published regulations at 76 FR 44156, that would implement a catch sharing plan for the guided sport and commercial fisheries for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). The proposed 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. 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.

NMFS received several requests from members of the public and representatives of recreational fishing organizations to extend the comment period on the proposed rule due to overlap with the recreational halibut fishing season and the complexity of the proposed catch sharing plan. Several commenters requested a 30-day extension and one commenter asked for an additional 60 days. We have considered these comments and conclude that a 15-day extension should allow sufficient time for the public to review and comment on the proposed rule without significantly delaying the rulemaking process.

Dated: September 1, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–22862 Filed 9–1–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BB27

Pacific Coast Groundfish; Public Hearing Notice; Secretarial Fishery Management Plan Amendment 1

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

ACTION: Hearing notice.

SUMMARY: The National Marine Fisheries (NMFS) in cooperation with the Pacific Fishery Management Council (PFMC) will be holding a hearing regarding the Secretarial Amendment 1 (previously Amendment 16–5) to the Pacific Coast Groundfish Fishery Management Plan (FMP). Secretarial Amendment 1 proposes to establish one new rebuilding plan, modify seven existing plans, modify the default proxy values for F_{MSY} and B_{MSY} as they apply to the flatfish species, and the harvest control rule policies.

DATES: The PFMC meeting will be held September 12–19, 2011, and the hearing is scheduled for Thursday, September 15, 2011.

ADDRESSES: The PFMC Meeting will be held at the San Mateo Marriott, 1770 South Amphlett Boulevard, San Mateo, CA 94402.

NMFS Address: 7600 Sand Point Way, NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, 206–526–4646.

SUPPLEMENTARY INFORMATION: A public hearing will be held on September 15, 2011, to receive comments on the proposed Secretarial Amendment 1. For more information on the Council meeting please see the meeting notice which published in the **Federal Register** on August 26, 2011 (76 FR 53414). Written and oral comments received at the public hearing will be taken into consideration by NMFS when making its final decision on the Amendment.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

Dated: August 31, 2011.

James P. Burgess,

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

[FR Doc. 2011–22746 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 173

Wednesday, September 7, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 31, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of publication of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Livestock Slaughter.

OMB Control Number: 0535–0005.

Summary of Collection: The primary functions of the National Agricultural Statistics Service (NASS) are to prepare and issue current official State and national estimates of crop and livestock production, disposition and prices and to collect information on related environmental and economic factors. General authority for data collection activities is granted under U.S. Code Title 7, Section 2204. This statue specifies the ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists''. Information from federally and non-federally inspected slaughter plants are used to estimate total red meat production. NASS will use a Federally and non-Federally-inspected livestock slaughter survey to collect data.

Need and Use of the Information: NASS will combine information collected from both types of plants to estimate total red meat production, consisting of the number of head slaughtered plus live and dressed weights of cattle, calves, hogs and sheep. Accurate and timely livestock estimates provide USDA and the livestock industry with basic data to project future meat supplies and producer prices. Agricultural economists in both the public and private sectors use this information in economic analysis and research.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 2,900.

Frequency of Responses: Reporting: Weekly, Monthly and Quarterly.

Total Burden Hours: 1,687.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–22740 Filed 9–6–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northern New Mexico Resource Advisory Committee (NNM RAC) will meet in Albuquerque, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review the status of Title II and funds to be allocated, discuss letter from Cibola and McKinley counties, monitoring report, review of administrative costs, provide opportunity for proponents to present proposals (5 minutes each), provide NNM RAC members opportunity to ask questions about proposals (3 minutes each), review proposal recommendation process, review and rank project proposal by Category Groups, provide recommendations for funding to Designated Federal Official and provide for public comment.

DATES: The meeting will be held on September 21, 2011 beginning at 10 a.m. and ending at 5 p.m. and on September 22, 2011 beginning at 8 a.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the Cibola National Forest Supervisor's Office conference room located at 2113 Osuna Rd. NE., Albuquerque, NM 87113. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Carson National Forest, 208 Cruz Alta Rd., Taos, NM 87571. Please call ahead to 575–758–6344 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ignacio Peralta, RAC Coordinator, Carson National Forest, 575–758–6344, *iperalta@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed for further information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review status of Title II and funds to be allocated, discuss letter from Cibola and McKinley counties, monitoring report, review of administrative costs, provide opportunity for proponents to present proposals (5 minutes each), provide NNM RAC members opportunity to ask questions about proposals (3 minutes each), review proposal recommendation process, review and rank project proposal by Category Groups, provide recommendations for funding to Designated Federal Official and provide for public comment. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 14, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 208 Cruz Alta Road, Taos, New Mexico 87571, or by e-mail to *iperalta@fs.fed.us,* or via facsimile to 575–758–6213.

Dated: August 31, 2011.

John Miera,

Acting Forest Supervisor, Carson National Forest.

[FR Doc. 2011–22796 Filed 9–6–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Survey of Manufactures.

OMB Control Number: 0607–0449.

Form Number(s): MA–10000(L), MA–10000(S), NC–99530.

Type of Request: Extension of a currently approved collection.

Burden Hours: 181,120.

Number of Respondents: 51,000.

Average Hours Per Response: 2 hours and 40 minutes.

Needs and Uses: The Census Bureau is requesting an extension of the currently approved collection for the ASM. The Census Bureau has conducted the ASM since 1949 to provide key measures of manufacturing activity during intercensal periods. In census years ending in ''2'' and ''7,'' we mail and collect the ASM as part of the Economic Census Covering the Manufacturing Sector. The ASM will be included in the collection of the 2012 Economic Census and therefore all collection activities for 2012 will be on hiatus. In 2013, collection activities will resume for this clearance.

The ASM statistics are based on a survey that includes both mail and nonmail components. The mail portion of the survey is comprised of a probability sample of approximately 51,000 manufacturing establishments from a frame of approximately 117,000 establishments. These 117,000 establishments are primarily comprised of manufacturing establishments of multiunit companies (companies with operations at more than one location) and large single-location manufacturing companies. The nonmail component is comprised of the remaining small and medium-sized single-location companies, approximately 211,000. No data are collected from companies in the nonmail component. Data are directly obtained from the administrative records of the Internal Revenue Service (IRS), the Social Security Administration (SSA), and the Bureau of Labor Statistics. The nonmail companies account for 63 percent of the population and for less than 7 percent of the manufacturing output.

This survey is an integral part of the Government's statistical program. Its results provide a factual background for decision making by the executive and legislative branches of the Federal Government. Federal agencies use the annual survey's input and output data as benchmarks for their statistical programs, including the Federal Reserve Board's Index of Industrial Production and the Bureau of Economic Analysis' estimates of the gross domestic product. The data also provide the Department of Energy with primary information on the use of energy by the manufacturing sector to produce manufactured products. These data also are used as benchmark data for the Manufacturing Energy Consumption Survey, which is conducted for the Department of Energy by the Census Bureau. The Department of Commerce uses the exports of manufactured products data to measure the importance of exports to the manufacturing economy of each state. Within the Census Bureau, the ASM data are used to benchmark and reconcile monthly and quarterly data on manufacturing production and inventories.

The ASM is the only source of complete establishment statistics for the programs mentioned above.

The ASM furnishes up-to-date estimates of employment and payrolls, hours and wages of production workers, value added by manufacture, cost of materials, value of shipments by class of product, inventories, cost of employer's fringe benefits, operating expenses, and expenditures for new and used plant and equipment. The survey provides data for most of these items for all 5-digit and selected 6-digit industries as defined in the North American Industry Classification System (NAICS). We also provide geographic data by state at a more aggregated industry level.

The survey also provides valuable information to private companies, research organizations, and trade associations. Industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning. State development/planning agencies rely on the survey as a major source of comprehensive economic data for policymaking, planning, and administration.

The Ownership or Control forms will be used to update the Business Register, the basic sampling frame for many of our current surveys. This enables us to update establishments in the Census Bureau's Business Register that are incorrectly identified as being single-establishment firms.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182, 224, 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin,

OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: September 1, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–22860 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Aerospace Executive Service Trade Mission at Singapore Air Show

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing an Aerospace Executive Service Trade Mission (AESTM) to Singapore in conjunction with the Singapore Airshow 2012 (*http://www.singaporeairshow.com.sg*).

The AESTM is designed to include participants from a variety of U.S. aerospace-industry manufacturers and service providers. The mission participants will be introduced to international agents, distributors and end-users whose capabilities are targeted to each U.S. participant's needs. Mission participants will also be briefed by key local industry leaders who can advise on local market conditions and opportunities.

In addition to the above-mentioned services, the Commercial Service will again bring its AsiaNow Showtime program to the Singapore Air Show, through which mission participants can meet one-on-one with Commercial Service aerospace and defense industry specialists from country markets throughout Asia. The industry specialists will be on hand to discuss market trends and opportunities in their respective markets.

Commercial Setting

The Singapore Air Show (SAS) is Asia's largest aerospace and defense event and one of the top three air shows in the world, serving as an international marketplace and networking platform for the global aerospace community. Encompassing all civil and military sectors of the international aerospace industry, the SAS is the foremost platform for companies to showcase their products and services in the Asia-Pacific region. The 2010 SAS featured over 43,000 trade attendees from 133 countries, participation from 897 companies from 36 countries and closed with deals and announcements worth US $10 billion.

Asia Pacific is widely considered the most promising market for the aerospace industry worldwide. As a leading global aviation hub in Asia Pacific, Singapore (the U.S.' 10th largest export market in 2010) is well positioned to take advantage of growth opportunities stemming from the region's brisk international trade, tourism and investments. U.S. aerospace firms looking to establish or expand business in Singapore and other markets in this dynamic region stand to benefit from participation in the AESTM in the context of the Singapore Air Show, which is the region's largest air show.

Singapore is the 8th largest market for U.S. aerospace exports. In 2010, U.S. aerospace exports were $3.5 billion, a 37% increase from 2009 ($2.7 billion). Singapore is the regional leader in aerospace maintenance, repair and overhaul (MRO), manufacturing, and research and development. Since 1992, Singapore's aerospace industry production has grown at an average rate of 13.3%, to become the most comprehensive MRO hub in Asia.

Aerospace is one of the fastest-growing industries in Singapore, and the long-term outlook remains positive. According to Frost and Sullivan, the business research and consulting firm, the Asia Pacific aviation industry is experiencing a faster recovery than anticipated. In fact, Frost and Sullivan states that the core of aerospace MRO activity is shifting towards Asia. This has created a market climate where Asian economies are leading the pace of aviation recovery. Asia Pacific is expected to dominate about 40% (U.S. $270 billion) of the global airline revenue by 2020. The cargo business has also shown equally buoyant growth, with Asia being one of the major hubs of the air freight business. Also, the rising GDP rates across Asia and the increasing disposable income of the population will lead to higher demand from commercial passengers. Singapore is particularly well-equipped to capture the demand from aviation-related services from this market given its MRO hub status, which will translate into greater opportunities for American suppliers to sell to this lucrative market and beyond.

Mission Goals

The goal of the Aerospace Executive Service at the 2012 Singapore Air Show is to promote U.S. exports. To this end, the AESTM will facilitate an effective presence for small- and medium-sized U.S. companies by combining aspects of a trade mission, trade show presence and networking activities in one package.

The AESTM Program enables U.S. aerospace companies to familiarize themselves with this important trade fair, to conduct market research and to explore export opportunities through pre-arranged meetings with potential partners. The Aerospace Executive Service also allows U.S. companies to have a presence at the show in the form of kiosk space, providing them an enhanced image and an extended level of engagement at the show site. AESTM participants will be supported by knowledgeable Commercial Service specialists familiar with the firms' objectives and with the Asian aerospace market.

Mission Scenario

Within the U.S. Pavilion at the 2012 Singapore Air Show, the Commercial Service will maintain a 64-square-meter booth that will include 36 square meters of kiosk space for the mission participants, where they can display company literature and conduct meetings with visitors to the air show, including buyer delegations recruited by Commercial Service staff in other Pacific Rim countries under the AsiaNow program. The Commercial Service booth will also house an area for meetings with Commercial Service staff and a Business Information Office (BIO) reception area (28 square meters). Commercial Service staff and the AES coordinator will be available to provide information and assistance throughout the duration of the AESTM at the Singapore Air Show. They will also promote and refer interested parties to AESTM participants.

In summary, participation in the AESTM Program includes:

- Pre-show breakfast briefing on February 13 (U.S. Ambassador to Singapore will be invited to be the lead presenter along with industry representatives);
- Daily transportation to and from AESTM hotel and Singapore Air Show;
- Pre-scheduled meetings with potential partners, distributors, and end users recruited by the Commercial Service;

• One show entry pass per company representative;

• Participation in U.S. Exhibitors Welcome Reception;

• One invitation to the U.S. VIP reception per participant;

• Access to Official U.S. Pavilion/BIO amenities, including meeting area and shared business center when not in use for AsiaNow one-on-one appointments;

• Individual kiosk space (3.0 m^2) within the U.S. Pavilion for displaying company literature and posters and conducting meetings;

• Copy of the official 2012 Singapore Air Show Exhibitor's Directory;

• Meetings with Commercial Service aerospace and defense industry specialists from U.S. Embassies and Consulates across Asia;

• Assistance from on-site AESTM program coordinator.

Proposed Timetable

Monday, February 13	Briefing at the AESTM hotel on program and country/regional market. One-on-one business matchmaking appointments Evening reception for U.S. exhibitors.
Tuesday, February 14	Attend U.S. Pavilion opening with VIP delegates at Singapore Air Show. One-on-one meetings on the show floor and walk show floor.
Wednesday, February 13	One-on-one meetings on the show floor or participants to walk show floor. Evening U.S. VIP Reception.
Thursday, February 16–Friday, February 17.	AsiaNow Showtime Program, participants walk show floor, and any follow-up meetings. Friday afternoon AES Trade Mission debrief. Friday evening no host dinner (optional).

Participation Requirements

All parties interested in participating in the AESTM at the Singapore Air Show must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A maximum of 12 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Singapore as well as U.S. companies seeking to enter the Singaporean and other Asian markets for the first time may apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $7,400 for large firms and $6,600 for a small or medium-sized enterprise (SME).* The fee for each additional firm representative (large firm or SME) is $500. Expenses for travel to and from Singapore, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

• Each applicant's products must meet the Singapore Air Show trade fair rules, which can be found at *http://www.singaporeAirShow.com.sg/.*

Selection Criteria for Participation

Selection will be based on the following criteria:

• Suitability of the company's products or services to the market;

• Applicant's potential for business in India and in the region, including likelihood of exports resulting from the mission;

• Consistency of the applicant's goals and objectives with the stated scope of the mission;

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** and posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet Web sites, publication in domestic trade publications and association newsletters, mailings from internal mailing lists, faxes to internal aerospace clients, e-mails to aerospace distribution lists, and promotion at industry meetings, symposia, conferences, trade shows, and other events. The ITA Aerospace and Defense Technology Team members in U.S. Export Assistance Centers will have the lead in recruiting the AESTM.

Recruitment for the mission will begin immediately and conclude no later than November 28, 2011. The mission will open on a first come first served basis. Applications received after November 28, 2011, will be considered only if space and scheduling constraints permit.

Contacts

Aerospace and Defense Technology Team Contact

Stephanie Heckel, Greensboro U.S. Export Assistance Center, 342 N. Elm Street, Greensboro, NC 27402, Tel: (336) 333–5345, Fax: (336) 333–5158, E-mail: *Stephanie.Heckel@trade.gov.*

U.S. Commercial Service in Singapore

Hawcheng Ng, American Embassy, 27 Napier Road, Singapore 258508, Tel. 011–(65) 6476–9037, Fax 011–(65)

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

6476–9080, E-mail: *Hawcheng.Ng@trade.gov.*

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–22751 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding in part the administrative review of the antidumping duty order on honey from Argentina for the period of review (POR) of December 1, 2009, to November 30, 2010, with respect to ten companies. This rescission, in part, is based on the timely withdrawal of the request for review by the interested parties that requested the review. A complete list of the companies for which the administrative review is being rescinded is provided in the background section below. Additionally, the Department is extending the preliminary results of this administrative review to no later than December 1, 2011.

DATES: *Effective Date:* September 7, 2011.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7850, Washington, DC 20230; telephone (202) 482–0195, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey From Argentina,* 66 FR 63672 (December 10, 2001). On December 1, 2010, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010). In response, on December 29, 2010, Algodonera Avellaneda, S.A. (Algodonera) requested an administrative review of the antidumping duty order on honey from Argentina for the POR.

On December 30, 2010, Nexco S.A. (Nexco) also requested an administrative review of the same antidumping duty order for the POR.

On January 3, 2011, A.G.L.H. S.A., (AGLH) Compañía Inversora Platense S.A. (CIPSA), Industrial Haedo S.A. (Haedo), Mielar S.A./Compañía Apícola Argentina S.A. (Mielar), Patagonik S.A. (Patagonik), and TransHoney S.A. (TransHoney) also requested administrative reviews.

Also on January 3, 2011, the American Honey Producers Association and Sioux Honey Association (collectively, petitioners) requested an administrative review of the same antidumping duty order. Specifically, the petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 21 Argentine producers/exporters: AGLH, Algodonera, Nexco, Haedo, Mielar, CIPSA, Patagonik, and TransHoney were included in the petitioners' request for review, as well as HoneyMax S.A. (HoneyMax) and Alma Pura S.A. (Alma Pura).[1]

On January 13, 2011, petitioners withdrew their request for an antidumping duty administrative review of honey from Argentina for the POR, for ACA. Petitioners noted that ACA is no longer subject to the antidumping duty order on honey from Argentina.

On January 28, 2011, the Department initiated a review of the 20 companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011) (*Initiation Notice*).

On February 2, 2011, Alma Pura submitted a letter certifying that, during the POR, it had no shipments, sales, or U.S. entries of subject merchandise. Alma Pura requested that the Department rescind the administrative review with respect to Alma Pura.

On February 7, 2011, the Department issued a memorandum to the file indicating its intention to limit the number of respondents selected for review and to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of Argentine honey during the POR. The Department encouraged all interested parties to submit comments regarding the use of CBP entry data for respondent selection purposes. *See* Memorandum to the File through Richard Weible, Director, Office 7, AD/CVD Operations, regarding ''Honey from Argentina—United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review,'' dated February 7, 2011.

On February 24, 2011, the Department published a subsequent initiation notice which included corrections to the *Initiation Notice* with respect to honey from Argentina. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 10329 (February 24, 2011) (*Second Initiation Notice*).[2]

On March 18, 2011, the Department selected the two producers/exporters with the largest export volume during the POR as mandatory respondents: HoneyMax and Nexco. *See* Memorandum to Richard O. Weible, ''Administrative Review of the Antidumping Duty Order on Honey from Argentina: Respondent Selection Memorandum,'' dated March 18, 2011. On March 18, 2011, the Department issued its antidumping questionnaire to the two mandatory respondents.

On April 8, 2011, and pursuant to 19 CFR 351.213(d)(1), the petitioners timely withdrew their request for review of the following companies: (1) Alimentos Naturales-Natural Foods Lavalle, (2) Alma Pura, (3) Apidouro Comercial Exportadora E Importadora Ltda., (4) Bomare S.A., (5) HoneyMax, (6) Interrupcion S.A., (7) Miel Ceta SRL, (8) Nexco, (9) Productos Afer S.A., and (10) Seabird Argentina S.A.

On April 8, 2011, and pursuant to 19 CFR 351.213(d)(1), Nexco withdrew its request for review and asked that the Department rescind the review in part.

Accordingly, the Department informed interested parties of its intent to rescind the review for the ten companies for which petitioners and Nexco withdrew requests for review, and to select CIPSA and TransHoney as mandatory respondents in place of Nexco and HoneyMax. *See*

[1] In addition to the companies listed above, petitioners also requested administrative reviews for Asociacion de Cooperativas Argentinas (ACA), Alimentos Naturales-Natural Foods Lavalle, Apidouro Comerical Exportadora E Importadora Ltda., Bomare S.A., Compania Apicola Argentina S.A., El Mana S.A., Interrupcion S.A., Miel Ceta SRL, Productos Afer S.A., Seabird Argentina S.A., and Villamora S.A.

[2] In Nexco's review request, Nexco also requested revocation from the antidumping duty order on honey from Argentina (in part). However, Nexco's request for revocation in part from the order was inadvertently omitted from the *Initiation Notice.* Furthermore, certain company names were misspelled in the same *Initiation Notice.* All errors were corrected in the *Second Initiation Notice.*

Memorandum to the Richard O. Weible, ''Administrative Review of the Antidumping Duty Order on Honey from Argentina: Respondent Selection Memorandum,'' dated May 9, 2011. On May 11, 2011, the Department issued its antidumping questionnaire to CIPSA and TransHoney.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Rescission, in Part, of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Based on petitioners' and respondents' withdrawal of their requests of administrative review within the 90-day deadline, the Department is rescinding, in part, the antidumping duty administrative review on honey from Argentina for the period December 1, 2009 to November 30, 2010, with respect to the following companies: (1) Alimentos Naturales-Natural Foods Lavalle, (2) Alma Pura, (3) Apidouro Comercial Exportadora E Importadora Ltda., (4) Bomare S.A., (5) HoneyMax, (6) Interrupcion S.A., (7) Miel Ceta SRL, (8) Nexco, (9) Productos Afer S.A., and (10) Seabird Argentina S.A.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department has determined it is not practicable to complete this review within the statutory time limit due to the selection of two new mandatory respondents for this review after the requests for review for the original respondents were withdrawn. The Department requires time to analyze information submitted by the current respondents in this administrative review, and may need to request additional information. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by 90 days (*i.e.,* to December 1, 2011).

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: August 30, 2011.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–22865 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 7, 2011.

SUMMARY: The Department of Commerce (the ''Department'') has decided to extend the time limit for the preliminary results of the new shipper review (''NSR'') of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') to November 9, 2011. The period of review (''POR'') for this NSR is February 1, 2010, through January 31, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Seth Isenberg, 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) 482–4031 and (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005.[1] On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited (collectively, ''Thong Thuan''). Thong Thuan certified that it is a producer and exporter of the subject

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005).

merchandise upon which the request was based. The notice initiating the NSR was published on March 23, 2011.[2] The preliminary results are currently due no later than September 10, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214(i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214(i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including Thong Thuan's multiple production stages for subject merchandise and the need to evaluate the *bona fide* nature of Thong Thuan's sales. The Department finds that these extraordinarily complicated issues require additional time to evaluate. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the preliminary results by 60 days, until no later than November 9, 2011. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: August 31, 2011.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary of Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–22852 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 76 FR 16384 (March 23, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–899]

Artist Canvas from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 2, 2011, the Department of Commerce (''Department'') initiated the first sunset review of the antidumping duty order on artist canvas from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 24459 (May 2, 2011) (''*Sunset Initiation*''); *see also Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China,* 71 FR 31154 (June 1, 2006) (''*Order*''). On May 17, 2011, Tara Materials, Inc. (''Tara Materials''), the petitioner in the artist canvas investigation, notified the Department that it intended to participate in the sunset review. The Department did not receive a substantive response from any respondent party. Based on the notice of intent to participate and adequate response filed by the domestic interested party, and the lack of response from any respondent interested party, the Department conducted an expedited sunset review of the *Order* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the *Order* would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Review'' section of this notice, *infra.*

DATES: *Effective Date:* September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Brooke Kennedy; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–3818.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2011, the Department initiated a sunset review of the order on artist canvas pursuant to section 751(c) of the Act. *See Sunset Initiation.* On May 17, 2011, the Department received a timely notice of intent to participate in the sunset review from Tara Materials, pursuant to 19 CFR 351.218(d)(1)(i). In accordance with 19 CFR 351.218(d)(1)(ii)(A), Tara Materials claimed interested party status under section 771(9)(C) of the Act as a producer of domestic like product.

On June 1, 2011, Tara Materials filed an adequate substantive response in the sunset review, within the 30-day deadline as specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Order.*

Scope of the Order

The products covered by the order are artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.,* pre-stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by the order.

Artist canvases subject to the order are currently classifiable under subheadings 5901.90.20.00 and 5901.90.40.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically excluded from the scope of the order are tracing cloths, ''paint-by-number'' or ''paint-it-yourself'' artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a painting set or kit.[1] Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

[1] Artist canvases with a non-copyrighted preprinted outline, pattern, or design are included in the scope, whether or not included in a painting set or kit.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. See the Department's memorandum entitled, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Certain Artist Canvas from the People's Republic of China,'' dated August 31, 2011 (''I&D Memo''). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* is revoked. Parties can obtain a public copy of the I&D Memo on file in the Central Records Unit, room 7046, of the main Commerce building. In addition, a complete public copy of the I&D Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the I&D Memo are identical in content.

Final Results of Sunset Review

Pursuant to section 751(c) of the Act, the Department determines that revocation of the *Order* on artist canvas would likely lead to continuation or recurrence of dumping. The Department also determines that the dumping margins likely to prevail if the *Order* was revoked are as follows:

Exporters/producers	Weighted-average margin (percent)
Ningbo Conda/Jinhua Universal	264.09
Ningbo Conda/Wuxi Silver Eagle Cultural Goods Co. Ltd.	264.09
Conda Painting/Wuxi Pegasus Cultural Goods Co. Ltd.	264.09
Jinhua Universal/Jinhua Universal	264.09
Phoenix Materials/Phoenix Materials	77.90
Phoenix Materials/Phoenix Stationary	77.90
Phoenix Materials/Shuyang Phoenix	77.90
Phoenix Stationary/Phoenix Materials	77.90
Phoenix Stationary/Phoenix Stationary	77.90
Phoenix Stationary/Shuyang Phoenix	77.90
Jiangsu By-products/Wuxi Yinying Stationery and Sports Products Co. Ltd. Corp.	77.90
Jiangsu By-products/Su Yang Yinying Stationery and Sports Products Co. Ltd. Corp.	77.90
PRC–Wide Entity	264.09

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22864 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests for an administrative review, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube (LWR pipe and tube) from Mexico. The review covers imports of subject merchandise of two respondent companies during the period August 1, 2009, through July 31, 2010. For these preliminary results, we have found that both respondents made sales of subject merchandise at less than normal value during the period of review. In addition, we have rescinded the review with respect to two additional companies.

DATES: *Effective Date:* September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Dena Crossland (Maquilacero), Brian Davis (Regiopytsa), or Edythe Artman, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3362, (202) 482–7924, or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The period of review (POR) is August 1, 2009, through July 31, 2010.

Scope of the Order

The merchandise that is the subject of this order is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

Background

On August 5, 2008, the Department published the antidumping duty order on LWR pipe and tube from Mexico in the **Federal Register**. *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular*

Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value, 73 FR 45403 (August 5, 2008) (*Order*). On August 2, 2010, the Department published its notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 45094 (August 2, 2010), covering, *inter alia,* LWR pipe and tube from Mexico for the POR.

In response, on August 31, 2010, four companies—Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), Nacional de Acero S.A de C.V (Nacional), Maquilacero S.A. de C.V. (Maquilacero), and Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa)—requested that the Department conduct an administrative review of their own entries of subject merchandise for the POR. On September 29, 2010, the Department published a notice of initiation of the requested administrative reviews. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076 (September 29, 2010). As discussed in the section immediately below, Prolamsa and Nacional later withdrew their requests for review.

Both Maquilacero and Regiopytsa submitted responses to the Department's antidumping questionnaire and responses to subsequent requests for additional information. The petitioner filed no comments on these responses.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Prolamsa and Nacional withdrew their requests for review on October 20, 2010, and November 4, 2010, respectively; thus, they both withdrew their requests within the 90-day time limit. No other party requested reviews of Prolamsa or Nacional. Therefore, we are accepting their requests for withdrawal and have rescinded the administrative reviews of Prolamsa and Nacional.

Extension of Preliminary Results

On April 1, 2011, the Department published an extension of the time limits for the preliminary results of this review by 120 days. *See Light-Walled Rectangular Pipe and Tube from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 18155 (April 1, 2011). The extension notice established the deadline of August 31, 2011, for these preliminary results.

Affiliated Respondents

Under section 771(33)(E) of the Tariff Act of 1930, as amended (the Act), if one party owns, directly or indirectly, five percent or more of another party, such parties are considered to be affiliated for purposes of the antidumping law. Furthermore, pursuant to 19 CFR 351.403, the Department may require a respondent to report the downstream sales of its affiliated customer to the first unaffiliated customer if: (1) The respondent's sales to all affiliated customers account for five percent or more of the respondent's total sales of foreign-like product in the comparison market, and (2) those sales to the affiliated customer are determined to have not been made at arm's-length.

In the less-than-fair-value (LTFV) investigation and the immediately preceding administrative review of this order, the Department determined that, pursuant to section 771(33)(E), Maquilacero had an affiliated customer whose downstream sales should be reported to the Department. *See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico,* 73 FR 35649 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 5; *Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 55559, 55561, (September 13, 2010). In this administrative review, Maquilacero reported sales to this same affiliated reseller and we found that these sales accounted for more than five percent of its home-market sales. However, because we found that these sales were made at arm's-length during the instant period of review, we did not request that Maquilacero submit its affiliate's downstream sales.

Regiopytsa also reported sales to affiliated customers in the home market during the POR, but, because these sales constituted less than five percent of its total home-market sales during that period, we did not request that Regiopytsa submit downstream sales for its one affiliated reseller.

Fair Value Comparisons

To determine if sales of subject merchandise were made in the United States at less than fair value, we compared the export price (EP) of U.S. sales to normal value, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we compared the EP of U.S. sales within the POR to the monthly weighted-average normal value of foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Price-to-Price Comparisons'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Maquilacero and Regiopytsa, covered by the description in the ''Scope of the Order'' section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to subject merchandise sold in the United States. We relied on the following six product characteristics to identify identical subject merchandise and foreign-like product: (1) Steel input type; (2) whether the product was metallic-coated or not; (3) whether the product was painted or not; (4) product perimeter; (5) wall thickness; and (6) shape. Where there were no sales of identical merchandise in the home market to compare to subject merchandise sold in the United States, we compared these U.S. sales to home-market sales of the most-similar, foreign like product on the basis of the reported product characteristics and instructions provided in the antidumping questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales made in the home market at the same level of trade as EP or the constructed export price. The normal-value level of trade is based on the starting prices of sales in the home market or, when normal value is based on constructed value, those of the sales from which we derived selling, general, and administrative expenses and profit. *See also* 19 CFR 351.412(c)(1)(iii). For EP, the level of trade is based on the starting price, which is usually the price from the exporter to the importer. *See* 19 CFR 351.412(c)(1)(i). In this review, both Maquilacero and Regiopytsa reported only EP sales to the United States.

To determine if the home-market sales are made at a different level of trade than EP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and

the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If home-market sales are at a different level of trade, as manifested in a pattern of consistent price differences between the sales on which normal value is based and home-market sales made at the level of trade of the export transaction, and the difference affects price comparability, then we make a level-of-trade adjustment to normal value under section 773(a)(7)(A) of the Act and 19 CFR 351.412. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Maquilacero

In its responses to section A of the antidumping questionnaire and supplemental responses, Maquilacero reported one level of trade with one channel of distribution for its EP sales. Based on our analysis of the selling functions performed by Maquilacero on its sales to the United States, we determined that the sales were made at one level of trade.

For the home market, Maquilacero identified two channels of distribution in its section A response as follows: (1) Direct sales made by Maquilacero, and (2) indirect sales made by its affiliated reseller to the first unaffiliated customer. Maquilacero reported that the sales in both channels were made at one level of trade. Based on our analysis of all of Maquilacero's home-market selling functions, we found that the sales made in both channels of distribution were made at one level of trade, or the normal-value level of trade.

We then compared the selling functions performed for the sales at the normal-value level of trade to those performed for the EP level of trade. Based on this analysis, we preliminarily determined that the EP and the starting price of Maquilacero's home-market sales represented different stages in the marketing process and were thus at different levels of trade. However, because Maquilacero only sold at one level of trade in the home market, there is no basis on which to determine if there was a pattern of consistent price differences between two levels of trade in that market. Furthermore, there is no other record evidence on which to base a level-of-trade adjustment. Therefore, even though the normal-value level of trade differed from the EP level of trade, we are unable to make a level-of-trade adjustment to normal value. For further discussion, *see* the ''Level of Trade'' section in the Memorandum to the File for ''Analysis of Data Submitted by Maquilacero S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Light-Walled Rectangular Pipe and Tube from Mexico,'' dated August 31, 2011 (Maquilacero Preliminary Analysis Memo).

Regiopytsa

In its initial and supplemental responses to section A, Regiopytsa reported one channel of distribution for its home-market sales made to two classes of customers (*i.e.,* distributors and end-users). For all sales made through the affiliated reseller in the home market, Regiopytsa reported that the merchandise was resold to unaffiliated customers. Regiopytsa reported a single level of trade in the home market in its section A response. Based on our analysis of all of Regiopytsa's home-market selling functions, we preliminary found that the selling functions for the reported channel of distribution constituted one level of trade in the home market, or the normal-value level of trade.

In the U.S. market, Regiopytsa reported one level of trade for which there was one channel of distribution to two classes of customers (*i.e.,* distributors and steel service centers). Based on our analysis of Regiopytsa's selling functions for its EP sales to the United States, we determined that there was one level of trade for its U.S. sales.

Next, we compared the selling functions associated with the sales at the normal-value level of trade to those associated with the EP level of trade and, based on our analysis of record evidence, we preliminarily found that the degree to which Regiopytsa provided the selling functions for its customers in the home market was greater than the degree to which it provided selling functions in the U.S. market. Although both markets had many similar selling functions, Regiopytsa provided certain selling functions in the home market that it did not provide in the U.S. market (*e.g.,* advertising, providing cash discounts, commissions to selling agents, and post-sale warehousing). But, as with Maquilacero, we were unable to calculate a level-of-trade adjustment because there was only one level of trade in Regiopytsa's home market. Therefore, for these preliminary results, we matched the EP sales to home-market sales without making a level-of-trade adjustment to normal value. *See* section 773(a)(7)(A) of the Act. For a more detailed explanation of our level-of-trade analysis, *see* the ''Level of Trade'' section in the Memorandum to the File for ''Analysis of Data Submitted by Regiomontana de Perfiles y Tubos S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Light-Walled Rectangular Pipe and Tube from Mexico,'' dated August 31, 2011 (Regiopytsa Preliminary Analysis Memo).

Date of Sale

The Department will normally use invoice date, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if it better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i).

For Maquilacero and Regiopytsa, we found that the invoice date best reflected the date on which material terms of sales were established with one exception. With respect to its home-market sales, Regiopytsa explained that certain sales involved ''special invoicing.'' Based on our analysis of these sales, we determined that the material terms of sale were in fact subject to change up until the time that the merchandise was released for shipment, which occurred after the invoice date. Thus, for these preliminary results, the Department found shipment date to be the most appropriate date of sale for the special-invoicing sales. *See* the ''Date of Sale'' section of Regiopytsa Preliminary Analysis Memo for the full analysis of this issue.

Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).''

For purposes of these preliminary results, we calculated EP for Maquilacero and Regiopytsa, in accordance with section 772(a) of the Act, because the merchandise was sold, prior to importation by the producer, outside of the United States to the first unaffiliated purchaser in the United States. For each company, we calculated EP based on the packed price that was charged to the first unaffiliated U.S. customer. We made deductions for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act, including deductions for foreign inland freight (plant/warehouse to the border), U.S. inland freight

(warehouse to the unaffiliated customer), country of manufacture inland insurance, and brokerage and handling. We also made adjustments, where appropriate, for imputed credit, certain direct selling expenses (including commissions), and billing adjustments.

Normal Value

A. Selection of Home Market

To determine whether there was a sufficient volume of sales of LWR pipe and tube in the home market during the period of review to serve as a viable basis for calculating normal value, we compared Maquilacero and Regiopytsa's volume of home-market sales of the foreign like product to the volume of each company's respective U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because both Maquilacero and Regiopytsa's aggregate volume of home-market sales of the foreign like product was greater than five percent of their aggregate volume of U.S. sales for subject merchandise, we determined that the home market was viable for comparison purposes for both companies, pursuant to section 773(a)(1)(B) of the Act.

B. Affiliated Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* section 773(f)(2) of the Act; *see also* 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice, ''the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's-length.'' *See China Steel Corp.* v. *United States,* 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's-length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69194 (November 15, 2002). Based on this analysis, Maquilacero's sales through its affiliated reseller were made at arm's length but those made by Regiopytsa to its affiliated customers (including its affiliated reseller) were not. Therefore, in our margin calculations, we included Maquilacero's sales to its affiliate but excluded Regiopytsa's sales to its affiliated customers.

C. Cost of Production Analysis

In the LTFV investigation of this proceeding, the Department disregarded sales made by Maquilacero that were found to be below its cost of production (COP). *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico,* 73 FR 5515, 5521 (January 30, 2008), unchanged in the final results, *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico,* 73 FR 35649 (June 24, 2008). Therefore, as below-cost sales made by Maquilacero were disregarded in the most recently completed segment of the proceeding, there were reasonable grounds to believe or suspect that this respondent had made sales of the foreign like product in the home market at prices below the COP, pursuant to section 773(b)(2)(A)(ii) of the Act. Consequently, on October 26, 2010, we requested that Maquilacero respond to section D of the Department's antidumping questionnaire.

Based on the review of the COP information provided by Maquilacero in its response, the company did not appear to experience significant changes in its cost of manufacturing (COM) during the POR. Therefore, we followed our normal methodology of calculating a POR, weighted average cost for each product. We relied on the COP information provided by Maquilacero except we made an upward adjustment to Maquilacero's labor costs to reflect the purchase of labor services from an affiliate during the POR. Because the record did not provide market prices for these services, we were unable to compare the transfer price of the services to a market price under section 773(f)(2) of the Act. Thus, we based our adjustment to labor costs on an analysis of the transfer price to the COP of the affiliate. Furthermore, because we are making the adjustment to the labor portion of COM, we excluded the affiliate's operating loss from Maquilacero's reported general and administrative expenses. For further details regarding this adjustment for Maquilacero, *see* the Memorandum to Neal M. Halper, Director, Office of Accounting from Ji Young Oh, Senior Accountant, regarding the ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Maquilacero S.A. de C.V.,'' dated August 31, 2011.

On a product-specific basis, we compared the adjusted weighted average COP figures to the home-market sales of the foreign like product in order to determine if these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges, packing expenses, warranty expenses, or indirect selling expenses. In determining whether to disregard home-market sales made at prices below their COP, we examined if such sales were made within an extended period of time, in substantial quantities, and at prices which permitted the recovery of all costs within a reasonable period of time.

We found that, for certain products, more than 20 percent of the home-market sales were made at prices below the COP and that these below-cost sales were made within an extended period of time and in substantial quantities. In addition, the sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales, and used only the remaining sales of the same product as the basis for determining normal value.

D. Price-to-Price Comparisons

We calculated normal value based on prices to unaffiliated customers and those to affiliated customers that passed the arm's-length test.[1] In the case of Maquilacero, normal value was also based on home-market sales that passed the cost test. In our calculation of normal value, we accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where applicable, for inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (COS), in accordance with section 773(a)(6)(C)(iii) of the Act. In particular, we made COS adjustments for home-market direct selling expenses, such as imputed credit expenses and warranty expenses, and certain U.S. direct selling expenses, including commissions and warranty

[1] We excluded home market sales of secondary merchandise, for which neither Maquilacero nor Regiopytsa could provide complete product characteristic information and which both companies reported to be heavily discounted lot sales (*i.e.,* sales of assorted merchandise), from our margin calculation analysis. For a more detailed discussion of these sales, *see* Maquilacero Preliminary Analysis Memo at 5–6 and Regiopytsa Preliminary Analysis Memo at 2.

expenses. For Maquilacero, we calculated home-market and U.S. warranty expenses based on a three-year company history of such expenses. For Regiopytsa, the company was unable to provide a three-year history of warranty expenses, so we based the calculation of the expenses on those incurred by Regiopytsa during the POR. Finally, we deducted home-market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

For more detailed information on the calculation of normal value, *see* Maquilacero Preliminary Analysis Memo at 10 and Regiopytsa Preliminary Analysis Memo at 7.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 47049, 47055 (August 7, 2003), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 69379 (December 12, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Mexican peso. Therefore, pursuant to section 773A(a) of the Act, we made currency conversions from Mexican pesos to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones and Reuters Retrieval Service. Because Factiva only publishes exchange rates for Monday through Friday, we used the rate of exchange on the most recent Friday for conversion of dates involving a Saturday or Sunday. *See* Import Administration Web site at: *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins exist for the period August 1, 2009, through July 31, 2010:

Manufacturer/Exporter	Weighted-average margin (percent)
Maquilacero S.A. de C.V.	0.80
Regiomontana de Perfiles y Tubos S.A. de C.V.	4.57

Disclosure and Public Comments

The Department will disclose the calculations we used in our analysis to parties to this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette.

Parties are reminded that any case or rebuttal briefs must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), in compliance with the procedures set forth in *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

The Department intends to issue the final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of the date of publication of this notice.

Duty Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review to the total customs value of the sales used to calculate those duties. Where the duty assessment rates are above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer in accordance with the requirements set forth in 19 CFR 351.106(c)(2).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR that were produced by the companies included in these preliminary results of review and for which the reviewed companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of this review.

Cash Deposit Requirements

The following cash-deposit requirements will be effective, upon completion of the final results of this administrative review, for all shipments of LWR pipe and tube from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the companies covered by this review (*i.e.,* Maquilacero and Regiopytsa) will be the rates established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), in which case the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the prior review, or the LTFV investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash-deposit rate will be the all-others rate of 3.76 percent, the all-others rate established in the LTFV investigation. *See Order* at 73 FR 45405. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22861 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC). The period of review (POR) is August 1, 2009 through July 31, 2010. We have preliminarily determined that respondent Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde) has made sales to the United States of the subject merchandise at prices below normal value (NV). We invite interested parties to comment on these preliminary results. Parties filing comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

DATES: *Effective Date:* September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding ironing tables from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China,* 69 FR 47868 (August 6, 2004) (*Amended Final and Order*).

On August 2, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on, *inter alia,* ironing tables from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 45094 (August 2, 2010). On August 31, 2010, Home Products International (the Petitioner in this proceeding) and Foshan Shunde requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of this order for Foshan Shunde.

On September 29, 2010, the Department initiated an administrative review of Foshan Shunde. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076 (September 29, 2010).

On May 4, 2011, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until August 31, 2011. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Administrative Review,* 76 FR 25301 (May 4, 2011).

The Department issued its original antidumping questionnaire to Foshan Shunde on October 4, 2010. Foshan Shunde timely filed its response to Section A of the questionnaire on November 12, 2010; Foshan Shunde's Sections C and D responses followed on November 19, 2010 and November 30, 2010 respectively. Petitioner filed comments on Foshan Shunde's sections A, C and D responses on January 12, 2011, May 17, 2011, July 28, 2011 and July 8, 2011.

The Department issued supplementary questionnaires to Foshan Shunde on March 30, 2011, June 2, 2011, and July 13, 2011. Foshan Shunde timely responded to each of these supplemental requests for information on May 2, 2011, June 23, 2011, and July 29, 2011.

Surrogate Country and Surrogate Value Data

On July 8, 2011 the Department issued a memorandum on surrogate country selection and surrogate value (SV) data. *See* Memorandum from Carole Showers, Director Office of Policy to Richard Weible, Director Office 7, Re: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Floor-Standing, Metal-Top, Ironing Tables and Parts Thereof from the People's Republic of China (''PRC''): Surrogate Country List, dated June 8, 2011 (Surrogate Country List). On June 10, 2011 the Department distributed the Surrogate Country List Memorandum to interested parties via e-mail. On July 8, 2011, the Petitioner submitted information to value factors of production (FOP) from Indonesia. *See* Petitioner July 8, 2011 letter. On July 22, 2011, Foshan Shunde submitted suggested FOPs from India. *See* Foshan Shunde July 22, 2011, letter. For the reasons explained *infra,* the Department has determined that Indonesia is an appropriate surrogate country for purposes of this review. Accordingly, all the surrogate values used to value FOPs were obtained from sources in Indonesia.

Scope of the Order

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the

attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.,* iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board''—*i.e.,* a metal-top table only, without the pad and cover—with or without additional features, *e.g.,* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8041. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

Non-Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME). 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. *See, e.g., Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this administrative review has contested such treatment or provided such information that would overturn that designation. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined the Philippines, Indonesia, Ukraine, Thailand, Colombia and South Africa are countries comparable to the PRC in economic development. (*See* Surrogate Country List).

Based on publicly available information placed on the record by interested parties (*e.g.,* production data), the Department determines Indonesia to be a reliable source for surrogate values. Indonesia is at a comparable level of economic development pursuant to section 773(c)(4) of the Act. *Id.* Moreover, Indonesia is a significant producer of the subject merchandise. *See* Petitioner July 8, 2011, submission at Exhibit 1. Additionally, Indonesia has publicly available and reliable data. *See* Memorandum to the File through Robert James, Program Manager Office 7 from Michael J. Heaney International Trade Analyst: Antidumping Duty Administrative Review of Floor-Standing, Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated August 31, 2011 (Factors Valuation Memorandum). Accordingly because Indonesia meets all of the Department's criteria for selection as a surrogate country, the Department has selected Indonesia for purposes of valuing FOP surrogate values.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned 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. *See* Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at *http://ia.ita.gov/policy/bull05-1.pdf* (Policy Bulletin O5:1). Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 at Comment 1 (May 6, 1991) (*Sparklers*). This concept was 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) (*Silicon Carbide*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is unnecessary to determine whether it is independent from government control. *See* Policy Bulletin 05:1 at 5.

Accordingly, we have considered whether Foshan Shunde is independent from government control, and therefore eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754, 61758 (November 19, 1997); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

Foshan Shunde provided complete separate-rate information in its response to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether Foshan Shunde is independent from government control.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining

whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR 20588 at Comment 1. The evidence provided by Foshan Shunde supports a preliminary finding of *de jure* absence of control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures (*e.g.,* the *Foreign Trade Law*) decentralizing control of companies. *See, e.g.,* Foshan Shunde November 12, 2010, Section A questionnaire response at pages at A–4–A–5.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR 22857*; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence provided by Foshan Shunde supports a preliminary finding of *de facto* absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency; (2) the respondent has authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from government in making decisions regarding the selection of management; and (4) the respondent retains the proceeds of its export sales and make independent decisions regarding disposition of profits or financing of losses. *See* Foshan Shunde November 12, 2010, Section A questionnaire response at A–7 through A–9.

In accordance with the criteria identified in *Sparklers* and *Silicon Carbide,* the evidence placed on the record of this review by Foshan Shunde demonstrates an absence of *de jure* and *de facto* government control with respect to Foshan Shunde's exports of the subject merchandise. Accordingly, we have determined that Foshan Shunde has demonstrated eligibility for a separate rate.

Fair Value Comparisons

To determine whether the respondent's sales of the subject merchandise to the United States were made at prices below NV, we compared its United States prices to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice. *See* section 773(a) of the Act.

U.S. Price

Export Price

We based U.S. price for Foshan Shunde on export price (EP) in accordance with section 772(a) of the Act because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight, and foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. Where appropriate, we made an addition to U.S. price for billing adjustments.

Foshan Shunde incurred foreign inland freight and foreign brokerage and handling expenses from PRC service providers. We therefore valued these services using Indonesian surrogate values (*see* ''Factors of Production'' section below for further discussion).

Normal Value

Factors of Production (FOPs)

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaires required Foshan Shunde to provide information regarding its weighted-average FOP.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc.* v. *United States,* 268 F. 3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value FOPs). During the POR, Foshan Shunde reported that it purchased a certain production material from a market economy supplier. *See* Foshan Shunde November 30, 2010, Section D response at Exhibit D–2 (because of the proprietary nature of this information, we do not summarize it here). Foshan Shunde further claimed that it purchased more than 33 percent of its total volume of this particular input from a market economy supplier. However, in response to our requests for further information concerning this input, Foshan Shunde was unable to establish that the production input was indeed of market economy origin. Accordingly, we used the Indonesian surrogate value of the input to value this FOP. *See* August 31, 2011, Memorandum from Michael Heaney to the File: ''Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde) Analysis Memorandum for the Preliminary Results'' (Preliminary Analysis Memorandum) at pages 3–4.

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw material employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by Foshan Shunde for materials, energy, by-products, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available values in the surrogate country, Indonesia. As

explained *infra,* to value labor, we used the industry specific labor rate for schedule 28 release 5B for Indonesia.

Foshan Shunde reported by-product sales. Consistent with the Department's determination in the investigation of *Diamond Sawblades from the PRC,* we will deduct the surrogate value of by-products sold from NV because the surrogate financial statements on the record of this administrative review contain no references to the treatment of by-products and because Foshan Shunde provided evidence to demonstrate sales of their by-products. *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006) (*Diamond Sawblades from the PRC*), and accompanying Issues and Decision Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 35864 (June 22, 2006). This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit. *Id.*

In selecting the surrogate Indonesian values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our normal practice. *See, e.g., Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory, or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value Foshan Shunde's FOPs may be found in the Memorandum to the File through Robert James, Program Manager Office 7 from Michael J. Heaney International Trade Analyst: Antidumping Duty Administrative Review of Floor-Standing, Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated August 31, 2011 (Factors Valuation Memorandum).

The Department used Indonesian import data from the Global Trade Atlas (GTA) published by Global Trade Information Services, Inc., which is sourced from the *Buku Tarif Bea Masuk Indonesia* (BTBMI) to determine the surrogate values for most raw materials, by-products and packing material inputs. With regard to the Indonesian-based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those imports from India, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Frontseating Service Valves from the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination,* 73 FR 62952, 62597 (October 22, 2008), unchanged in *Frontseating Service Valves from the People's Republic of China; Final Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009); and *China National Machinery Import & Export Corporation* v. *United States,* 293 F. Supp. 2d 1334, 1339 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004). We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No 100–S–76* at 590 (1988) which stipulates that the Department will ''avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.'' Rather, the Department bases its decisions on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries in calculating the Indonesian import-based surrogate values. Additionally, we disregarded prices from NME countries. These countries include Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, China, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the averaging value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the BTBMI, in the GTA, available at *http://www.gtis.com/gta.* All surrogate values used from the GTA are available on the record of this proceeding and are listed in the Factors Valuation Memorandum. Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indonesian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund. *See* Factors Valuation Memorandum at Attachment 1. We further adjusted these prices to account for freight expenses incurred between the input supplier and the respondent. For business proprietary factors, valuation descriptions are described in the Factors Valuation Memorandum.

The Department valued electricity using electricity price data for Indonesia specified in the World's Bank's *2003 Electricity for All: Options for Increasing Access in Indonesia,* issued in 2003 (*Electricity for All*). Petitioner has placed a copy of *Electricity for All* on the record of this proceeding. *See* Petitioner's July 8, 2011, Surrogate Value Comments at Exhibit 3. The electricity rates reported represent actual, country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in Indonesia. To represent current electricity rates during the POR, we used the Indonesian Wholesale Price Index to inflate these values to POR price levels. *See* Factors Valuation Memorandum at page 5.

The Department valued water using data collected by the United Nations in 2006. *See Human Development Report: Disconnected Poverty: Water Supply and Development in Jakarta, Indonesia* (*Water Supply and Development*). Petitioner has placed a copy of *Water Supply and Development* on the record of this proceeding. *See* Petitioner's July 8, 2011, Surrogate Value Comments at Exhibit 6. We based the value for water on the 2005 value listed for large hotels, high-rise buildings, banks, and factories. To represent current water rates during the POR, we used the Indonesian Wholesale Price Index to inflate these values to POR price levels. *See* Factors Valuation Memorandum at page 5.

To calculate the labor input, we based our calculation on the methodology

which the Department enunciated on June 21, 2011 in *Antidumping Methodologies in Proceedings Involving Non-Market Economies Valuing the Factor of Production: Labor* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). Prior to 2010, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). On May 3, 2010, the Federal Circuit, in *Dorbest Ltd.,* v. *United States,* 604 F. 3d 1363, 1372 (Fed Cir. 2010) (*Dorbest*), invalidated part of that regulation. As a consequence of the Federal Circuit's ruling in *Dorbest,* the Department no longer relies on the regression-based methodology described in 19 CFR 351.408(c)(3).

In *Labor Methodologies,* the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. *See Labor Methodologies* at 76 FR at 36093. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) *Yearbook of Labor Statistics* (*Yearbook*). *See Labor Methodologies* at 76 FR at 36093–36094.

There are no Chapter 6A labor data available in this proceeding from Indonesia. Therefore, in these *Preliminary Results,* the Department has calculated the labor input using Indonesian Chapter 5B data which reflects direct compensation and bonuses. The Department finds that because Chapter 6A data are unavailable, it is preferable to use Chapter 5B data from Indonesia to remain consistent with the other data sources that we are relying on from the primary surrogate country. Also, the Department further finds the two digit description under ISIC–Revision 3 (Manufacture of Fabricated Metal Products, except Machinery and Equipment) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. This is the same classification used in the prior review of this case when the Department also relied on Chapter 5B data under the Department's interim labor rate methodology. *See Antidumping Methodologies in Proceedings Involving Non Market Economies Valuing the Factor of Production: Labor* 76 FR 9544 (February 18, 2011). Accordingly, relying on Chapter 5B of the *Yearbook,* we calculated the labor data reported by Indonesia to the ILO to the Department under Sub-classification 28 of the ISIC–Revision 3 standard, in accordance with section 773(c)(4) of the Act. For these *Preliminary Results,* the calculated industry-specific wage rate is $0.5347 per hour. Because these data reflect direct compensation and bonuses and none of the indirect costs reflected in Chapter 6A data, we find that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements. *See Labor Methodologies* at 76 FR at 36094. A more detailed description of the wage rate calculation methodology is provided in the Factors Valuation Memorandum.

The Department valued truck freight expenses using a per-unit average rate calculated from a 2001 study *Cost of Investing and Doing Business in ASEAN* (*ASEAN Study*). We used the Indonesian Wholesale Price Index to inflate these values to POR levels. The *ASEAN Study* is attached at Attachment 7 of the Factors Valuation Memorandum.

The Department valued brokerage and handling using the values published in *Doing Business 2010: Indonesia* by the World Bank. Petitioner has placed a copy of *Doing Business 2010: Indonesia* on the record of this proceeding. *See* Petitioner July 8, 2011, Surrogate Value Comments at Exhibit 10.

To value factory overhead, selling, general and administrative (SG&A) expenses, and profit the Department used the audited 2009 financial statements of PT Lion Metal Works Tbk (PT Lion). PT Lion is an Indonesian producer of Indonesian fabricated metal products which we find comparable to the subject merchandise. Petitioner placed upon the record of this proceeding, product brochures which describe the merchandise produced by PT Lion. *See* Petitioner July 8, 2011, letter at Exhibit 7. Many of the products produced by PT Lion are products which like the subject merchandise involve the fabrication of metal. Petitioner has placed a copy of the 2009 Financial Statements of PT Lion on the record of this proceeding. (*See* Petitioner July 8, 2011 Surrogate Value Comments at Exhibit 8).

We are preliminarily granting a by-product offset to Foshan Shunde for scrap steel sales. *See* Preliminary Analysis Memorandum at page 3.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773(A) of the Act, based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Board.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Exporter	Margin (percent)
Foshan Shunde Yongjian Housewares & Hardware Co., Ltd	63.09

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific *ad valorem* assessment rates for ironing tables from the PRC based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this 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 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 157.68 percent (*see Amended Final and Order*); 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 publication of the final results of the next administrative review.

Public Comment

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first workday thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary 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 these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–22856 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Customer Surveys

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 7, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sarah Brabson, (301) 628–5751 or *Sarah.Brabson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved generic information collection.

This collection follows the guidelines contained in the OMB Resource Manual for Customer Surveys. In accordance with Executive Order 12862, the National Performance Review, and good management practices, NOAA offices seek approval to continue to gather customer feedback on services and/or products, which can be used in planning for service/product modification and prioritization. Under this generic clearance, individual offices would use approved questionnaires and develop new questionnaires, as needed, by selecting subsets of the approved set of collection questions and tailoring those specific questions to be meaningful for their particular programs. These proposed questionnaires would then be submitted to OMB using a fast-track request for approval process, for which separate **Federal Register** notices are not required. Surveys currently being conducted include Web site satisfaction surveys, a Chart Users survey, and a Coastal Services Center Training Evaluation.

The generic clearance will not be used to survey any bodies NOAA regulates unless precautions are taken to ensure that the respondents believe that they are not under any risk for not responding or for the contents of their responses; e.g., in no survey to such a population will the names and addresses of respondents be required.

II. Method of Collection

Surveys are conducted by mail or via a Web site.

III. Data

OMB Control Number: 0648–0342.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households; non-profit institutions; state, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 483,000.

Estimated Time per Response: 7 minutes.

Estimated Total Burden Hours: 57,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 1, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–22851 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Seafood Inspection and Certification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 7, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James Appel, (301) 427–8310 or *James.Appel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) imposed prohibitions against the taking of endangered species. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders. The regulations contain two sets of information collections: (1) Applications for research/enhancement permits, and (2) reporting requirements for permits issued.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. To issue permits under ESA Section 10(a)(1)(A), the National Marine Fisheries Service (NMFS) must determine that (1) Such exceptions were applied for in good faith, (2) if granted and exercised, will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in Section 2 of the ESA.

The currently approved application and reporting requirements are being revised to apply only to Pacific salmon and steelhead, as requirements regarding other species are being addressed in a separate information collection. Clarification of some of the instructions will also be provided, based on previous applicants' responses and submitted applications and reports.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms, as well as some information by telephone.

III. Data

OMB Control Number: 0648–0266.

Form Number: 89–800, 89–814, 89–819.

Type of Review: Regular submission (revision and extension of a currently approved collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 1,435.

Estimated Time per Response: Contract requests, 15 minutes; label approvals, 15 minutes; and inspection requests, 30 minutes.

Estimated Total Annual Burden Hours: 7,698.

Estimated Total Annual Cost to Public: $5,000 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 1, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–22850 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA682

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT)

will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Monday, October 3, 2011 from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, October 4 through Friday, October 7 from 8:30 a.m. until business for each day has been completed.

ADDRESSES: The meeting will be held at the National Oceanic and Atmospheric Administration Western Regional Center's Sand Point Facility, Building 9 Rooms A and B, 7600 Sand Point Way NE., Seattle, WA 98115–6349; *telephone:* (206) 526–6150.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Staff Officer, Pacific Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to develop recommendations for 2013–14 groundfish harvest specifications and management measures and consider inseason adjustments to 2011–12 groundfish fisheries. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's task will be to develop recommendations for consideration by the Council at its November meeting in Costa Mesa, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT 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 GMT'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. Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Dated: August 31, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–22741 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110614333–1503–02]

Request for Information: Technical Inputs and Assessment Capacity Related to Regional, Sectoral, and Cross-Cutting Assessments for the 2013 U.S. National Climate Assessment (NCA) Report and the Ongoing NCA Process

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Request for information.

SUMMARY: This notice is an amendment to the request for information (RFI) published in the **Federal Register** on Wednesday, July 13, 2011 (76 FR 41217). This RFI sought comments and expressions of interest (EOI) from the public in providing technical inputs and/or offering assessment capacity on topics related to National Climate Assessment (NCA) regional, sectoral, and cross-cutting topics proposed for the 2013 NCA report and the ongoing NCA process. More information on the NCA process, including the strategic plan, proposed report outline, and information about the National Climate Assessment Development and Advisory Committee (NCADAC), can be found at *http://assessment.globalchange.gov.* This amendment provides a deadline of October 1, 2011 for EOIs describing anticipated inputs for the 2012 NCA report.

DATES: The deadline for EOIs describing anticipated inputs for the 2013 NCA report is October 1, 2011. As described in the RFI, the deadline for subsequent inputs for the 2013 NCA report remains March 1, 2012.

A full draft of the NCA report is anticipated by mid-2012, so that scientific and subject-matter experts and the broader public will have sufficient time to review the draft and provide comments to the NCADAC on its content. A full year is planned to review and revise the report, with a planned release of the final report in mid-2013. For complete instructions and supplementary information please see the original **Federal Register** Notice of a Request for Information at 76 FR 41217 (July 13, 2011), or the United States Global Change Research Program at *http://assessment.globalchange.gov.*

ADDRESSES: General comments and expressions of interest should be submitted via email to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, at *ecloyd@usgcrp.gov.*

FOR FURTHER INFORMATION CONTACT: Any questions about the content of this request should be sent to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, U.S. Global Change Research Program Office, 1717 Pennsylvania Ave., NW., Suite 250, Washington, DC 20006, Telephone (202) 223–6262, Fax (202) 223–3065, e-mail *ecloyd@usgcrp.gov.* For more information about the NCA process, including the strategic plan, proposed report outline, and information about the NCADAC, please visit *http://assessment.globalchange.gov.*

Dated: August 31, 2011

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–22743 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 7, 2011.

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

- *E-mail: InformationCollection@uspto.gov.* Include ''0651–0016 comment'' in the subject line of the message.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

• *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by e-mail to *Raul.Tamayo@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(i) and 1.362–1.378, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is due at 3½,

7½, and 11½ years after the date the patent was granted. If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable. Maintenance fees are not required for design or plant patents, or for reissue patents if the patent being reissued did not require maintenance fees.

Payments of maintenance fees that are submitted during the six-month grace period before patent expiration must include the appropriate surcharge as indicated by 37 CFR 1.20(h). Submissions of maintenance fee payments and surcharges must include the relevant patent number and the corresponding United States application number in order to identify the correct patent and ensure proper crediting of the fee being paid.

If the USPTO refuses to accept and record a maintenance fee payment that was submitted prior to the expiration of a patent, the patentee may petition the Director to accept and record the maintenance fee under 37 CFR 1.377. This petition must be accompanied by the fee indicated in 37 CFR 1.17(g), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the Director to accept a delayed payment of the maintenance fee under 37 CFR 1.378. The Director may accept the payment of a maintenance fee after the expiration of the patent if the petitioner shows to the satisfaction of the Director that the delay in payment was unavoidable or unintentional. Petitions to accept unavoidably or unintentionally delayed payment must also be accompanied by the required maintenance fee and appropriate surcharge under 37 CFR 1.20(i). If the Director accepts the maintenance fee payment upon petition, then the patent is reinstated. If the USPTO denies a petition to accept delayed payment of a maintenance fee in an expired patent, the patentee may petition the Director to reconsider that decision under 37 CFR 1.378(e). This petition must be accompanied by the fee indicated in 37 CFR 1.17(f), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

The rules of practice (37 CFR 1.33(d) and 1.363) permit applicants, patentees, assignees, or their representatives of record to specify a ''fee address'' for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. A fee address must be an address that is associated with a USPTO customer number. Customer numbers may be requested by using the Request for Customer Number form (PTO/SB/125), which is covered under OMB control number 0651–0035. Maintaining a correct and updated address is necessary so that fee-related correspondence from the USPTO will be properly received by the applicant, patentee, assignee, or authorized representative. If a separate fee address is not specified for a patent or application, the USPTO will direct fee-related correspondence to the correspondence address of record.

The USPTO offers forms to assist the public with providing the information covered by this collection, including the information necessary to submit a patent maintenance fee payment (PTO/SB/45), to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment in an expired patent (PTO/SB/65 and PTO/SB/66), and to designate or change a fee address (PTO/SB/47). No forms are provided for the petitions under 37 CFR 1.377 and 1.378(e).

Customers may submit maintenance fee payments and surcharges incurred during the six-month grace period before patent expiration by using the Maintenance Fee Transmittal Form (PTO/SB/45) or by paying online through the USPTO Web site. However, to pay a maintenance fee after patent expiration, the maintenance fee payment and the appropriate surcharge must be filed together with a petition to accept unavoidably or unintentionally delayed payment. The USPTO accepts online maintenance fee payments by credit card, deposit account, or electronic funds transfer (EFT). Otherwise, non-electronic payments may be made by check, credit card, or deposit account.

Customers may submit the other forms and petitions in this collection electronically through EFS-Web, the USPTO's online filing system. The USPTO also offers a special EFS-Web version of Form PTO/SB/66, which is used for the automatic processing and immediate rendering of a decision on a petition to accept an unintentionally delayed maintenance fee payment.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651–0016.

Form Number(s): PTO/SB/45/47/65/66.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 573,161 responses per year. The USPTO estimates that approximately 21% of these responses will be from small entities.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to 8 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 43,605 hours.

Estimated Total Annual Respondent Cost Burden: $6,658,984. The USPTO expects that the petitions included in this collection will be prepared by attorneys and that the other items in this collection will be prepared by paraprofessionals. Using the professional rate of $340 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the petitions will be $2,088,620 per year. Using the paraprofessional rate of $122 per hour, the USPTO estimates that the

respondent cost burden for submitting the other items in this collection will be $4,570,364 per year, for a total annual respondent cost burden of $6,658,984.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Maintenance Fee Transmittal Transactions (PTO/SB/45)	5 minutes	255,414	20,433
Electronic Maintenance Fee Transactions	20 seconds	109,543	657
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65)	8 hours	172	1,376
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66)	1 hour	2,351	2,351
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66)—EFS–Web	1 hour	800	800
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	4 hours	54	216
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	8 hours	175	1,400
"Fee Address" Indication Form (PTO/SB/47)	5 minutes	204,652	16,372
Totals	.....	573,161	43,605

Estimated Total Annual Non-hour Respondent Cost Burden: $688,304,405. This information collection has annual (non-hour) cost burden in the form of fees and postage costs.

This collection has fees in the form of patent maintenance fees, surcharges for late payment of maintenance fees, and petition fees. Under 37 CFR 1.20(e)–(g), the patent maintenance fees due at 3½ years, 7½ years, and 11½ years after the date of grant are $980, $2,480, and $4,110 respectively (discounted to $490, $1,240, and $2,055 for small entities). The surcharge under 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the above intervals is $130 ($65 for small entities). The surcharge under 37 CFR 1.20(i) for a petition to accept a maintenance fee after the six-month grace period for these intervals has expired is $700 where the delayed payment is shown to be unavoidable and $1,640 where the delayed payment is shown to be unintentional. The fee listed in 37 CFR 1.17(g) for a petition to review the refusal to accept the payment of a maintenance fee filed prior to the expiration of a patent is $200. The fee listed in 37 CFR 1.17(f) for a petition for reconsideration of the decision on a petition refusing to accept the delayed payment of a maintenance fee in an expired patent is $400. The USPTO estimates that the total fees associated with this collection will be $688,155,520 per year as calculated in the accompanying table.

Fee or surcharge	Estimated annual responses	Amount of fee or surcharge	Estimated annual filing costs
Patent maintenance fee at 3 ½ years	122,083	$980.00	$119,641,340.00
Patent maintenance fee at 3 ½ years (small entity)	30,959	490.00	15,169,910.00
Patent maintenance fee at 7 ½ years	98,216	2,480.00	243,575,680.00
Patent maintenance fee at 7 ½ years (small entity)	22,220	1,240.00	27,552,800.00
Patent maintenance fee at 11 ½ years	60,820	4,110.00	249,970,200.00
Patent maintenance fee at 11 ½ years (small entity)	12,237	2,055.00	25,147,035.00
Surcharge for paying maintenance fee during the six-month grace period	8,189	130.00	1,064,570.00
Surcharge for paying maintenance fee during the six-month grace period (small entity)	10,233	65.00	665,145.00
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65)	172	700.00	120,400.00
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66)	3,151	1,640.00	5,167,640.00
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	54	200.00	10,800.00
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	175	400.00	70,000.00
"Fee Address" Indication Form (PTO/SB/47)	204,652	0.00	0.00
Totals	573,161	.....	688,155,520.00

The public may submit the forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 44 cents and that approximately 338,376 submissions per year may be mailed to the USPTO, for a total postage cost of $148,885 per year.

The total (non-hour) respondent cost burden for this collection in the form of fees and postage costs is estimated to be $688,304,405 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 1, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–22792 Filed 9–6–11; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning application instructions designed to be used for grant competitions which the Corporation sponsors from time to time. These competitions are designed and conducted, when appropriations are available, to address the Corporation's strategic initiatives or other priorities. Applicants will respond to the questions included in these instructions in order to apply for funding in these Corporation competitions.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 7, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC 20525.

(2) *By hand delivery or by courier to:* the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) *Electronically through http://www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected 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 submissions of responses).

Background

These application instructions will be used by applicants for funding through Corporation competitions focusing on strategic initiatives or other priorities. The application is completed electronically using eGrants, the Corporation's web-based grants management system, or submitted via e-mail. This information collection instructs applicants to complete a three part narrative which includes program design, organizational capability, and budget.

Current Action

The Corporation seeks to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 11/30/2011.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: CNCS Application Instructions.

OMB Number: 3045–0129.

Agency Number: None.

Affected Public: Current/prospective recipients of Corporation funding.

Total Respondents: 600.

Frequency: Depending on the availability of appropriations.

Average Time per Response: Averages 8 hours.

Estimated Total Burden Hours: 4,800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 31, 2011.

Idara Nickelson,

Chief of Program Operations.

[FR Doc. 2011–22747 Filed 9–6–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: The Board of Visitors of the Marine Corps University will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of

professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Friday, October 7, 2011, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Marine Corps University General Alfred M. Gray Research Center. The address is: 2040 Broadway Street, Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Joel Westa, Director of Academic Support, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–784–4037.

Dated: August 29, 2011.

J.M. Beal,

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

[FR Doc. 2011–22785 Filed 9–6–11; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 21, 2011 at the West Trenton Volunteer Fire Company, located at 40 West Upper Ferry Road, West Trenton, New Jersey. The hearing will be part of the Commission's regularly scheduled business meeting, which is open to the public.

The public hearing to be held during the 1:30 p.m. business meeting will NOT include dockets related to natural gas development projects, nor will the Commissioners consider action on the Draft Natural Gas Development Regulations (''draft regulations'') published for comment on December 9, 2010, on the Commission's Web site. Commission consideration of the draft regulations will occur at a special public meeting to be held on October 21, 2011 at 1 p.m. in the Patriots Theater at the War Memorial, located at One Memorial Drive in Trenton, New Jersey. The Commission accepted written comment on the draft regulations through April 15, 2011 and received oral comment during six public hearing sessions in February 2011. The Commissioners and staff are currently reviewing the voluminous comments received (many of which are available for review at drbc.net). The public meeting on October 21 will not include a public hearing. Additional information about the October 21, 2011 meeting will be published separately.

Items for Public Hearing. The subjects of the public hearing to be held during the 1:30 p.m. business meeting on September 21, 2011 include 25 draft dockets, for which the names and brief descriptions are posted on the Commission's website at drbc.net. The draft dockets can be accessed on the website ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

A public hearing also will be held during the 1:30 p.m. business meeting on a resolution authorizing the Executive Director to enter into a contract with The Nature Conservancy for a study of instream flow needs to protect key ecological communities for the range of habitats in the Delaware Basin.

The public is advised that items scheduled for hearing are occasionally postponed to allow more time for the Commissioners to consider them. Please check the Commission's Web site, drbc.net, closer to the meeting date for changes that may be made after the deadline for filing this notice.

Other Agenda Items. In addition to the standard business meeting items, consisting of adoption of the Minutes of the Commission's June 28 and July 13, 2011 business meetings, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, public hearings and public dialogue, the business meeting also will include the annual staff report on implementation of the Water Resources Plan for the Delaware River Basin.

Opportunities to Comment. Individuals who wish to comment for the record on a hearing item or to address the Commissioners informally during the public dialogue portion of the meeting are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224. Written comment on items scheduled for hearing may be submitted in advance of the meeting date to: Commission Secretary, P. O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522 or by e-mail to *paula.schmitt@drbc.state.nj.us.* Written comment on dockets should also be furnished directly to the Project Review Section at the above address or fax number or by e-mail to *william.muszynski@drbc.state.nj.us.*

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Dated: August 30, 2011.

Pamela M. Bush, Esquire,

Commission Secretary.

[FR Doc. 2011–22642 Filed 9–6–11; 8:45 am]

BILLING CODE 6360–01–P

DEARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities (Board).

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Wednesday, September 21, 2011, Time: 9 a.m.–2 p.m.

ADDRESSES: Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008, 202–328–2000.

FOR FURTHER INFORMATION CONTACT: John Silvanus Wilson, Jr., Executive Director, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue, SW., Washington, DC 20204; *telephone:* (202) 453–5634, *fax:* (202) 453–5632.

SUPPLEMENTARY INFORMATION:

The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2)

which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

Agenda

The Board will receive updates from the Chairman of the President's Board of Advisors on HBCUs and the Executive Director of the White House Initiative on HBCUs on their respective activities throughout Fiscal Year 2011 including activities that have occurred since the Board's last meeting, which was held on June 7, 2011. In addition, the Board will discuss the federal support of HBCUs in Fiscal Year 2010, the budget outlook for federal support in Fiscal Year 2012 and possible strategies to meet its duties under its charter.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify John P. Brown, associate director, White House Initiative on HBCUs, at (202) 453–5645, no later than Friday, September 16, 2011. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Wednesday, September 21, 2011, from 1:30 p.m.–2 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of John S. Wilson, Jr., White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, by Friday, September 16, 2011.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC, 20202, Monday through Friday (excluding federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Dated: August 25, 2011.

Martha J. Kanter,

Under Secretary, U.S. Department of Education.

[FR Doc. 2011–22859 Filed 9–6–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 26, 2011; 1 p.m.–5 p.m., Tuesday, September 27, 2011; 8:30 a.m.–4:30 p.m.

ADDRESSES: Marriott Charleston, 170 Lockwood Blvd., Charleston, SC 29403.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; *Phone:* (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, September 26, 2011

1 p.m. Combined Committee Session,
5 p.m. Adjourn.

Tuesday, September 27, 2011

8:30 a.m. Approval of Minutes, Chair Update, Agency Updates, Public Comment Session, Waste Management Committee Report, Facilities Disposition & Site Remediation Committee Report, Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Administrative Committee Report, Strategic & Legacy Management Committee Report, Nuclear Materials Committee Report, Public Comment Session.
4:30 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda.

Public Participation: The EM SSAB, Savannah River Site, 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 Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/meeting_summaries_2011.html.*

Issued at Washington, DC, on September 1, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–22814 Filed 9–6–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Site-Wide Environmental Impact Statement (EIS) Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, October 4, 2011; 2 p.m.

ADDRESSES: Nevada Site Office, 232 Energy Way, North Las Vegas, Nevada 89030.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. *Phone:* (702) 657–9088; Fax (702) 295–5300 or *E-mail: nssab@nv.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Committee: The purpose of the Committee is to review and prepare comments on the draft Site-Wide EIS.

Tentative Agenda: The Committee members will review and prepare comments on the draft Site-Wide EIS.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its 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 Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following *Web site: http://nv.energy.gov/nssab/MeetingMinutes.aspx*.

Issued at Washington, DC on September 1, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–22815 Filed 9–6–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–549B–001]

Commission Information Collection Activities (FERC–549B); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 23, 2011 (76 FR 36909) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by October 7, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0203 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed either on paper or on CD/DVD, and should refer to Docket No. IC11–549B–001. 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 and eSubscription are not available for Docket No. IC11–549B–001, due to a system issue.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–549B, ''Gas Pipeline Rates: Capacity Information'', includes both the Index of Customers (IOC) report under Commission regulations at 18 Code of Federal Regulations (CFR) 284.13(c) and three capacity reporting requirements. One of these is in Commission regulations at 18 CFR 284.13(b) and requires reports on firm and interruptible services. The second is at 18 CFR 284.13(d)(1) and requires pipelines make information on capacity and flow information available on their Internet web sites. The third is at 18 CFR 284.13(d)(2) and requires an annual filing of peak day capacity.

Capacity Reports Under 284.13(b) and 284.13(d)(1)

On April 4, 1992, in Order No. 636 (RM91–11–000), the Commission established a capacity release mechanism under which shippers could release firm transportation and storage capacity on either a short- or long-term basis to other shippers wanting to obtain capacity. Pipelines posted available firm and interruptible capacity information on their electronic bulletin boards (EBBs) to inform potential shippers.

On August 3, 1992, in Order No. 636–A (RM91–11–002), the Commission determined through staff audits, that the efficiency of the capacity release mechanism could be enhanced by standardizing the content and format of capacity release information and the methods by which shippers accessed this information, which pipelines posted to their EBBs.

On March 29, 1995, through Order 577 (RM95–5–000), the Commission amended § 284.243(h) of its regulations to allow shippers the ability to release capacity without having to comply with

the Commission's advance posting and bidding requirements.

On February 9, 2000, in Order No. 637 (RM98–10–000), to create greater substitution between different forms of capacity and to enhance competition across the pipeline grid, the Commission revised its capacity release regulations regarding scheduling, segmentation and flexible point rights, penalties, and reporting requirements. This resulted in more reliable capacity information availability and price data that shippers needed to make informed decisions in a competitive market as well as to improve shipper's and the Commission's ability to monitor the market for potential abuses. This order also required company postings to be on the company Web site instead of outdated EBBs.

Peak Day Annual Capacity Report Under 284.13(d)(2)

18 CFR 284.13(d)(2) requires an annual peak day capacity report of all interstate pipelines, including natural gas storage only companies. This report is generally a short report showing the peak day design capacity or the actual peak day capacity achieved, with a short explanation, if needed. The regulation states:

An interstate pipeline must make an annual filing by March 1 of each year showing the estimated peak day capacity of the pipeline's system, and the estimated storage capacity and maximum daily delivery capability of storage facilities under reasonably representative operating assumptions and the respective assignments of that capacity to the various firm services provided by the pipeline.

This annual report/filing is publicly available, while other more specific interstate pipeline and storage capacity details are filed as CEII, such as the Annual System Flow Diagram (FERC–567) which are not publicly available.

Index of Customers Under 284.13(c)

In Order 581, issued September 28, 1995 (Docket No. RM95–4–000), the Commission established the IOC quarterly information requirement. This Order required the reporting of five data elements in the IOC filing: The customer name, the rate schedule under which service is rendered, the contract effective date, the contract termination date, and the maximum daily contract quantity, for either transportation or storage service, as appropriate.

In a notice issued separate from Order 581 in Docket No. RM95–4–000, issued February 29, 1996, the Commission, through technical conferences with industry, determined that the IOC data reported should be in tab delimited format on diskette and in a form as proscribed in Appendix A of the rulemaking. In a departure from past practice, a three-digit code, instead of a six-digit code, was established to identify the respondent.

In Order 637, issued February 9, 2000 (Docket Nos. RM98–10–000 and RM98–12–000), the Commission required the filing of: The receipt and delivery points held under contract and the zones or segments in which the capacity is held, the common transaction point codes, the contract number, the shipper identification number, an indication whether the contract includes negotiated rates, the names of any agents or asset managers that control capacity in a pipeline rate zone, and any affiliate relationship between the pipeline and the holder of capacity. It was stated in the Order that the changes to the Commission's reporting requirements would enhance the reliability of information about capacity availability and price that shippers need to make informed decisions in a competitive market as well as improve shippers' and the Commission's ability to monitor marketplace behavior to detect, and remedy anti-competitive behavior. Order 637 required a pipeline post the information quarterly on its Internet Web sites instead of on the outdated EBBs.

Action: The Commission is requesting a three-year extension of the FERC–549B reporting requirements, with no changes.

Burden Statement: The estimated annual public reporting burden for this collection is estimated as:

FERC–549B requirement	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
Capacity Reports under 284.13(b) and 284.13(d)(1)	129	6	145	112,230
Peak Day Annual Capacity Report under 284.13(d)(2)	129	1	10	1,290
Index of Customers under 284.13(c)	129	4	3	1,548
Total				115,068

The total estimated annual cost burden to respondents is $7,876,183 (115,068 hours/2,080 hours [1] per year, times $142,372 [2]). The estimated annual burden per respondent is $61,056 (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

[1] Estimated number of hours an employee works each year.

[2] Estimated average annual cost per employee.

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: August 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–22712 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3225–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 08–25–11 Att. C Compliance Amendment to be effective 4/1/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5089.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–3306–000.
Applicants: Duke Energy Corporation, Progress Energy, Inc.
Description: Minor Amendments to the pro forma Joint Dispatch Agreement filed by the Applicants.
Filed Date: 07/18/2011.
Accession Number: 20110718–5121.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: ER11–4368–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Letter Agreement for Mammoth Pacific, L.P., Casa Diablo 4 Project to be effective 8/14/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5000.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4369–000.
Applicants: North American Power and Gas, LLC.
Description: North American Power and Gas, LLC submits tariff filing per 35.1: North American Power and Gas, LLC MBR Tariff to be effective 8/25/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5029.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4370–000.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits tariff filing per 35.13(a)(2)(iii: RS25 revised to be effective 8/25/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5037.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4371–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: PAC Energy NITSA Rev 9 to be effective 7/28/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5038.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4372–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.15: Termination of City of Nephi Construction Agreement to be effective 9/16/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5039.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4373–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: UMPA Revised ARTSOA to be effective 6/18/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5040.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4374–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 35.13(a)(2)(iii: PGE Volume 12 to be effective 10/24/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5061.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

Docket Numbers: ER11–4375–000.
Applicants: City of Pasadena, California.
Description: City of Pasadena, California submits tariff filing per 35.13(a)(1): TRR and TO Tariff Update to be effective 9/1/2011.
Filed Date: 08/25/2011.
Accession Number: 20110825–5080.
Comment Date: 5 p.m. Eastern Time on Thursday, September 15, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 26, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22735 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4051–001.
Applicants: CSOLAR IV South, LLC.
Description: CSOLAR IV South, LLC submits tariff filing per 35.17(b): Amendment to Application for Market-Based Rate Authorization to be effective 9/11/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5063.
Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4200–000.
Applicants: TC Ravenswood, LLC.
Description: AMENDMENT TO MOTION OF TC RAVENSWOOD, LLC.
Filed Date: 08/26/2011.
Accession Number: 20110826–5052.
Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4200–000.
Applicants: TC Ravenswood, LLC.
Description: AMENDMENT NO. 2 TO MOTION OF TC RAVENSWOOD, LLC.
Filed Date: 08/26/2011.
Accession Number: 20110826–5053.
Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4394–000.
Applicants: Snowflake White Mountain Power, LLC.
Description: Snowflake White Mountain Power, LLC submits notice of cancellation of its market based rate tariff and tariff ID.
Filed Date: 08/29/2011.

Accession Number: 20110830–0201.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 30, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22811 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Number: EG11–124–000.
Applicants: Minco Wind II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Minco Wind II, LLC.
Filed Date: 08/29/2011.
Accession Number: 20110829–5119.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER11–2895–000; *ER11–2895–001.*
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits response to deficient letter.
Filed Date: 08/22/2011.
Accession Number: 20110823–0008.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Number: ER11–4385–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position No. W1–032—Original Service Agreement No. 3040 to be effective 7/28/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5066.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4386–000.
Applicants: AmericaWide Energy, LLC.
Description: AmericaWide Energy, LLC submits tariff filing per 35.12: Market-Based Rate Application to be effective 11/1/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5067.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4387–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Queue Position W2–075—Original Service Agreement No. 3039 to be effective 7/28/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5068.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4388–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: ITC Midwest Certificates of Concurrence to be effective 10/4/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5090.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4389–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 08–29–11 Attachment X_Ins. Req. to be effective 10/29/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5101.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4390–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2234 Osage Wind/PSO Affected Systems' Facilities Construction Agreement to be effective 7/28/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5113.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4391–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position No. V2–030/V4–018/W3–047—Original Service Agreement No. 3041 to be effective 7/29/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5120.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

Docket Number: ER11–4392–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.15: Notice of Cancellation of Service Agreement No. 2795 in Docket No. ER11–3196–000 to be effective 7/29/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5137.
Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: August 30, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22807 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2468–000.
Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company's Informational Filing showing Penalties Assessed for the 12-month period ending June 30, 2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5079.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2469–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits tariff filing per 154.402: 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5130.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2470–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Pascagoula Expansion Non-Conforming Service Agreement to be effective 9/30/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5149.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2471–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Update List of Non-Conforming Service Agreements (Angola LNG) to be effective 9/30/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5001.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2472–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Small Customer Renewal Filing to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5027.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2473–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.501: 2011 Cash In/Cash/Out Filing to be effective N/A.
Filed Date: 08/31/2011.
Accession Number: 20110831–5028.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2474–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.501: 2011 Cash/In/Cash/Out Report Filing to be effective N/A.
Filed Date: 08/31/2011.
Accession Number: 20110831–5029.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2475–000.
Applicants: Williston Basin Interstate Pipeline Comp.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: ACA Filing to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5035.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2476–000.
Applicants: Williston Basin Interstate Pipeline Company
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Semi-annual Fuel & Electric Power Reimbursement to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5037.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2477–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Housekeeping/Service Agreement Filing to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5038.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2478–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits tariff filing per 154.402: ACA Filing to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5041.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2479–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits tariff filing per 154.403(d)(2): Annual Fuel and Gas Loss Retention Percentage Adjustment to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5042.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2480–000.
Applicants: Steuben Gas Storage Company.
Description: Steuben Gas Storage Company submits tariff filing per 154.402: 2011 Annual Charge Adjustment Filing of Steuben Gas Storage Company to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5043.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2481–000.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits tariff filing per 154.402: ACA 2011 to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5044.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2482–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits tariff filing per 154.402: ACA 2011 to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5045.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2483–000.
Applicants: Discovery Gas Transmission LLC.
Description: Discovery Gas Transmission LLC submits tariff filing per 154.402: 2011 ACA Tariff Filing to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5046.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2484–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.402: 20110829 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 08/31/2011.
Accession Number: 20110831–5049.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before *5 p.m.* Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22803 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–2453–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Request of Tennessee Gas Pipeline Company for Limited Waiver for August 31, 2011 Quarterly Fuel Filing.
Filed Date: 08/26/2011.
Accession Number: 20110826–5176.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2011.

Docket Numbers: RP11–2452–000.
Applicants: Carolina Gas Transmission Corporation.
Description: 2011 Penalty Revenue Sharing Filing of Carolina Gas Transmission Corporation.
Filed Date: 08/29/2011.
Accession Number: 20110829–5042.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2454–000.
Applicants: Venice Gathering System, LLC.
Description: Venice Gathering System, LLC submits tariff filing per 154.402: 2011 ACA Surcharge Filing to be effective 10/1/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5050.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2455–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.402: TGPL 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5064.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2456–000.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc. submits tariff filing per 154.204: Changes—Tioga Expansion Project to be effective 10/28/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5121.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2457–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits tariff filing per 154.204: Raton and Settlement TSA Update to be effective 10/1/2011.
Filed Date: 08/29/2011.
Accession Number: 20110829–5136.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2458–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Enterprise K12–8 Amendment to Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5021.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2459–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero 3 to Tenaska 207 Capacity Release Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5022.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2460–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero 2 to Tenaska 208 Capacity Release Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5023.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2461–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enerquest 34686 to BP Energy 39013 Capacity Release Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5029.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2462–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Devon 34694–34 Amendment to Negotiated Rate Agreement to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5030.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2463–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Texla 39034 Capacity Release Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5031.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2464–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enbridge 34685 to Texla 39017 Capacity Release Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5032.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2465–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enbridge 34685 to Texla 39018 Capacity Release Negotiated Rate Agreement Filing to be effective 9/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5033.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2466–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.402: ACA Filing—Eff. October 1, 2011 to be effective 10/1/2011.
Filed Date: 08/30/2011.
Accession Number: 20110830–5036.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: RP11–2467–000.
Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2011 SoCal Non-conforming Agreement to be effective 9/1/2011.

Filed Date: 08/30/2011.

Accession Number: 20110830–5061.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: CP11–538–000.

Applicants: Dominion Transmission, Inc.

Description: Abandonment Application of Dominion Transmission, Inc.

Filed Date: 08/22/2011.

Accession Number: 20110822–5225.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 7, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 30, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22736 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–60–000.

Applicants: Duke Energy Corporation, Progress Energy, Inc.

Description: Additional information of Duke Energy Corporation and Progress Energy, Inc. regarding their application for approval of their proposed merger.

Filed Date: 08/29/2011.

Accession Number: 20110829–0016.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 6, 2011.

Docket Numbers: EC11–110–000.

Applicants: Liberty Electric Power, LLC.

Description: Section 203 Application of Liberty Electric.

Filed Date: 08/26/2011.

Accession Number: 20110826–5169.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: EC11–111–000.

Applicants: MATL LLP, Enbridge Inc., Montana Alberta Tie, Ltd.

Description: Joint Application for Authorization of Transaction Under Section 203 of the Federal Power Act and Request for Expedited Consideration of Enbridge Inc., *et al.*

Filed Date: 08/26/2011.

Accession Number: 20110826–5171.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1281–009.

Applicants: New York Independent System Operator, Inc.

Description: Report/Form of New York Independent System Operator, Inc.

Filed Date: 08/26/2011.

Accession Number: 20110826–5173.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4376–000.

Applicants: AEP Texas North Company.

Description: AEP Texas North Company submits tariff filing per 35.13(a)(2)(iii): 20110826 TNC–Kaiser Creek Wind SUA to be effective 7/21/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5030.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4377–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2011–8–26_314–PSCo_NXPM_Limon Wind EP Agrmt to be effective 8/11/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5050.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4378–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2205 City of Larned, Kansas Interconnection Agreement to be effective 7/28/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5074.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4379–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Revisions to the Tariff Schedule 12–Appendix re RTEP Upgrades per Board Approval to be effective 11/24/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5089.

Comment Date: 5 p.m. Eastern Time on Monday, September 26, 2011.

Docket Numbers: ER11–4380–000.

Applicants: Bellevue Solar, LLC.

Description: Bellevue Solar, LLC submits tariff filing per 35.12: Bellevue Solar Baseline MBR Application Filing to be effective 9/19/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5095.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4381–000.

Applicants: Yamhill Solar, LLC.

Description: Yamhill Solar, LLC submits tariff filing per 35.12: Yamhill Solar Baseline MBR Application Filing to be effective 9/19/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5100.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4382–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Revisions to the Tariff & OA re Demand Response in Regulation Markets to be effective 10/25/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5101.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4383–000.

Applicants: Public Service Company of New Hampshire.

Description: Public Service Company of New Hampshire submits tariff filing per 35.12: Groton Wind LLC Design, Engineering and Procurement Agreement to be effective 8/26/2011.

Filed Date: 08/26/2011.

Accession Number: 20110826–5114.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

Docket Numbers: ER11–4384–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–08–26 CAISO

Petition for Waiver of Tariff Provision to be effective N/A.

Filed Date: 08/26/2011.

Accession Number: 20110826–5155.

Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–3–001.

Applicants: Mississippi Power Company.

Description: Amendment to Application of Mississippi Power Company under ES10–3.

Filed Date: 08/26/2011.

Accession Number: 20110826–5174.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22737 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12569–001]

Public Utility District No. 1 of Okanogan County, WA, Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed the Public Utility District No. 1 of Okanogan County's (Okanogan PUD's) application for license for the Enloe Hydroelectric Project (FERC Project No. 12569), located on the Similkameen River near the city of Oroville in Okanogan County, Washington. Part of the project would occupy a total of 41.76 acres of federal lands administered by the U.S. Bureau of Land Management.

Staff prepared this final environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Kim Nguyen by telephone at (202) 502–6105, or by e-mail at *kim.nguyen@ferc.gov.*

Dated: August 31, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–22818 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4380–000]

Bellevue Solar, 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 Bellevue Solar, 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 September 20, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22810 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4381–000]

Yamhill Solar, 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 Yamhill Solar, 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 September 20, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22809 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4386–000]

AmericaWide Energy, 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 AmericaWide Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 20, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 31, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22808 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–013—Alabama, Holt Hydroelectric Project]

Alabama Power Company; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama Historical Commission (Alabama SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the existing Holt Hydroelectric Project.

The Programmatic Agreement, when executed by the Commission, the Alabama SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual

undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13e). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

Alabama Power Company, as licensee for Project No. 2203–013, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2203–013 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
Elizabeth Ann Brown, Deputy SHPO, Alabama Historical Commission, 468 South Perry Street, Montgomery, AL 36130–0900.
Amanda Hill, Alabama Historical Commission, 468 South Perry Street, Montgomery, AL 36130–0900.
Greg Rhinehart, Alabama Historical Commission, 468 South Perry Street, Montgomery, AL 36130–0900.
Barry Lovett or Representative, Alabama Power Company, 600 North 18th Street, Birmingham, AL 35291.
Bill Gardner, Alabama Power Company, 600 North 18th Street, Birmingham, AL 35291.
Chief Gregory E. Pyle, Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, OK 74702–1210.
Terry Cole, THPO, Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, OK 74702–1210.
Bryant Celestine, THPO, Alabama-Coushatta Tribe of Texas, 571 State Park Road 56, Livingston, TX 77351.
Ted Isham and/or Emman Spain, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447.
Chief Christine Norris, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.
Michael Tarpley, THPO, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.
Robert Thrower, THPO, Poarch Band of Creek Indians, 5811 Jack Springs Road, Atmore, AL 36502.
Jonathan A. Ashley or Representative, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001, ATTN: EN–HW.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original plus seven copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: August 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–22711 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–124–000]

Public Service Company of Colorado; Notice of Rate Election

Take notice that on August 29, 2011, Public Service Company of Colorado (PSCo) filed a Rate Election pursuant to section 284.123(b)(1) of the Commission's regulations. PSCo proposes to utilize rates that are the same as those contained in PSCo's transportation rate schedules for comparable intrastate service on file with the Colorado Public Utilities Commission, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Dated: August 31, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–22816 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–536–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on August 19, 2011, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed a prior notice request, pursuant to sections 157.205 and 157.211(a)(2) of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act, to construct and operate a new delivery point to serve The City of Middleton Gas System (Middleton) in Hardeman County, Tennessee under Tennessee's blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3299, or by e-mail at *tom.joyce@elpaso.com;* C. Todd Piczak, Senior Counsel, El Paso Corporation, 2101 L Street, NW Suite 1000, Washington DC 20037, by telephone at (202) 223–5984, by facsimile at (202) 257–6169, or by e-mail at *todd.piczak@elpaso.com;* or Juan Eligio, Regulatory Analyst, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3294, or by e-mail at *juan.eligio@elpaso.com*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: August 31, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–22819 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER11–2256–000; ER11–3149–000; ER11–3856–000; ER11–4384–000; ER11–4384–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com.*

September 1, 2011.	Fall 2011 Release Market Simulation, Renewables Integration Market and Product Review.
September 6, 2011.	Release User Group, Flexible Ramping Constraint Draft Tariff Language, Circular Scheduling Straw Proposal.
September 7, 2011.	Settlements and Market Clearing User Group, ISO Stakeholder Symposium, Congestion Revenue Rights.
September 8, 2011.	Fall 2011 Release Market Simulation, ISO Stakeholder Symposium Market Update.
September 12, 2011.	Fall 2011 Release Market Simulation, Renewables Integration Market and Product Review.
September 13, 2011.	Technical User Group, Local Market Power Mitigation Enhancements.
September 14, 2011.	Settlements and Market Clearing User Group, Congestion Revenue Rights, Market Performance and Planning Forum, Outage Management System Business Requirements.
September 15, 2011.	Fall 2011 Release Market Simulation.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov;* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

Dated: August 31, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–22817 Filed 9–6–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0001; FRL–8886–3]

SFIREG EQI Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Environmental Quality Issues (EQI) Working Committee will hold a 2-day meeting, beginning on October 17, 2011 and ending October 18, 2011. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, October 17, 2011 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on Tuesday October 18, 2011.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington VA. 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field External Affairs Division

(7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5561; *fax number:* (703) 305–1850; *e-mail address: kendall.ron@epa.gov* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; *e-mail address:* Grier Stayton at *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on FIFRA field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those who sell, distribute or use pesticides, as well as any Non Government Organization.

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

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2011–0001. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Tentative Agenda Topics

1. Endangered Species Act—''the services'' on their process and expectations.
2. How EPA and states process responses to biological opinions.
3. Chesapeake Bay and Pesticides—implications for other areas.
4. Aquatic Life Benchmarks Letter—EPA response and Working Committee discussion.
5. National Pollution Discharge Elimination System (NPDES) update.
6. Imprelis update.
7. Contaminant Candidate List (CCL) selections and data input—use of the Pesticides of Interest Tracking System (POINTS) data?
8. State Lead Agency priorities.
9. Nanotechnology and pesticides.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: August 22, 2011.

Robert McNally,

Acting Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2011–22665 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0718; FRL–8886–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review scientific conclusions supporting EPA's FIFRA Section 6(b) Notice of Intent to Cancel Twenty Homeowner Rodenticide Bait Products.

DATES: The meeting will be held on November 29, 2011, through December 1, 2011, from approximately 8:30 a.m. to 5 p.m.

Comments. The Agency encourages that written comments be submitted by November 15, 2011, and requests for oral comments be submitted by November 22, 2011. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after November 15, 2011, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before September 21, 2011.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/SAP* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0718, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0718. If your comments contain any

information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–2045; *fax number:* (202) 564–8382; *e-mail address: bailey.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2011–0718 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than November 15, 2011, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after November 15, 2011, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments should bring 30 copies to the meeting for distribution to the FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than November 22, 2011, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.,* overhead projector, 35 mm projector, chalkboard). Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals

nominated for this meeting should have expertise in one or more of the following areas: Ecotoxicology and Wildlife Biology (including assessment of poisoning incidents and case evaluation of mortality); Toxicology/Pharmacology of Rodenticides; Veterinarian Science (including pet poisoning incident surveillance); Human Poisoning Surveillance; and Rodent Biology and Control. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 21, 2011. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of the FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The EPA's 2008 Risk Mitigation Decision for Ten Rodenticides (RMD) concluded more than a decade of Agency review of commensal rodenticides. The RMD concluded that registrants of commensal rodenticide products needed to adopt certain risk mitigation measures in order to meet the FIFRA registration standard of not causing unreasonable adverse effects on the environment. In 2008, EPA gave registrants of commensal rodenticide bait products 3 years to research, develop, and register new consumer/homeowner products that adopted these risk mitigation measures designed to greatly reduce child, pet, and non-target wildlife exposure to rodenticides. The Agency intends to propose a Notice of Intent to Cancel (NOIC) for 20 consumer/homeowner rodenticide products for which registrants have refused to voluntarily adopt the risk mitigation measures. The Agency will be seeking advice and recommendations from the SAP on the following scientific issues associated with the proposed NOIC:

- EPA's evaluation of human and pet incidents of accidental exposure to rodenticides.
- EPA's evaluation of ecological incidents of accidental exposure to rodenticides.
- The differences in uptake and clearance of first-generation anticoagulant rodenticides, non-anticoagulant rodenticides, and second-generation anticoagulant rodenticides, in target and non-target wildlife.
- EPA's ecological risk assessments for rodenticides, including ecological risks of first-generation anticoagulant rodenticides, non-anticoagulant rodenticides, and second-generation anticoagulant rodenticides.
- The differences in secondary ecological exposure between first-generation anticoagulant rodenticides, non-anticoagulant rodenticides, and second-generation anticoagulant rodenticides.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to the FIFRA SAP, FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting), and the meeting agenda will be available by late October. In addition, the Agency may provide additional background

documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency within 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 30, 2011.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2011–22843 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA/100/J–11/001; FRL–9460–1]

External Peer Review Meeting for the Draft Guidance of Applying Quantitative Data To Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that Eastern Research Group, Inc. (ERG), a contractor to the EPA, will convene an independent panel of experts to review the draft document, ''*Guidance for Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation.''* EPA previously announced the release of the draft guidance for a 45 day comment period (76 FR 33752–33753), which was subsequently extended to 60 days (76 FR 43999). The public comment period ended August 9, 2011. EPA intends to forward public comments to the contractor for distribution to members of the review panel. The external review draft does not represent Agency policy.

The public may register to attend this peer review meeting as observers. Time will be set aside for observers to give brief oral comments at the meeting on the draft document. The draft document and appendix are available via the internet on the Risk Assessment Forum Web page (*http://www.epa.gov/raf/DDEF/index.htm*). When finalizing the draft document, EPA intends to consider the comments from the external peer review meeting along with public comments received by August 9, 2011 in accordance with 76 FR 33752–33753 and 76 FR 43999. Public comments submitted during the public comment period ending August 9, 2011, may be viewed at *http://www.regulations.gov* under Docket ID No. EPA–HQ–ORD–2009–0694.

DATES: The peer review panel meeting on the draft document, ''*Guidance for Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation''* will be held on Monday, September 12, 2011, beginning at 8:30 a.m. and ending at 5 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the following location: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

Instructions: To attend the peer review meeting as an observer register no later than September 5, 2011, call ERG at (781) 674–7374 or toll free at (800) 803–2833 (the DDEF peer review coordinator is Laurie Waite); or send a facsimile to (781) 674–2906 (reference the ''DDEF Peer Review Meeting'' and include your name, title, affiliation, full address and contact information), or send an e-mail to *meetings@erg.com* (reference the ''DDEF Peer Review Meeting'' and include your name, title, affiliation, full address and contact information). Internet registration is available at *https://www2.ergweb.com/projects/conferences/peerreview/register-ddef.htm.* Space is limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited time at the peer review meeting for comments from the public. Please inform ERG if you wish to make oral comments during the meeting.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the DDEF Peer Review Meeting and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, call ERG by calling (781) 674–7374 or toll free at (800) 803–2833 and speak to Laurie Waite; or send a facsimile to (781) 674–2906 (reference the ''DDEF Peer Review Meeting'' and include your name and contact information), or send an e-mail to *meetings@erg.com* (reference the ''DDEF Peer Review Meeting'' and include your name and contact information).

FOR FURTHER INFORMATION CONTACT: Dr. Michael W. Broder, Risk Assessment Forum, Office of the Science Advisor (8105R) at the following address: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. His telephone number is (202) 564–3393. His e-mail address is *broder.michael@epa.gov.*

Internet: The draft document can be downloaded from *http://www.epa.gov/raf/DDEF/index.htm*

SUPPLEMENTARY INFORMATION: This draft document outlines approaches for developing factors for interspecies and intraspecies extrapolation based on data describing toxicokinetics and/or toxicodynamics properties of particular chemical agent(s). It was developed to provide guidance for EPA staff in evaluating such data and/or information and to inform the regulated community and other interested parties about emerging EPA approaches to employ data to address areas of uncertainty.

Dated: August 30, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–22660 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9460–2]

Notice of Decision Not To Reissue National Pollutant Discharge Elimination System (NPDES) General Permit for the Final Beneficial Reuse or Disposal of Municipal Sewage Sludge in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision not to reissue NPDES general permit.

SUMMARY: EPA Region 6 is providing notice that the Agency does not intend to reissue the NPDES General Permit for the Final Beneficial Reuse or Disposal of Municipal Sewage Sludge in Louisiana (LAG650000) which was issued on August 21, 1998 and became effective on September 21, 1998 (63 FR 44962). The permit expired on September 22, 2003 and was never reissued.

FOR FURTHER INFORMATION CONTACT: Denise Hamilton, Oversight Section (6WQ–PO), Environmental Protection Agency, 1445 Ross Ave., Suite 1200, Dallas, TX 75202; telephone number: (214) 665–2775; fax number: (214) 665–2191; e-mail address: *hamilton.denise@epa.gov.*

SUPPLEMENTARY INFORMATION: With this notice, EPA provides official notification of its decision not to reissue the permit. EPA notes that the conditions of the permit were developed to be consistent with the self-implementing requirements of 40 CFR part 503, and facilities must comply with Part 503 regulations whether or not a permit has been issued. As established in 40 CFR 503.3(b), the requirements of 40 CFR part 503 are directly enforceable and no person shall use or dispose of sewage sludge through any practice for with requirements are established in this part except in accordance with such requirements.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 30, 2011.

Troy C. Hill,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–22837 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–8887–1]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled, only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before March 5, 2012.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. ATTN: Maia Tatinclaux.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0014. EPA's policy is that all comments received will be included in the 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Wahington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**:

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 32 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number, (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests, or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** cancelling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000264–00438	Bronate Herbicide	MCPA,2-ethylhexyl ester, Bromoxynil octanoate.
000264–00477	Buctril + Atrazine Herbicide	Bromoxynil octanoate, Atrazine.
000264–00586	Sedagri Batril 20W Herbicide	Bromoxynil octanoate.
000264–00650	Silverado Herbicide	Fenoxaprop-p-ethyl.
000264–00699	Rhino Brand Herbicide	MCPA,2-ethylhexyl ester, Bromoxynil octanoate, Hepatonic acid, 2,6-dibromo-4-cyanophenyl ester.
000264–00799	Weco Max Brand Herbicide	2-4-D, 2-ethylhexyl ester, Hepatonic acid, 2,6-dibromo-4-cyanophenyl ester, Bromoxynil octanoate.
000264–00803	Spiroxamine Technical	1,4-Dioxaspiro? 4,5Udecane-2-methanamine,8-(1,1-dimethylethyl)-N-ethyl-N-propyl-.
000264–00804	Accrue Fungicide	1,4-Dioxaspiro? 4,5Udecane-2-methanamine,8-(1,1-dimethylethyl)-N-ethyl-N-propyl-.
000264–00842	Silverado LQ Wild Oat Herbicide	Mesosulfuron-methyl.
000264–01071	Wolverine Power Pak	Hepatonic acid, 2,6-dibromo-4-cyanophenyl ester, Bromoxynil octanoate, Puyrasulfotole Technical; Fenoxaprop-p-ethyl.
001043–00060	T.B. Q. Germicidal Detergent	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16).
001719–00043	Cop-R-Tox Wood Preservative	Copper naphthenate.
004822–00394	Raid Yard Guard Outdoor Fogger Formula VII.	Bioallethrin, Permethrin.
008278–00004	Metro That's It Dry	Metaldehyde.
009444–00138	Time-Mist Metered Insecticide II	MGK 264, Piperonyl butoxide, Pyrethrins.
009444–00159	Purge After Hours Plus DS	MGK 264, Piperonyl butoxide, Pyrethrins.
053883–00174	Propicinazole 14.3	Propiconazole.
062451–00003	Ant Guard for Hummingbird Feeders	Piperonyl butoxide, Pyrethrins.
071992–00001	Cunap-8 Wood Preservative	Copper naphthenate.
071992–00002	Cunap-2	Copper naphthenate.
071992–00003	CU Nap-5W Wood Preservative	Copper naphthenate.
086203–00013	Dinotefuran TK	Dinotefruran.
086203–00017	Dinotefuran 20SG TK	Dinotefruran.
CA050014	Admire Pro Systemic Protectant	Imidacloprid.
MN070007	Dinotefuran 20% Turf, Ornamental & Vegetable Transplant.	Dinotefruran.
NC910011	Drexel Sucker Plucker Concentrate	Alcohols, Cx—Cxx.
OH080002	Tree-Age	Emamectin benzoate.
OR100006	Dual Magnum Herbicide	S-Metolachlor.
SC910006	Drexel Sucker Plucker Concentrate	Alcohols, Cx—Cxx.
VA910011	Drexel Sucker Plucker Concentrate	Alcohols, Cx—Cxx.
WA060012	DuPont Velpar DF Herbicide	Hexazinone.
WA060013	DuPont Velpar L Herbicide	Hexazinone.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Co. No.	Company name and address
1043	Steris Corporation, P.O. Box 147, St. Louis, MO 63166–0147.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. No.	Company name and address
1719	Mobile Paint Manufacturing Company Inc., P.O. Box 717, Theodore, AL 36582.
4822	S.C. Johnson & Son Inc., 1525 Howe St., Racine, WI 53403.
8278	Metro Biological Laboratory, 583 Canyon Rd., Redwood City, CA 94062.
9444	Waterbury Companies Inc., 129 Calhoun St., P.O. Box 640, Independence, LA 70443.
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507–1041.
62451	Lineguard Inc., Attn: E.H. Roberts, P.O. Box 839, Elyria, OH 44036.
71992	Merichem Company, 5455 Old Spanish Trail, Houston, TX 77023.
86203; MN070007	Mitsui Chemicals Agro, Inc., AGENT: Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126.
264; CA050014	Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
NC910011; SC910006; VA910011.	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis,TN 38113–0327.
OH080002; OR100006	Syngenta Crop Protection, LLC, D/B/A Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300.
WA060012; WA060013	E.I. DuPont De Nemours and Co., Inc. (S300/419), ATTN: Manager, US Registration, DuPont Crop., Protection, 1007 Market Street, Wilmington, DE 19898–0001.

III. What is the Agency's Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 26, 2011.

Peter Caulkins,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–22847 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 8, 2011, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

- August 11, 2011

B. *New Business*

- Fall 2011 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and Fall 2011 Regulatory Performance Plan

C. *Report*

- Quarterly Report on FCS Condition

Closed Session *

- Update on OE Supervisory and Oversight Activities

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: September 2, 2011.

Mary Alice Donner,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 2011–23037 Filed 9–2–11; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission is correcting an error that appeared in the **Federal Register** on August 19, 2011. The document gave notice of a new, consolidated system of records, FCC/OMD–28, ''Time and Attendance Records,'' in the **Federal Register** in which the numbering of the system of records was incorrectly identified as FCC/OMD–14. The correct numbering of the system is FCC/OMD–28. This document corrects the error.

DATES: Effective September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document in the **Federal Register** on August 19, 2011, 76 FR 51975, which incorrectly identified the numbering of a new system of records. In the Notice FR Doc. 2011–21246 published August 19, 2011, 76 FR 51975 make the following correction:

On page 51975, in the third column, above the SYSTEM NAME, the numbering of the system of records is corrected to read FCC/OMD–28.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–22832 Filed 9–6–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: CBS Radio East Inc., Station WLZL, Facility ID 72177, BPH–20110812ACL, from Annapolis, MD, to Bowie, MD; Indiana Community Radio Corporation, Station WYER, Facility ID 173401, BPED–20110705AAO, from Carmi, IL, To Albion, IL; Mount Wilson FM Broadcasters, Inc., Station NEW, Facility ID 183343, BMPH–20110804ABE, from Big Sur, CA, to Molus, CA; Winton Road Broadcasting Co., LLC, Station New, Facility ID 165985, BMPH–20110812ACX, from Shiprock, NM, to Kirtland, NM.

DATES: The agency must receive comments on or before November 7, 2011.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 2011–22745 Filed 9–6–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 2011.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; Patriot Financial Manager, LLC, and Ira M. Lubert, W. Kirk Wycoff and James J. Lynch,* all of Philadelphia, Pennsylvania; to acquire voting shares of Porter Bancorp, Inc., and thereby indirectly acquire voting shares of PBI Bank, both in Louisville, Kentucky.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Carl W. Ellis, Imperial Beach, California, individually; Carl W. Ellis; Linda Ellis McGarraugh, and Benjamin Drew Ellis, II, both of Perryton, Texas, as a group acting in concert; and Timothy Rodgers Ellis, Big Spring, Texas; Kenneth Ellis, Austin, Texas; and Donald Smith Ellis, Amarillo, Texas, as a group acting in concert to acquire voting shares of FirstPerryton Bancorp, Inc., Perryton, Texas, and thereby indirectly acquire voting shares of FirstBank Southwest, Amarillo, Texas.

Board of Governors of the Federal Reserve System, September 1, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–22836 Filed 9–6–11; 8:45 am]

BILLING CODE 6210–01–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 September 21, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Oostburg Bancorp, Inc.,* Oostburg, Wisconsin; to engage *de novo* through its subsidiary, OSC Consulting Services, LLC., Oostburg, Wisconsin, in management consulting and counseling activities, pursuant to section 225.28(b)(9)(i)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–22835 Filed 9–6–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0157; Docket 2011–0079; Sequence 7]

Federal Acquisition Regulation; Submission for OMB Review; Architect-Engineer Qualifications (SF 330)

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for the Architect-Engineer Qualifications form (SF 330).

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

DATES: Submit comments on or before October 7, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0157 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0157'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0157''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0157'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0157.

Instructions: Please submit comments only and cite Information Collection 9000–0157, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Glover, Procurement Analyst, Contract Policy Division, GSA (202) 501–1448 or e-mail *Curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 330, Part I is used by all Executive agencies to obtain information from architect-engineer firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified architect-engineer firm to perform the specific project. The form is designed to provide a uniform method for architect-engineer firms to submit information on experience, personnel, capabilities of the architect-engineer firm to perform along with information on the consultants they expect to collaborate with on the specific project.

Standard Form 330, Part II is used by all Executive agencies to obtain general uniform information about a firm's experience in architect-engineering projects. Architect-engineer firms are encouraged to update the form annually. The information obtained on this form is used to determine if a firm should be solicited for architect-engineer projects.

A notice published in the **Federal Register** at 76 FR 20351, on April 12, 2011. One comment was received.

General Comment

A respondent suggested including language in Section F, item 24 of the SF 330 to inform contractors they can submit photos and/or graphics that are relevant to the projects described in this section.

Agency Response

The ability for contractors to submit photos and/or graphics is contingent on the government requesting this type of information for their evaluation, and is addressed under the Standard Form 330 instructions (Page 2 of Instructions, number 24). These instructions state that the contractor is to enter any other information requested by the agency for each example project.

B. Annual Reporting Burden

Respondents: 5,000.
Responses per Respondent: 4.
Total Responses: 20,000.
Hours per Response: 29.
Total Burden Hours: 580,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC, telephone (202) 501–4755. Please cite OMB Control No. 9000–0157, Architect-Engineer Qualifications (SF 330), in all correspondence.

Dated: September 1, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–22870 Filed 9–6–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. HHS–OPHS–2011–0014]

Guidance on Exculpatory Language in Informed Consent, Draft

AGENCY: Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, and the Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health and the Food and Drug Administration (FDA), are announcing the availability of a draft guidance entitled, ''Guidance on Exculpatory Language in Informed Consent.'' The draft guidance, when finalized, will represent OHRP's and FDA's current thinking on this topic and will supersede OHRP's November 15, 1996 guidance document entitled '''Exculpatory Language' in Informed Consent'' and question number 52 in FDA's January 1998 guidance entitled, ''Institutional Review Boards Frequently Asked Questions—Information Sheet Guidance for Institutional Review Boards and Clinical Investigators.'' The draft guidance is intended primarily for institutional review boards (IRBs), investigators, sponsors, and funding agencies that may be responsible for the review, conduct, or oversight of human subject research conducted or supported by HHS or regulated by FDA.

DATES: Submit written comments by November 7, 2011.

ADDRESSES: Submit written requests for copies of the draft Guidance on Exculpatory Language in Informed Consent document to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–402–2071. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

You may submit comments identified by docket ID number HHS–OPHS–2011–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above docket ID number in the ''Enter Keyword or ID field and click on ''Search.'' On the next page, click the ''Submit a Comment'' action and follow the instructions.
- *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]:* Irene Stith-Coleman, PhD., Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, PhD, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, 240–453–6900; e-mail *Irene.StithColeman@hhs.gov* or Sara Goldkind, M.D., Office of Good Clinical Practice, 10903 New Hampshire Ave., WO32–5110, Silver Spring, MD 20993, 301–796–8342; e-mail *Sara.Goldkind@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHRP and FDA are announcing the availability of a draft guidance entitled, ''Guidance on Exculpatory Language in Informed Consent.'' The draft guidance is intended primarily for institutional review boards (IRBs), investigators, sponsors, and funding agencies that may be responsible for the review, conduct, or oversight of human subject research conducted or supported by HHS or regulated by FDA. This guidance, which is available on the OHRP Web site at *http://www.hhs.gov/ohrp/newsroom/rfc/index.html* and the FDA Web site at *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/default.htm,* is intended to assist IRBs in making the required regulatory determinations when reviewing research under 21 CFR 50.20 and 45 CFR 46.116 by providing recommendations regarding what language is considered to be exculpatory under HHS and FDA regulations, and thus inappropriate to include in informed consent. The draft guidance should also help clinical investigators and sponsors better understand the regulatory requirements as to what language is permissible to include in informed consent. The draft guidance, when finalized, will represent OHRP's and FDA's current thinking on this topic and will supersede OHRP's November 15, 1996 guidance document entitled, '' 'Exculpatory Language' in Informed Consent'' and question number 52 in FDA's January 1998 guidance entitled, ''Institutional Review Boards Frequently Asked Questions—Information Sheet Guidance for Institutional Review Boards and Clinical Investigators.''

To enhance human subject protection and reduce regulatory burden, OHRP and FDA have been actively working to harmonize the agencies' regulatory requirements and guidance for human subject research. This draft guidance document was developed as part of these efforts. OHRP and FDA believe that it will be most helpful to the regulated community to issue a joint guidance document which will clearly demonstrate the agencies' harmonious approach to the topic of what language could be considered exculpatory and thus prohibited in informed consent versus what language could be acceptable in informed consent.

OHRP and FDA are issuing this as draft guidance because the agencies have revised and clarified what constitutes exculpatory language in informed consent and therefore prohibited under 21 CFR 50.20 and 45 CFR 46.116 in response to numerous questions and comments from the IRB and research communities. The draft guidance includes a detailed discussion about what OHRP and FDA consider to be exculpatory language, examples of informed consent language that OHRP and FDA would consider to be acceptable, and examples of informed consent language that OHRP and FDA would consider to be exculpatory.

This draft guidance is part of the Information Sheet Guidance Initiative, announced in the Federal Register of February 3, 2006 (71 FR 5861), which describes FDA's intention to update the process for developing, issuing, and making available guidances intended for IRBs, clinical investigators, and sponsors. Known as ''Information Sheets,'' these guidances have provided recommendations to IRBs, clinical investigators, and sponsors to help them fulfill their responsibilities to protect human subjects who participate in research regulated by the FDA. The Information Sheet Guidance Initiative is intended to ensure that the Information Sheets are updated, consistent with the FDA's good guidance practices (GGPs). As part of the initiative, which will be ongoing, the agency plans to rescind Information Sheets that are obsolete, revise and reissue guidances that address current issues, and develop new guidance documents as needed.

The draft guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The draft guidance, when finalized, will represent OHRP's and 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 OHRP or FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov, http://www.hhs.gov/ohrp/newsroom/rfc/index.html,* or *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/default.htm.*

III. Request for Comments

OHRP and FDA are making their joint draft guidance document available for public comment. The guidance document will be finalized and issued after the public comments have been considered.

Dated: September 1, 2011.

Jerry Menikoff,

Director, Office for Human Research Protections.

David Dorsey,

Acting Associate Commissioner for Policy and Planning, U.S. Food and Drug Administration.

[FR Doc. 2011–22883 Filed 9–6–11; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Postponement of Release of Draft NTP Monograph on Potential Developmental Effects of Cancer Chemotherapy During Pregnancy and Panel Meeting To Peer Review Draft Monograph

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Notice of postponement of draft NTP monograph and peer review panel meeting.

SUMMARY: The NTP is postponing the release of the Draft NTP Monograph on Potential Developmental Effects of Cancer Chemotherapy during Pregnancy and the peer review panel meeting. Release of the draft monograph was scheduled for September 9, 2011, and the meeting for October 19–20, 2011; both were announced on August 17, 2011 (76 FR 51034). Information about rescheduling the release of the draft monograph and the peer review will be announced in the **Federal Register** and posted on the NTP Web site at *http://ntp.niehs.nih.gov/go/36639.*

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, NTP Designated Federal Officer, (919) 541–9834, *whiteld@niehs.nih.gov.*

Dated: August 29, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–22823 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–0765]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Fellowship Management System, OMB No. 0920–0765 exp. 03/31/2014—Revision—Scientific Education and Professional Development Program Office (SEPDPO), Office of Surveillance, Epidemiology and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

SEPDPO requests an additional three years to continue CDC's use of the online Fellowship Management System (FMS) for its electronic application and directory processes that allow individuals to apply to fellowships online and tracks applicant and alumni information; and a revision that will allow public health agencies and organizations to submit fellowship assignment proposals electronically, using FMS.

The mission of SEPDPO is to provide leadership in public health training and education, and manage innovative, evidence-based programs to prepare the health workforce to meet public health challenges of the 21st century. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professions seek opportunities, through CDC fellowships, to broaden their knowledge, skills, and experience to improve the science and practice of public health. CDC fellows are assigned to state, tribal, local and territorial public health agencies; federal government agencies, including CDC, and HHS operational divisions, such as Indian Health Service; and to nongovernmental organizations, including academic institutions, tribal organizations, and private public health organizations.

FMS provides an efficient and effective way for processing fellowship application data, selecting qualified candidates, maintaining a current alumni database, documenting the impact of the fellowships on alumni careers, and generating reports. This proposed revision will provide a secure site within this existing electronic system for designated employees of public health agencies and organizations to submit fellowship assignment proposals electronically.

Designated employees of public health agencies or organizations will answer a standardized set of core questions within FMS about the proposed assignments, including the type of public health agency or organization submitting the proposal; proposed fellow activities, including training and opportunities for service and collaboration; and how the fellow will be supported, including the type and extent of mentorship and supervision the fellow will receive.

This revision enhances FMS to include a function that will result in a standardized process for submitting and reviewing host assignment proposals across fellowships. The electronic assignment proposal process that FMS provides optimizes the matching of qualified fellowship candidates with host sites and will result in an optimal fit between fellows and their assignments — ultimately leading to

long-term employment and sustained public health capacity of state and local health departments and other non-federal public health agencies and organizations.

The annual burden table has been updated to reflect the number of respondents from nonfederal public health agencies or organizations that submit assignment proposals to host fellows. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS*

Type of respondents	Number of respondents	Frequency of response	Average annualized burden per response (in hours)	Average total response burden in hours
Public Health Agency or Organization	226	1	1.42	320
Fellowship applicants	1122	1	40/60	748
Fellowship alumni*	454	1	15/60	114
Total	1802			1182

*Some alumni are deceased or cannot be located. Response burden assumes response from an individual responding alumnus, on average, every 3 years (which is likely an overestimate of frequency).

Dated:August 31, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–22795 Filed 9–6–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–0314]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Survey of Family Growth (NSFG)—(0920–0314)—Extension—Expiration 5/31/2012—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''family formation, growth, and dissolution,'' as well as ''determinants of health'' and ''utilization of health care'' in the United States. This three-year clearance request includes the data collection in 2012–2014 for the continuous NSFG.

The National Survey of Family Growth (NSFG) was conducted periodically between 1973 and 2002, continuously in 2006–2010, and continuously starting in Fall 2011, by the National Center for Health Statistics, CDC. Each year, about 14,000 households are screened, with about 5,000 participants interviewed annually. Participation in the NSFG is completely voluntary and confidential. Interviews average 60 minutes for males and 80 minutes for females. The response rate since 2006 is about 77 percent for both males and females.

The NSFG program produces descriptive statistics which measure factors associated with birth and pregnancy rates, including contraception, infertility, marriage, divorce, and sexual activity, in the US population 15–44 years; and behaviors that affect the risk of sexually transmitted diseases (STD), including HIV, and the medical care associated with contraception, infertility, and pregnancy and childbirth.

NSFG data users include the DHHS programs that fund it, including CDC/NCHS and ten others (The Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD); the Office of Population Affairs (DHHS/OPA); the Office of the Assistant Secretary for Planning and Evaluation (DHHS/OASPE); the Children's Bureau (DHHS/ACF/CB); the ACF's Office of Planning, Research, and Evaluation; the CDC's Division of HIV/AIDS Prevention (CDC/DHAP); the CDC's Division of STD Prevention (CDC/DSTD); the CDC's Division of Reproductive Health (CDC/DRH); the CDC's Division of Cancer Prevention and Control (CDC/DCPC); and the CDC's Division of Birth Defects and Developmental Disabilities (DBDDD). The NSFG is also used by state and local governments; private research and action organizations focused on men's and women's health, child well-being, marriage and the family; academic researchers in the social and public health sciences; journalists, and many others.

This submission requests approval for three years. No questionnaire changes are requested in the first 18 months of this clearance; some limited changes may be requested after that, to be responsive to emerging public policy issues.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
1. Screener Respondents	14,000	1	3/60	700
2. Interview Females	2,750	1	1.5	4,125
3. Interview Males	2,250	1	1.0	2,250
4. Verification Questions	1,400	1	5/60	117
5. Testing questions	250	1	1	250
Total				7,442

Dated: August 31, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–22790 Filed 9–6–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–11AO]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Children's Health After the Storms (CHATS)—New—National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR)/Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves research to assess the potential adverse health effects among children who resided in Federal Emergency Management Agency (FEMA)-provided temporary housing units deployed in the Gulf Coast region following hurricanes Katrina and Rita. The title of this study has changed since publication of the initial 60-day **Federal Register** Notice (FRN) (previous title ''The Gulf Coast Children's Health Study''); however, the goals remain the same.

The Children's Health Study After the Storms (CHATS) addresses an important public health need to assess the potential short-term and long-term health effects among children who lived in FEMA-provided temporary housing units following hurricanes Katrina and Rita, and who were potentially exposed to higher levels of indoor air pollutants such as formaldehyde and other volatile organic compounds compared to other types of housing. These health effects may include adverse acute and chronic health conditions, primarily respiratory and dermal, that may be associated with their exposures. Plans involve a two-year Feasibility Study to investigate the association between exposure to temporary housing units and health conditions and to assess the practicality of conducting a larger longitudinal study. If certain feasibility objectives are met, such as identifying a sufficient number of eligible participants, a 6-year Full Study will be conducted following the same study design as the Feasibility Study.

The Feasibility Study will be conducted in the states of Louisiana and Mississippi. The study will assess the potential health impacts from exposures to various indoor pollutants (e.g., formaldehyde and other volatile organic compounds and plasticizers, including phthalates) commonly found in higher concentrations in the temporary housing units compared with other types of housing.

In the study, a 1:1 ratio of exposed and unexposed children age 3–15 years will be recruited. Children who resided in temporary housing units will be categorized into the ''exposed'' group and children who did not reside in temporary housing units will be categorized into the ''unexposed'' group. A screening questionnaire will be used to assess eligibility and exposure to temporary housing units. The screening questionnaire will be conducted with one adult resident of each selected household. Based on responses to the screening questions, one eligible child will be selected for the study from each participating household. To obtain the desired sample size, we plan to screen 2,236 households in order to identify 625 eligible children. Of these, it is expected that 80%, or 500 children, will agree to participate in the study.

The Feasibility Study will involve a baseline and a 6-month follow-up assessment for each participant, and each assessment is divided into two sessions. The baseline assessment will include a health questionnaire, clinical assessment including biological sample collection, and environmental exposure measurement. The environmental exposure assessment will be collecting biomarkers of exposure and measuring exposures to environmental pollutants using personal and indoor sampling devices over a 7-day period. In the 6-month follow-up assessment, a shorter version of the health questionnaire and the same clinical and environmental exposure assessments will be conducted.

Accounting for a 10% loss to follow-up, the sample size for the 6-month follow-up assessment is projected to be 450 children. If a determination is made to conduct the Full Study, these 450 children will be part of the Full Study and continue to participate in the rest of follow-up assessments.

There is no cost to the participants except their time. The total estimated annual burden hours are 1,310.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form name or module	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Household member 18 yrs or older	Eligibility Screener	1,118	1	10/60
Children ages 3–15	Baseline: Session 1 (Child Modules)	250	1	15/60
Parents of children ages 3–15	Baseline: Session 1 (Parent Modules)	250	1	1
Children ages 3–15	Baseline: Session 2 (Child Modules)	250	1	1
Parents of children ages 3–15	Baseline: Session 2 (Parent Modules)	250	1	30/60
Children ages 3–15	6-month Follow-up: Session 1 (Child Modules).	225	1	7/60
Parents of children ages 3–15	6-month Follow-up: Session 1 (Parent Modules).	225	1	40/60
Children ages 3–15	6-month Follow-up: Session 2 (Child Modules).	225	1	37/60
Parents of children ages 3–15	6-month Follow-up: Session 2 (Parent Modules).	225	1	30/60
Household member 18 yrs or older	Verification Questionnaire for Eligibility Screener (10% subsample).	112	1	2/60
Household member 18 yrs or older	Verification Questionnaire for Baseline and 6-month Follow-up Visits (9% subsample).	43	1	5/60
Household member 18 yrs or older	Mail Verification Form for Baseline and 6-month Follow-up Visits (1% subsample).	5	1	5/60

Dated: August 30, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–22788 Filed 9–6–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Task Force on Community Preventive Services

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Community Preventive Services Task Force (Task Force). The Task Force—an independent, nonfederal body of nationally known leaders in public health practice, policy, and research who are appointed by the CDC Director—was convened in 1996 by the Department of Health and Human Services (HHS) to assess the effectiveness of community, environmental, population, and healthcare system interventions in public health and health promotion. During this meeting, the Task Force will consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meeting will be held on Monday, October 3, 2011 from 8:30 a.m. to 5:30 p.m., EST and Tuesday, October 4, 2011 from 8:30 a.m. to 1 p.m. EST.

ADDRESSES: The Task Force Meeting will be held at the Centers for Disease Control and Prevention, Century Center, 2500 Century Parkway, Conference Rooms 1200/1201, Atlanta, Georgia 30345. Information regarding logistics will be available on the Community Guide Web site (*http://www.thecommunityguide.org*), Wednesday, September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Shelton, The Community Guide Branch, Epidemiology and Analysis Program Office, Office of Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, Georgia 30333, *phone:* (404) 498–1194), *e-mail: communityguide@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

Matters to be discussed: Updates on Tobacco, Skin Cancer, Health Equity and Cardiovascular Disease.

Meeting Accessibility: This meeting is open to the public, limited only by space availability.

Dated: August 25, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–22801 Filed 9–6–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0619]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for humanitarian use devices (HUDs).

DATES: Submit either electronic or written comments on the collection of information by November 7, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Humanitarian Use Devices—21 CFR Part 814 (OMB Control Number 0910–0332)—Extension

This collection of information implements the HUD provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(m)) and subpart H, part 814 (21 CFR part 814). Under section 520(m) of the FD&C Act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless an exemption is granted because there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose the disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury with the probable benefit to health from using the device outweighing the risk of injury or illness from its use. This takes into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collected will assist FDA in making determinations on the following: (1) Whether to grant HUD designation of a medical device; (2) exempt an HUD from the effectiveness requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
814.102	17	1	17	40	680
814.104	5	1	5	320	1,600
814.106	5	5	25	50	1,250
814.108	47	1	47	80	3,760
814.116(e)(3)	3	1	3	1	3
814.124(a)	22	1	22	1	22
814.124(b)	12	1	12	2	24
814.126(b)(1)	43	1	43	120	5,160
Total					12,499

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per record-keeping	Total hours
814.126(b)(2)	43	1	43	2	86

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents in tables 1 and 2 of this document are an average from data for the previous 3 years, *i.e.,* fiscal years 2008 to 2010. The number of annual reports submitted under § 814.126(b)(1) in table 1 reflects 43 respondents with approved HUD applications. Likewise, under § 814.126(b)(2) in table 2, the number of recordkeepers is 43.

Dated: September 1, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–22858 Filed 9–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0627]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements contained in existing FDA regulations regarding the general administrative procedures for a person to petition the Commissioner of Food and Drugs (the Commissioner) to issue, amend, or revoke a rule; to file a petition for an administrative reconsideration or an administrative stay of action; and to request an advisory opinion from the Commissioner.

DATES: Submit either electronic or written comments on the collection of information by November 7, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions—(OMB Control Number 0910–0183)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)), provides that every Agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (submission of documents to Division of Dockets Management), a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, not-for-profit institutions or groups.

Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal, Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under 21 CFR 10.25 (initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions who are requesting from the Commissioner a reconsideration of a matter.

Section 10.35 (21 CFR 10.35), issued under section 701(a) of the FD&C Act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to Division of Dockets Management), the Commissioner to stay the effective date of any administrative action.

Such a petition must do the following: (1) Identify the decision involved; (2) state the action requested, including the

length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the FD&C Act sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to Division of Dockets Management), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the Agency's formal position for matters of general applicability.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.30	207	1	207	24	4,968
10.33	4	1	4	10	40
10.35	5	1	5	10	50
10.85	4	1	4	16	64
Total					5,122

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on Agency records and experience over the past 3 years. In 2010, FDA received approximately 207 petitions (§ 10.30), 4 administrative reconsiderations of action (§ 10.33), 5 administrative stays of action (§ 10.35), and 4 advisory opinions (§ 10.85).

Dated: August 30, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–22857 Filed 9–6–11; 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 November 16, 2011, from 8 a.m. to approximately 5:30 p.m.

Location: Hilton Washington DC/Silver Spring, 8727 Colesville Rd., Silver Spring, MD 20910, 301–589–5200. 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=75dcd91903204870aff160cb9d5528151d*.

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 November 16, 2011, the committee will meet in open session to hear an overview of the research program in the Laboratory of Method Development, Division of Viral Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA. The committee will also hear an update on the evaluation of Gullian-Barre Syndrome after Influenza Vaccine among Medicare population, 2010–2011. 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 November 16, 2011, from 8 a.m. to approximately 9:30 a.m. and from 10:15 a.m. to approximately 5:30 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 November 9, 2011. Oral presentations from the public will be scheduled between approximately 3:30 p.m. and

4:30 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 November 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 November 2, 2011.

Closed Committee Deliberations: On November 16, 2011, between approximately 9:45 a.m. and 10:15 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 program in the Laboratory of Method Development 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: August 31, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy

[FR Doc. 2011–22766 Filed 9–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Immunology Devices Panel of the Medical Devices Advisory Committee: Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Immunology Devices Panel of the Medical Devices Advisory Committee scheduled for October 14, 2011. The meeting was announced in the **Federal Register** of August 9, 2011 (76 FR 48871). The meeting is postponed so that FDA can review and consider additional information that was submitted. Future meeting dates will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1613, Silver Spring, MD 20993–0002, 301–796–6639, *e-mail: shanika.craig@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

Dated: August 31, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–22767 Filed 9–6–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), HHS.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, NICHD has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted within 30 days after publication in FR.

ADDRESSES: Written comments may be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NIH Desk Officer, by E-mail to *OIRA_submission@omb.eop.gov,* or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Ms. Jamelle Banks, Public Health Analyst, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive Room 2A18, Bethesda, Maryland 20892, or call a non-toll free number (301) 496–1877 or E-mail your request, including your address to *banksj@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over

time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

No comments were received in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide NICHD's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 5.

Respondents: 15,200.

Annual responses: 15,200.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 4,950.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: August 30, 2011.

Jamelle E. Banks,

Public Health Analyst, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2011–22830 Filed 9–6–11; 8:45 am]

BILLING CODE P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: October 17–18, 2011.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Helen Lin, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22828 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review PAR11–050, R25s.

Date: September 29, 2011.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, md 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, NIDCR R03 Applications 2012/01.

Date: October 26, 2011.

Time: 1 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marilyn Moore-Hoon, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22829 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases, Special Emphasis Panel, Small Grants Research Review.

Date: October 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eric H. Brown, MS, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd, Room 824, MSC 4872, Bethesda, MD 20892–4872, (301) 594–4955, *browneri@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22826 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, R13 Conference Applications.

Date: October 13, 2011.

Time: 2 to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Study for CKD.

Date: October 17, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22820 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Magnificent Mile Downtown Chicago, 165 East Ontario Street, Chicago, IL 60611.

Contact Person: Aftab A Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: October 5, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: James W Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases.

Date: October 6, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael K Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: October 6–7, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Vonda K Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7801, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Methodology and Measurement in the Behavioral and Social Sciences.

Date: October 7, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Inner Harbor, 301 W. Lombard St., Baltimore, MD 21201.

Contact Person: Tomas Drgon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Daniel F McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: October 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Garofalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Angela Y Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Sally A Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 408–9724, *mulherns@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin National Harbor, 171 Waterfront Street, National Harbor, MD 20745.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Francisco Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Lynn E Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: James J Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: October 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance, Washington, DC Hotel, 999 Ninth Street, NW., Washington, DC 20001–4427.

Contact Person: Maqsood A Wani, PhD,, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: October 13, 2011.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-Mediated Diseases Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.
Date: October 13, 2011.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.
Date: October 13–14, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle NW., Washington, DC 20037.
Contact Person: Lisa Steele, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.
Date: October 13–14, 2011.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar Arlington, 1121 19th Street, North, Arlington, VA 22209.
Contact Person: Jian Wang, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.
Date: October 13–14, 2011.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard Chicago Downtown/Magnificent Mile, 165 East Ontario Street, Chicago, IL 60611.
Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cardiovascular and Sleep Epidemiology Study Section.
Date: October 13, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: J Scott Osborne, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.
Date: October 13–14, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.
Date: October 13–14, 2011.
Time: 9 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–081: Shared Instrumentation: Miscellaneous.
Date: October 13, 2011.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)
Contact Person: Dennis Hlasta, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC, Bethesda, MD 20892, 301–435–1047, *dennis.hlasta@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–08–224: Systems Sciences.
Date: October 13, 2011.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)
Contact Person: Tomas Drgon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.
Date: October 14, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.
Name of Committee:
Date: October 14, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance, Washington, DC Hotel, 999 Ninth Street, NW., Washington, DC 20001–4427.
Contact Person: Yuanna Cheng, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301)435–1195, *Chengy5@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22824 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group, Development—1 Study Section.
Date: October 10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: Grand Hyatt Seattle, 721 Pine Street, Seattle, WA 98101.

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: October 10–11, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Tumor Cell Biology Study Section.

Date: October 10–11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.

Date: October 11–12, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Kirk Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Molecular and Integrative Signal Transduction Study Section.

Date: October 11–12, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: October 11–12, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: October 11–12, 2011.

Time: 6 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Cellular and Molecular Biology of the Kidney Study Section.

Date: October 12, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22822 Filed 9–6–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–24]

Announcement of Funding Awards for Fiscal Year 2010 Transformation Initiative: Sustainable Communities Research Grant (SCRGP) Program

AGENCY: Office of the Assistant Secretary of Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding for the Fiscal Year (FY) 2010 Transformative Initiative: Sustainable Communities Research Grant Program (SCRGP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help complete the research projects developed under this program.

FOR FURTHER INFORMATION CONTACT: Regina Gray, Division of Affordable Housing Research and Technology, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Room 8132, 451 Seventh Street, SW., Washington, DC, 20410, Telephone (202) 402–2876. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not tool free).

SUPPLEMENTARY INFORMATION: The Office of Policy Development and Research (PD&R), under the Assistant Secretary, administered the FY10 Sustainable Communities Research Grant Program (SCRGP) to invite research proposals that build on existing evidence-based scholarship in the broad area of sustainability. Research proposals were submitted in five subject categories: (a) Affordable housing development and preservation; (b) transportation and infrastructure planning; (c) healthy community design; (d) ''green'' and energy-efficient practices; and, (e) an open research category.

The Catalog of Federal Domestic Assistance number for this program is 14.523.

On January 4, 2011, HUD posted a Notice of Public Interest (NOPI) for Fiscal Year 2010 *Transformation Initiative:* Sustainable Communities Research Grant Program on *Grants.gov.* Policy Development and Research reserved $1,500,000 and the Office of Sustainable Housing and Communities (OSHC) added an additional $1,000,000 under the Sustainable Communities Initiative (SCI), bringing the total amount to $2,500,000. Funds for both programs were made available by the Department of Housing and Urban Development Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009). Applicants could request a minimum amount of $150,000 and a

maximum of $500,000. The grant performance period is for 24 months (2 years). Awards under this NOPI will be administered in the form of a Cooperative Agreements.

The Department reviewed, evaluated and scored the applications received based on the rating criteria in the NOPI. As a result, HUD has accepted the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545). More information about the awardees may be found at *http://www.huduser.org.*

Dated: *August 24, 2011.*

Kevin J. Neary,

Deputy Assistant Secretary for Research Evaluation and Monitoring.

List of Awardees for Grant Assistance Under the Fiscal Year (FY) 2010 Sustainable Communities Research Grant Program Funding Competition, by Institution, Address, Grant Amount and Point of Contact

1. The University of Miami, Dr. Scott C. Brown, Department of Epidemiology & Public Health, 1425 NW., 10th Avenue, Miami, Florida. Grant: $500,000.
2. The National Housing Trust, Mr. Todd Nedwick, 1101 30th Street, NW., Washington, D.C. Grant: $348,696.
3. Arizona State University, Ms. Tamara Deuser, P.O. Box 8760111, 600 South Mill Avenue, Tempe, Arizona 85287–5302. Grant: $500,000.
4. Virginia Polytechnic Institute and State University, Mr. Andrew McCoy, 1880 Pratt Drive, Blacksburg, Virginia 24060–3580. Grant: $363,475.
5. International City/County Management Association, Ms. Barbara Yuhas, 777 North Capitol Street, NE., Washington, DC. Grant: $284,666.
6. The Urban Institute, Dr. Rolf Pendall, Metropolitan Housing & Communities Policy Center, 2100 M Street, NW., Washington, DC. Grant: $500,000.

[FR Doc. 2011–22871 Filed 9–6–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5415–FA–20]

Announcement of Funding Awards Resident Opportunity and Self-Sufficiency (ROSS)-Service Coordinators, Program Fiscal Year (FY) 2010

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY2010 Notice of Funding Availability (NOFA) for the Resident Opportunity and Self-Sufficiency (ROSS)-Service Coordinators Program. This announcement contains the consolidated names and addresses of the award recipients for this year under the ROSS-Service Coordinators Program.

FOR FURTHER INFORMATION CONTACT: Joseph Taylor, Grants Management Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410, telephone number 202–475–8852. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The ROSS–SC program provides grants to Public Housing Agencies (PHAs), tribes/tribally designated housing entities (TDHEs), Resident Associations (RAs), and nonprofit organizations (including grassroots, faith-based and other community-based organizations) for the provision of a Service Coordinator to coordinate supportive services and other activities designed to help Public and Indian housing residents attain economic and housing self-sufficiency as defined in 24 CFR part 964. More specifically, the ROSS–SC program provides service coordinators to PHAs to link participants to the supportive services they need to achieve self-sufficiency or remain independent.

The FY2010 awards announced in this notice identify applicants that were selected for funding in a competition posted on HUD's website on April 21, 2010. Applications were reviewed and selected through a lottery for funding based on the meeting threshold criteria in the ROSS–SC NOFA, which made approximately $35 million available for distribution.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 114 awards made under the competition in Appendix A to this notice.

Dated: August 16, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A—LIST OF RESIDENT OPPORTUNITY AND SELF-SUFFICIENCY (ROSS)—SERVICE COORDINATORS PROGRAM NOFA GRANTEES FOR FISCAL YEAR 2010

Recipient	Address	City	State	Zip code	Amount
Aleut Community of St. Paul Island—Tribal Government.	P.O. Box 86	St. Paul Island	AK	99660	$240,000
Cook Inlet Tribal Council, Inc.	3600 San Jeronimo Drive	Anchorage	AK	99508	232,047
Tlingit Haida Regional Housing Authority.	5446 Jenkins Drive	Juneau	AK	99801	240,000
Opelika Housing Authority	1706 Toomer Street	Opelika	AL	36803	240,000
Housing Authority of the City of Hot Springs.	1004 Illinois Street	Hot Springs	AR	71901	116,001
City of Phoenix Housing Department	200 West Washington, 4th Floor	Phoenix	AZ	85003	480,000
City of Tucson	P.O. Box 27210, 310 North Commerce Park Loop.	Tucson	AZ	85726	240,000
Housing Authority of Maricopa County	2024 North 7th Street	Phoenix	AZ	85006	240,000
Housing Authority of the City of Yuma	420 South Madison Avenue	Yuma	AZ	85364	240,000
Housing Authority of the City of Los Angeles.	2600 Wilshire Boulevard	Los Angeles	CA	90057	720,000
Housing Authority of the City of Santa Barbara.	808 Laguna Street	Santa Barbara	CA	93101	240,000

APPENDIX A—LIST OF RESIDENT OPPORTUNITY AND SELF-SUFFICIENCY (ROSS)—SERVICE COORDINATORS PROGRAM NOFA GRANTEES FOR FISCAL YEAR 2010—Continued

Recipient	Address	City	State	Zip code	Amount
Housing Authority of the County of San Joaquin.	448 South Center Street	Stockton	CA	95203	412,470
City of Boulder Housing Authority dba Boulder Housing Partners.	4800 Broadway	Boulder	CO	80304	240,000
Hirschfeld Towers Local Resident Council.	333 West Ellsworth Avenue	Denver	CO	80223	202,317
Housing Authority of the City of Meriden.	22 Church Street	Meriden	CT	6451	240,000
James Creek Resident Council	100 North Street S.W	Washington	DC	20024	240,000
The Wilmington Housing Authority	400 North Walnut Street	Wilmington	DE	19801	480,000
Jacksonville Housing Authority	1300 Broad Street	Jacksonville	FL	32202	543,819
Manatee County Housing Authority	5631 11th Street East	Bradenton	FL	34203	223,860
Miami-Dade Public Housing Agency	701 N.W. 1st Court	Miami	FL	33136	720,000
Pahokee Housing Authority, Inc	465 Friend Terrace	Pahokee	FL	33476	189,850
Pinellas County Housing Authority	11479 Ulmerton Road	Largo	FL	0	240,000
Punta Gorda Housing Authority	340 Gulf Breeze Avenue	Punta Gorda	FL	33950	199,010
Sarasota Housing Authority	40 South Pineapple Avenue	Sarasota	FL	34236	177,862
Conyers Housing Authority	1214 Summer Circle	Conyers	GA	30012	221,682
Griffin Housing Authority	518 Nine Oaks Drive	Griffin	GA	30224	240,000
Housing Authority of Newnan	48 Ball Street	Newnan	GA	30263	240,000
Housing Authority of the City of Carrollton.	P.O. Box 627, 1 Roop Street	Carrollton	GA	30117	240,000
Valdosta Housing Authority	610 East Ann OFC	Valdosta	GA	31603	240,000
Guam Housing and Urban Renewal Authority.	117 Bien Venida Avenue	Sinajana	GU	96910	156,456
Coeur d'Alene Tribal Housing Authority	P.O. Box 267, 1005 8th Street	Plummer	ID	83851	240,000
Housing Authority of Greene County	P.O. Box 336, 325 North Carr Street	White Hall	IL	62092	130,573
Housing Authority of Henry County	125 North Chestnut Street	Kewanee	IL	61443	176,493
Knox County Housing Authority	225 West Tompkins	Galesburg	IL	61401	240,000
Peoria Housing Authority	100 South Richard Pryor Place	Peoria	IL	61605	240,000
Rock Island Housing Authority	227 21st Street	Rock Island	IL	61201	225,000
Rockford Housing Authority	223 South Winnebago Street	Rockford	IL	61102	480,000
Fort Wayne Housing Authority	P.O. Box 13489, 7315 Hanna Street	Fort Wayne	IN	46869	158,585
Housing Authority of the City of Evansville.	500 Court Street	Evansville	IN	47708	183,792
Campbellsville Housing & Redevelopment Authority.	400 Ingram Avenue	Campbellsville	KY	42718	240,000
Housing Authority of Ashland	3131 Winchester Avenue	Ashland	KY	41101	240,000
Lebanon Housing Authority	101 Hamilton Heights	Lebanon	KY	40033	240,000
St. James Parish Housing Authority	2627 North King Avenue	Lutcher	LA	70071	240,000
Urban Strategies, Inc	720 Olive Street, Suite 2600	St. Louis	LA	63101	480,000
Chelsea Housing Authority	54 Locke Street	Chelsea	MA	21150	240,000
Gloucester Housing Authority	P.O. Box 1599, 259 Washington Street	Gloucester	MA	1931	240,000
Malden Housing Authority	630 Salem Street	Malden	MA	2148	240,000
Somerville Housing Authority	30 Memorial Road	Somerville	MA	2145	240,000
Housing Authority of the City of Annapolis.	1217 Madison Street	Annapolis	MD	21403	240,000
Monument East Tenant Council	633 North Aisquith Street	Baltimore	MD	21202	240,000
The Brentwood Tenant Council	401 E. 25th Street	Baltimore	MD	21202	240,000
Bath Housing Authority	80 Congress Avenue	Bath	ME	4530	199,570
Housing Authority of the City of Brewer	15 Colonial Circle, Suite1	Brewer	ME	4412	155,000
South Portland Housing Authority	51 Landry Circle	South Portland	ME	4106	209,091
Community Action Network	P.O. Box 130076	Ann Arbor	MI	48113	238,657
Port Huron Housing Commission	905 Seventh Street	Port Huron	MI	48060	240,000
SOS Community Services, Inc	101 South Huron Street	Ypsilanti	MI	48197	193,480
Housing Authority of the City of Jackson, Mississippi.	2747 Livingston Road	Jackson	MS	39213	240,000
Fort Peck Housing Authority, Inc	P.O. Box 667, 503 6th Avenue East	Poplar	MT	59255	201,000
Northern Cheyenne Tribal Housing Authority.	P.O. Box 327, Highway 39 North	Lame Deer	MT	59043	168,000
Salish & Kootenai Housing Authority	P.O. Box 38	Pablo	MT	59855	210,000
Housing Authority of the County of Wake.	P.O. Box 339, 100 Shannon Drive	Zebulon	NC	27597	240,000
Housing Authority of the City of Lincoln	Lincoln Housing Authority, 5700 R Street.	Lincoln	NE	68505	222,045
Housing Authority of the City of Omaha	540 South 27th Street	Omaha	NE	68105	379,017
Ponca Tribe of Nebraska	1501 Michigan Avenue	Norfolk	NE	68701	198,092
Dover Housing Authority	62 Whittier Street	Dover	NH	3820	240,000
Atlantic City Housing Authority	227 North Vermont Avenue, 17th Floor	Atlantic City	NJ	8401	480,000
Cerebral Palsy Association of Middlesex County, Inc.	10 Oak Drive	Edison	NJ	8837	240,000

APPENDIX A—LIST OF RESIDENT OPPORTUNITY AND SELF-SUFFICIENCY (ROSS)—SERVICE COORDINATORS PROGRAM NOFA GRANTEES FOR FISCAL YEAR 2010—Continued

Recipient	Address	City	State	Zip code	Amount
Cerebral Palsy Association of Middlesex County, Inc.	10 Oak Drive	Edison	NJ	8837	240,000
Housing Authority of the Borough of Glassboro.	737 Lincoln Boulevard	Borough of Glassboro	NJ	8028	240,000
Housing Authority of the Borough of Madison.	24 Central Avenue	Madison	NJ	7940	240,000
Housing Authority of the City of Long Branch.	2 Hope Lane	Long Branch	NJ	7740	240,000
Housing Authority of the City of Paterson.	60 Van Houten Street	Paterson	NJ	7509	425,491
Housing Authority of the City of Vineland.	191 West Chestnut Avenue	Vineland	NJ	8360	240,000
Housing Authority of the City of Truth or Consequences.	108 Cedar	Truth or Consequences	NM	87901	240,000
Binghamton Housing Authority	35 Exchange Street	Binghamton	NY	13902	210,000
Chautauqua Opportunities, Inc	17 West Courtney Street	Dunkirk	NY	14048	194,000
Citywide Council of Syracuse Low Income Housing Residents.	516 Burt Street	Syracuse	NY	13202	480,000
Cohoes Housing Authority	100 Manor Sites	Cohoes	NY	12047	121,592
Ithaca Housing Authority	800 South Plain Street	Ithaca	NY	14850	184,325
Town of Islip Housing Authority	963 Montauk Highway	Oakdale	NY	11769	104,952
Cuyahoga Metropolitan Housing Authority.	1441 West 25th Street	Cleveland	OH	44113	720,000
Lorain Metropolitan Housing Authority	1600 Kansas Avenue	Lorain	OH	44052	232,878
Portage Metropolitan Housing Authority	2832 State Route 59	Ravenna	OH	44266	222,072
Trumbull Metropolitan Housing Authority.	4076 Youngstown Road S.E., Suite 101.	Warren	OH	44484	195,155
Housing & Community Services Agency of Lane County.	177 Day Island Road	Eugene	OR	97401	240,000
Housing Authority of the County of Beaver.	300 State Avenue	Beaver	PA	15009	315,946
Tioga County Housing Authority	4 Riverside Plaza	Blossburg	PA	16912	240,000
United Neighborhood Centers	425 Alder Street	Scranton	PA	18505	185,231
North Charleston Housing Authority	2170 Ashley Phosphate Road, #700	North Charleston	SC	29406	240,000
Oglala Sioux Tribe Partnership for Housing, Inc.	P.O. Box 3001	Pine Ridge	SD	57770	240,000
Chattanooga Housing Authority	801 North Holtzclaw Avenue	Chattanooga	TN	37401	480,000
Memphis Housing Authority	700 Adams Avenue	Memphis	TN	38105	720,000
Housing Authority of the City of Beaumont.	1890 Laurel	Beaumont	TX	77701	171,000
Housing Authority of the City of Belton, Texas.	P.O. Box 708, 715 Saunders	Temple	TX	76503	158,135
Housing Authority of the City of Bryan	1306 Beck Street	Bryan	TX	77803	240,000
Housing Authority of the City of Wichita Falls, Texas.	501 Webster	Wichita Falls	TX	76307	181,500
Paiute Housing Authority	665 North, 100 East	Cedar City	UT	84720	179,843
Charlottesville Public Housing Association of Residents (PHA).	1000 Preston Avenue, Suite C	Charlottesville	VA	22903	153,399
Cumberland Plateau Regional Housing Authority.	Post Office Box 1328, 35 Fox Meadow Drive.	Lebanon	VA	24266	149,400
Norfolk Redevelopment and Housing Authority.	201Granby Street	Norfolk	VA	23510	720,000
Portsmouth Redevelopment & Housing Authority.	801 Water Street, 2nd Floor	Portsmouth	VA	23704	240,000
Virgin Islands Housing Authority	402 Estate Anna's Retreat	St. Thomas	VI	801	720,000
Bennington Housing Authority	22 Willowbrook Drive	Bennington	VT	5201	235,197
Full Life Care	800 Jefferson Street, #600	Seattle	WA	98104	720,000
Housing Authority of the City of Everett	P.O. Box 1547	Everett	WA	98206	228,890
Housing Authority of the City of Seattle	120 6th Avenue North	Seattle	WA	98109	708,759
Housing Authority, City of Renton	2900 North East 10th Street	Renton	WA	98056	186,331
Skyline Crest Resident Leadership Group.	500 Omaha Way	Vancouver	WA	98661	228,226
Appleton Housing Authority	925 West Northland Avenue	Appleton	WI	51914	220,500
Highland Park Resident Corporation	c/o Kenneth Barbeau, Contract Administrator, HACM, 650 West Reservoir Avenue.	Milwaukee	WI	53212	146,070
Holton Terrace Resident Organization	c/o Kenneth Barbeau, Contract Administrator, HACM, 650 West Reservoir Avenue.	Milwaukee	WI	53212	237,619
Lac Courte Oreilles Band of Lake Superior Chippewa.	13394 West Trepania Road	Hayward	WI	54843	198,576

APPENDIX A—LIST OF RESIDENT OPPORTUNITY AND SELF-SUFFICIENCY (ROSS)—SERVICE COORDINATORS PROGRAM NOFA GRANTEES FOR FISCAL YEAR 2010—Continued

Recipient	Address	City	State	Zip code	Amount
Mitchell Court Resident Organization	650 West Reservoir Ave, c/o Kenneth Barbeau, Contract Administrator, HACM.	Milwaukee	WI	53212	237,619

[FR Doc. 2011–22874 Filed 9–6–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5415–FA–19]

Announcement of Funding Awards; Public and Indian Housing Family Self-Sufficiency Program Under the Resident Opportunity and Self-Sufficiency (ROSS) Program; Fiscal Year (FY) 2010

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY2010 Notice of Funding Availability (NOFA) for the Public and Indian Housing Family Self-Sufficiency Program Under the Resident Opportunity and Self-Sufficiency (ROSS) Program (PH–FSS). This announcement contains the consolidated names and addresses of the award recipients for this year under the PH–FSS Program.

FOR FURTHER INFORMATION CONTACT: Andrea Edmond, Grants Management Center, Office of Public and Indian Housing, Department of Housing and Urban Development, Grants Management Center, 451 7th Street, SW., B–133, POC 3rd Floor, Washington, DC 20410, telephone telephone number 202–475–8851. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The PH–FSS program provides grants to Public Housing Authorities (PHAs), and Tribes/Tribally designated housing entities (TDHEs) that administer a PH–FSS program to help them make progress toward housing self-sufficiency. More specifically, the PH–FSS program promotes the development of local strategies to coordinate the use of assistance under the Public Housing program with public and private resources, enables participating families to increase earned income and financial literacy, reduce or eliminate the need for welfare assistance, and make progress toward achieving economic independence and housing self-sufficiency.

The FY2010 awards announced in this notice identify applicants that were selected for funding in a competition posted on HUD's Web site on October 21, 2010. Applications were reviewed and selected based on meeting threshold criteria in the PH–FSS NOFA, which made approximately $15 million available for distribution.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 242 awards made under the competition in Appendix A to this notice.

Dated: August 16, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A—LIST OF PUBLIC AND INDIAN HOUSING FAMILY SELF-SUFFICIENCY PROGRAM UNDER THE RESIDENT OPPORTUNITY FOR SELF-SUFFICIENCY (ROSS) PROGRAM (PH–FSS) NOFA GRANTEES FOR FISCAL YEAR 2010

Recipient	Address	City	State	Zip code	Amount
Alaska Housing Finance Corporation	P.O. Box 101020	Anchorage	AK	99510	$69,000
Alexander City Housing Authority	2110 County Road	Tallapoosa	AL	35010	39,936
Housing Authority of the Birmingham District.	1826 3rd Avenue South	Birmingham	AL	35255	69,000
Huntsville Housing Authority	200 Washington Street	Huntsville	AL	35804	55,500
Jefferson County Housing Authority	3700 Industrial Parkway	Birmingham	AL	35217	55,666
Mobile Housing Authority	151 South Claiborne Street	Mobile	AL	36602	46,926
Tuscaloosa Housing Authority	2808 10th Avenue	Tuscaloosa	AL	35401	41,042
Housing Authority of the City of Hot Springs.	1004 Illinois Street	Hot Springs	AR	71901	27,390
Housing Authority of the City of North Little Rock, Arkansas.	2201 Division	North Little Rock	AR	72114	40,629
Housing Authority of the City of West Memphis.	2820 Harrison Street	West Memphis	AR	72364	42,652
City of Phoenix Housing Department	251 West Washington, 4th Floor	Phoenix	AZ	85003	69,000
City of Tucson	P.O. Box 27210, 310 North Commerce Park Loop.	Tucson	AZ	85726	68,680
Housing Authority of Maricopa County	2024 North 7th Street	Phoenix	AZ	85006	69,000
Housing Authority of the City of Yuma	420 South Madison Avenue	Yuma	AZ	85364	62,458
Yuma County Housing Department	8450 West Highway 95, Suite 88	Somerton	AZ	85350	56,000
Bear River Band Rohnerville Rancheria	27 Bear River Drive	Loleta	CA	95551	69,000
City of Sacramento Housing Authority	801 12th Street	Sacramento	CA	94814	69,000
County of Sacramento Housing Authority.	801 12th Street	Sacramento	CA	94814	69,000

APPENDIX A—LIST OF PUBLIC AND INDIAN HOUSING FAMILY SELF-SUFFICIENCY PROGRAM UNDER THE RESIDENT OPPORTUNITY FOR SELF-SUFFICIENCY (ROSS) PROGRAM (PH–FSS) NOFA GRANTEES FOR FISCAL YEAR 2010—Continued

Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of San Buenaventura.	995 Riverside Street	Ventura	CA	93001	69,000
Housing Authority of the City of San Luis Obispo.	487 Leff Street	San Luis Obispo	CA	93401	54,622
Housing Authority of the City of Santa Barbara.	808 Laguna Street	Santa Barbara	CA	93101	66,950
Housing Authority of the County of Kern.	601–24th Street	Bakersfield	CA	93301	62,804
Housing Authority of the County of Marin.	4020 Civic Center Drive	San Rafael	CA	94903	68,959
Housing Authority of the County of San Bernardino.	715 East Brier Drive	San Bernardino	CA	92408	69,000
Housing Authority of the County of San Joaquin.	448 South Center Street	Stockton	CA	95203	120,442
Housing Authority of the County of Santa Cruz.	2931 Mission Street	Santa Cruz	CA	95060	69,000
Housing Authority of the County of Stanislaus.	P.O. Box 581918, 1701 Robertson Road.	Modesto	CA	95358	65,000
Madera, City of	205 North G Street	Madera	CA	93637	54,368
Oxnard Housing Authority	435 South D Street	Oxnard	CA	93030	69,000
The Housing Authority of the County of Los Angeles.	2 Coral Circle	Monterey Park	CA	91755	69,000
Boulder Housing Partners aba Housing Authority, City of Boulder.	4800 Broadway	Boulder	CO	80304	69,000
Fort Collins Housing Authority	1715 West Mountain Avenue	Fort Collins	CO	80521	69,000
Housing Authority of the City & County of Denver.	777 Grant Street	Denver	CO	80203	243,230
Housing Authority of Ansonia	36 Main Street	Ansonia	CT	6401	69,000
Housing Authority of New Britain	16 Armistice Street	New Britain	CT	6053	69,000
Housing Authority of Stamford	22 Clinton Avenue	Stamford	CT	6901	66,950
Housing Authority of the City of Meriden.	22 Church Street	Meriden	CT	6451	58,539
Housing Authority of the City of New Haven.	360 Orange Street	New Haven	CT	6511	58,896
Housing Authority of the City of Norwalk.	24½ Monroe Street	Norwalk	CT	6856	69,000
Fort Pierce Housing Authority	511 Orange Avenue	Fort Pierce	FL	34950	45,337
Hialeah Housing Authority	75 East 6th Street	Hialeah	FL	33010	40,293
Housing Authority of Brevard County	1401 Guava Avenue	Melbourne	FL	32935	55,222
Housing Authority of Lakeland	430 Hartsell Avenue	Lakeland	FL	33815	52,084
Housing Authority of the City of Fort Myers.	4224 Renaissance Preserve Way	Fort Myers	FL	33916	60,092
Housing Authority of the City of Tampa	1514 Union Street	Tampa	FL	33607	65,593
Jacksonville Housing Authority	1300 Broad Street	Jacksonville	FL	32202	45,867
Lee County Housing Authority	14170 Warner Circle	North Fort Myer	FL	33903	48,801
Manatee County Housing	5631 11th Street East	Bradenton	FL	34203	62,620
Pinellas County Housing Authority	11479 Ulmerton Road	Largo	FL	33778	69,000
Sarasota Housing Authority	40 South Pineapple Avenue	Sarasota	FL	34236	47,741
Tallahassee Housing Authority	2940 Grady Road	Tallahassee	FL	32312	29,383
The Housing Authority of the City of Daytona Beach.	211 North Ridgewood Avenue, Suite 300.	Daytona Beach	FL	32114	45,020
The West Palm Beach Housing Authority.	1715 Division Avenue	West Palm Beach	FL	33407	40,206
Griffin Housing Authority	518 Nine Oaks Drive	Griffin	GA	30224	68,000
Housing Authority of Columbus, Georgia.	P.O. Box 630, 1000 Wynnton Road	Columbus	GA	31902	46,350
Housing Authority of Savannah	1407 Wheaton Street	Savannah	GA	31404	69,000
Housing Authority of the City of Albany, GA.	P.O. Box 485, 521 Pine Avenue	Albany	GA	31702	30,836
Housing Authority of the City of Carrollton.	1 Roop Street	Carrollton	GA	30117	61,074
Macon Housing Authority	2015 Felton Avenue	Macon	GA	31201	63,368
Northwest Georgia Housing Authority	800 North Fifth Avenue	Rome	GA	30162	45,976
The Housing Authority of the City of Marietta.	P.O. Drawer K, 95 Cole Street N.E	Marietta	GA	30061	57,070
Tri-City Housing Authority	P.O. Box 220, 33 Martin Luther King Jr. Drive.	Woodland	GA	31836	69,000
City of Des Moines Municipal Housing Agency.	100 East Euclid Avenue, Suite 101	Des Moines	IA	50313	32,024

APPENDIX A—LIST OF PUBLIC AND INDIAN HOUSING FAMILY SELF-SUFFICIENCY PROGRAM UNDER THE RESIDENT OPPORTUNITY FOR SELF-SUFFICIENCY (ROSS) PROGRAM (PH–FSS) NOFA GRANTEES FOR FISCAL YEAR 2010—Continued

Recipient	Address	City	State	Zip code	Amount
Eastern Iowa Regional Housing Authority.	7600 Commerce Park	Dubuque	IA	52002	66,746
Nampa Housing Authority	211–19th Avenue North	Nampa	ID	83687	36,342
Chicago Housing Authority	60 East Van Buren	Chicago	IL	60605	57,962
Housing Authority of Elgin	120 South State Street	Elgin	IL	60123	69,000
Housing Authority of Greene County	P.O. Box 336, 325 North Carr Street	White Hall	IL	62092	45,910
Housing Authority of Henry County	125 North Chestnut Street	Kewanee	IL	61443	48,918
Macoupin County Housing Authority	P.O. Box 226, 760 Anderson Street	Carlinville	IL	62626	42,616
Peoria Housing Authority	100 South Richard Pryor Place	Peoria	IL	61605	49,515
Rock Island Housing Authority	227 21st Street	Rock Island	IL	61201	65,000
Rockford Housing Authority	223 South Winnebago Street	Rockford	IL	61102	68,964
Springfield Housing Authority	200 North Eleventh Street	Springfield	IL	62703	39,000
The Housing Authority of the County of Lake.	33928 North Route 45	Grayslake	IL	60030	69,000
Fort Wayne Housing Authority	P.O. Box 13489, 7315 Hanna Street	Fort Wayne	IN	46869	40,000
Housing Authority of the City of Elkhart	1396 Benham Avenue	Elkhart	IN	46516	40,982
Housing Authority of the City of Michigan City.	621 East Michigan Boulevard	Michigan City	IN	46360	42,616
Housing Authority of the City of Terre Haute.	P.O. Box 3086, 2001 North 19th Street	Terre Haute	IN	47803	64,188
Housing Authority of the County of Delaware, Indiana.	2401 South Haddix Avenue	Muncie	IN	47302	49,764
Indianapolis Housing Agency	1919 North Meridian Street	Indianapolis	IN	46202	45,000
New Albany Housing Authority	P.O. Box 11	New Albany	IN	47150	114,000
Lawrence-Douglas County Housing Authority.	1600 Haskell Avenue	Lawrence	KS	66044	81,456
Salina Housing Authority	469 South 5th	Salina	KS	67402	60,101
Housing Authority of Bowling Green	247 Double Springs Road	Bowling Green	KY	42101	47,740
Housing Authority of Glasgow	P.O. Box 1745, 111 Bunche Avenue	Glasgow	KY	42142	40,631
Louisville Metro Housing Authority	420 South Eighth Street	Louisville	KY	40203	69,000
Housing Authority of New Orleans	4100 Touro Street	New Orleans	LA	70122	69,000
Housing Authority of the City of Shreveport.	2500 Line Avenue	Shreveport	LA	71104	58,440
Jefferson Parish Housing Authority	1718 Betty Street	Marrero	LA	70072	45,893
Boston Housing Authority	52 Chauncy Street	Boston	MA	02111	69,000
Brockton Housing Authority	45 Goddard Road	Brockton	MA	02303	69,000
Fall River Housing Authority	85 Morgan Street	Fall River	MA	02722	69,000
Framingham Housing Authority	1 John J. Brady Drive	Framingham	MA	01702	69,000
Holyoke Housing Authority	475 Maple Street, Suite One	Holyoke	MA	01040	47,744
Lowell Housing Authority	P.O. Box 60, 350 Moody Street	Lowell	MA	01853	65,000
Lynn Housing Authority & Neighborhood Development (LHAND).	10 Church Street	Lynn	MA	01902	53,074
Malden Housing Authority	630 Salem Street	Malden	MA	02148	69,000
Somerville Housing Authority	30 Memorial Road	Somerville	MA	02145	67,465
Worcester Housing Authority	40 Belmont Street	Worcester	MA	01605	67,465
Hagerstown Housing Authority	35 West Baltimore Street	Hagerstown	MD	21740	100,125
Housing Authority of Baltimore City	417 East Fayette Street, Room 923	Baltimore	MD	21202	69,000
Housing Authority of St. Mary's County, Maryland.	21155 Lexwood Drive, Suite C	Lexington Park	MD	20653	42,008
Housing Authority of Washington County.	319 East Antietam Street, 2nd Floor	Hagerstown	MD	21740	4,440
Housing Commission of Anne Arundel County.	7477 Baltimore Annapolis Boulevard	Glen Burnie	MD	21060	64,890
Housing Opportunities Commission	10400 Detrick Avenue	Kensington	MD	20895	141,144
Rockville Housing Enterprises	621A Southlawn Lane	Rockville	MD	20850	23,075
Housing Authority of the City of Brewer	15 Colonial Circle, Suite 1	Brewer	ME	4412	52,832
Lewiston Housing Authority	1 College Street	Lewiston	ME	4240	17,848
Portland Housing Authority	14 Baxter Boulevard	Portland	ME	4101	19,157
Detroit Housing Commission	1301 East Jefferson	Detroit	MI	48207	69,000
Muskegon Housing Commission	1080 Terrace	Muskegon	MI	49442	44,322
Saginaw Housing Commission	1803 Norman Street	Saginaw	MI	48605	48,675
Housing and Redevelopment Authority of Virginia, MN.	442 Pine Mill Court	Virginia	MN	55792	56,681
Housing Authority of St. Louis Park	5005 Minnetonka Boulevard	St. Louis Park	MN	55416	18,035
Washington County Housing and Redevelopment Authority.	321 Broadway Avenue	St. Paul Park	MN	55071	29,247
Housing Authority of Kansas City, Missouri.	301 East Armour	Kansas City	MO	64111	54,775
Housing Authority of Saint Charles	1041 Olive Street	Saint Charles	MO	63301	44,790

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Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of Columbia, MO.	201 Switzer Street	Columbia	MO	65203	52,396
Natchez Housing Authority	2 Auburn Avenue	Natchez	MS	39120	63,500
The Meridian Housing Authority	2425 E. Street	Meridian	MS	39301	57,011
Missoula Housing Authority	1235 34th Street	Missoula	MT	59801	69,000
Burlington Housing Authority	P.O. Box 2380, 133 North Ireland Street.	Burlington	NC	27217	58,486
City of Concord Housing Department	P.O. Box 308, 283 Harold Goodman Circle.	Concord	NC	28026	48,568
City of Hickory Public Housing Authority.	P.O. Box 2927	Hickory	NC	28603	50,073
Gastonia Housing Authority	P.O. Box 2398, 340 West Long Avenue.	Gastonia	NC	28053	51,500
Housing Authority for the City of Greensboro.	P.O. Box 21287, 450 North Church Street.	Greensboro	NC	27420	63,115
Housing Authority of the City of Asheville.	165 South French Broad Avenue	Asheville	NC	28801	55,000
Housing Authority of the City of Charlotte, N.C.	1301 South Boulevard	Charlotte	NC	28203	65,000
Housing Authority of the City of Greenville.	1103 Broad Street	Greenville	NC	27834	60,371
Housing Authority of the City of High Point.	500 East Russell Avenue	High Point	NC	27261	104,724
Housing Authority of the City of Kinston, North Carolina.	608 North Queen Street	Kinston	NC	28501	46,957
Housing Authority of the City of Wilmington, N.C.	1524 South 16th Street	Wilmington	NC	28401	60,000
Lexington Housing Authority	P.O. Box 1085	Lexington	NC	27293	58,044
Mid-East Regional Housing Authority	809 Pennsylvania Avenue	Washington	NC	27889	41,000
North Wilkesboro Housing Authority	P.O. Box 1373, 101 Hickory Street	North Wilkesboro	NC	28659	55,000
Statesville Housing Authority	110 West Allison Street	Statesville	NC	28677	130,000
The Housing Authority of the City of Durham.	330 East Main Street	Durham	NC	27701	69,000
Fargo Housing and Redevelopment Authority.	325 Broadway	Fargo	ND	58102	51,830
Housing Authority of the City of Lincoln	Lincoln Housing Authority, 5700 R Street.	Lincoln	NE	68505	51,856
Kearney Housing Agency	P.O. Box 1236, 2715 Avenue I	Kearney	NE	68848	46,350
Atlantic City Housing Authority and Urban Redevelopment Agency.	227 North Vermont Avenue, 17th Floor	Atlantic City	NJ	8404	58,065
Housing Authority, County of Morris	99 Ketch Road	Morristown	NJ	7960	36,102
Housing Authority of the Borough of Madison.	24 Central Avenue	Madison	NJ	7940	69,000
Housing Authority of the City of Camden.	2021 Watson Street, 2nd Floor	Camden	NJ	8105	46,683
Housing Authority of the City of Perth Amboy.	P.O. Box 390, 881 Amboy Avenue	Perth Amboy	NJ	8862	68,673
Housing Authority of the City of Vineland.	191 West Chestnut Avenue	Vineland	NJ	8360	69,000
The Housing Authority of Plainfield	510 East Front Street	Plainfield	NJ	7060	69,000
The Newark Housing Authority	500 Broad Street, 2nd Floor	Newark	NJ	7102	69,000
Clovis Housing & Redevelopment Agency, Inc.	P.O. Box 1240, 2101 West Grand Avenue.	Clovis	NM	88101	45,020
Housing Authority of the City of Truth or Consequences.	108 Cedar Street	Truth or Consequences	NM	87901	56,227
Santa Fe Civic Housing Authority	664 Alta Vista Street	Santa Fe	NM	87505	57,585
Santa Fe County Housing Authority	52 Camino de Jacobo	Santa Fe	NM	87507	56,587
Taos County Housing Authority	Box 4239 NDCBU, 525 Ranchitos Road.	Taos	NM	87571	50,256
Housing Authority of the City of Reno	1525 East 9th Street	Reno	NV	89512	28,214
Southern Nevada Regional Housing Authority (SNRHA).	340 North 11th Street	Las Vegas	NV	89101	182,804
Buffalo Municipal Housing Authority	300 Perry Street	Buffalo	NY	14204	69,000
Geneva Housing Authority	P.O. Box 153, 41 Lewis Street	Geneva	NY	14456	65,642
Mechanicville Housing Authority	1 Harris Avenue	Mechanicville	NY	12118	34,479
Monticello Housing Authority	76 Evergreen Drive	Monticello	NY	12701	38,789
Municipal Housing Authority of the City of Schenectady.	375 Broadway	Schenectady	NY	12305	57,199
Municipal Housing Authority of the City of Utica, New York.	509 2nd Street, Suite 1	Utica	NY	13501	68,959

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Recipient	Address	City	State	Zip code	Amount
New Rochelle Municipal Housing Authority.	50 Sickles Avenue	New Rochelle	NY	10801	69,000
Rochester Housing Authority	675 West Main Street	Rochester	NY	14611	66,136
Troy Housing Authority	One Eddy's Lane	Troy	NY	12180	61,995
Akron Metropolitan Housing Authority	100 West Cedar Street	Akron	OH	44307	131,431
Chillicothe Metropolitan Housing Authority.	178 West Fourth Street	Chillicothe	OH	45601	50,325
Dayton Metropolitan Housing Authority	P.O. Box 8750, 400 Wayne Avenue	Dayton	OH	45401	65,042
Fairfield Metropolitan Housing Authority	315 North Columbus Street	Lancaster	OH	43130	56,580
Geauga Metropolitan Housing Authority	385 Center Street	Chardon	OH	44024	63,654
Lorain Metropolitan Housing Authority	1600 Kansas Avenue	Lorain	OH	44052	64,782
Lucas Metropolitan Housing Authority	435 Nebraska Avenue	Toledo	OH	43604	55,110
Morgan Metropolitan Housing Authority	4580 North Street Route 376 North West.	McConnelsville	OH	43758	49,849
Springfield Metropolitan Housing Authority.	101 West High Street	Springfield	OH	45502	69,000
Trumbull Metropolitan Housing Authority.	4076 Youngstown Road, S.E., Suite 101.	Warren	OH	44484	50,078
Zanesville Metropolitan Housing Authority.	407 Pershing Road	Zanesville	OH	43701	51,487
Housing Authority of the City of Muskogee.	220 North 40th Street	Muskogee	OK	74401	42,436
Housing Authority of the City of Shawnee, OK.	P.O. Box 3427, 601 West Seventh Street.	Shawnee	OK	74804	92,148
Housing Authority of the City of Tulsa	415 East Independence Street	Tulsa	OK	74106	46,712
Housing Authority & Community Services Agency of Lane County.	177 Day Island Road	Eugene	OR	97401	69,000
Housing Authority and Urban Renewal Agency of Polk County, OR.	P.O. Box 467, 204 S.W. Walnut	Dallas	OR	97338	15,881
Housing Authority of Portland	135 Southwest Ash Street	Portland	OR	97204	199,524
Housing Authority of the City of Salem	360 Church Street S.E.	Salem	OR	97301	69,000
Allegheny County Housing Authority	625 Stanwix Street, 12th Floor	Pittsburgh	PA	15222	68,428
Altoona Housing Authority	2700 Pleasant Valley Boulevard	Altoona	PA	16602	56,674
Housing Authority of Northumberland County.	50 Mahoning Street	Milton	PA	17847	53,718
Housing Authority of the City of Pittsburgh.	200 Ross Street	Pittsburgh	PA	15219	47,262
Housing Authority of the City of York	P.O. Box 1963, 31 South Broad Street	York	PA	17403	45,278
Philadelphia Housing Authority (PHA)	12 South 23rd Street, 6th Floor	Philadelphia	PA	19103	69,000
Westmoreland County Housing Authority.	154 South Greengate Road	Greensburg	PA	15601	60,676
The Housing Authority of the City of Providence.	100 Broad Street	Providence	RI	2903	69,000
Housing Authority of the City of Columbia, SC.	1917 Harden Street	Columbia	SC	29204	48,329
North Charleston Housing Authority	2170 Ashley Phosphate Road, #700	North Charleston	SC	29406	50,000
Spartanburg Housing Authority	201 Caulder Avenue, Suite A	Spartanburg	SC	29306	51,100
The Housing Authority of the City of Greenville.	511 Augusta Street	Greenville	SC	29605	47,206
Chattanooga Housing Authority	801 North Holtzclaw Avenue	Chattanooga	TN	37404	68,000
Jackson Housing Authority	125 Preston Street	Jackson	TN	38301	101,268
Kingsport Housing & Redevelopment Authority.	P.O. Box 44, 906 East Sevier Avenue	Kingsport	TN	37662	64,174
Memphis Housing Authority	700 Adams Avenue	Memphis	TN	38105	69,000
Metropolitan Development and Housing Agency.	701 South Sixth Street	Nashville	TN	37206	136,648
Shelbyville Housing Authority	316 Templeton Street	Shelbyville	TN	37160	49,937
Town of Crossville Housing Authority	P.O. Box 425	Crossville	TN	38557	56,837
Cameron County Housing Authority	65 Castellano Circle	Brownsville	TX	78526	52,082
Housing Authority of City of Fort Worth	1201 East 13th Street	Fort Worth	TX	76102	69,000
Housing Authority of the City of Austin	P.O. Box 6159	Austin	TX	78762	109,342
Housing Authority of the City of Beaumont.	1890 Laurel	Beaumont	TX	77701	41,330
Housing Authority of the City of Brownsville.	P.O. Box 2606 Boca Chica Boulevard	Brownsville	TX	78521	44,283
Housing Authority of the City of El Paso.	5300 East Paisano Drive	El Paso	TX	79905	50,527
Housing Authority of the City of Mission	1300 East 8th	Mission	TX	78572	68,000
Housing Authority of the City of San Antonio.	818 South Flores Street	San Antonio	TX	78204	413,273

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Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of Waco	P.O. Box 978, 4400 Cobbs Drive	Waco	TX	76703	52,758
Housing Authority of the City of Wichita Falls.	501 Webster	Wichita Falls	TX	76301	48,500
Housing Authority of the County of Hidalgo.	1800 North Texas Boulevard	Weslaco	TX	78596	41,734
Houston Housing Authority	2640 Fountainview, Suite 400	Houston	TX	77054	52,518
Robstown Housing Authority	625 West Avenue F	Robstown	TX	78380	32,136
San Marcos Housing Authority	1201 Thorpe Lane	San Marcos	TX	78666	51,260
The Housing Authority of the City of Dallas.	3939 North Hampton Road	Dallas	TX	75212	56,440
Housing Authority of the County of Salt Lake.	3595 South Main Street	Salt Lake City	UT	84115	59,652
Alexandria Redevelopment and Housing Authority.	600 North Fairfax Street	Alexandria	VA	22314	69,000
Bristol Redevelopment and Housing Authority.	809 Edmond Street	Bristol	VA	24201	41,843
Chesapeake Redevelopment & Housing Authority.	1468 South Military Highway	Chesapeake	VA	23320	49,359
City of Roanoke Redevelopment & Housing Authority.	2624 Salem Turnpike N.W	Roanoke	VA	24017	110,000
Danville Redevelopment and Housing Authority.	135 Jones Crossing	Danville	VA	24541	47,271
Fairfax Co. Redevelopment and Housing Authority.	3700 Pender Drive, Suite 300	Fairfax	VA	22030	69,000
Newport News RHA	227 27th Street	Newport News	VA	23607	48,410
Norfolk Redevelopment and Housing Authority.	201 Granby Street	Norfolk	VA	23510	138,000
Portsmouth Redevelopment & Housing Authority.	801 Water Street, 2nd Floor	Portsmouth	VA	23704	55,340
Richmond Redevelopment and Housing Authority.	901 Chamberlayne Parkway	Richmond	VA	23220	69,000
Suffolk Redevelopment and Housing Authority.	530 East Pinner Street	Suffolk	VA	23434	38,366
Waynesboro Redevelopment and Housing Authority.	P.O. Box 1138, 1700 New Hope Road	Waynesboro	VA	22980	44,290
Virgin Islands Housing Authority	402 Estate Anna's Retreat	St. Thomas	VI	801	69,000
Brattleboro Housing Authority	P.O. Box 2275	Brattleboro	VT	5303	69,000
Rutland Housing Authority	5 Tremont Street	Rutland	VT	5701	65,477
Housing Authority of the City of Tacoma.	902 South L Street	Tacoma	WA	98405	59,662
Housing Authority of the City of Vancouver.	2500 Main Street	Vancouver	WA	98660	65,775
King County Housing Authority	600 Andover Park West	Tukwila	WA	98188	68,861
Seattle Housing Authority	P.O. Box 19028, 120 6th Avenue North.	Seattle	WA	98109	69,000
Housing Authority of the City of Milwaukee.	P.O. Box 324	Milwaukee	WI	53201	69,000
Charleston-Kanawha Housing Authority	1525 Washington Street West	Charleston	WV	25312	36,256
Parkersburg Housing Authority	1901 Cameron Avenue	Parkersburg	WV	26101	37,598
Housing Authority of the City of Cheyenne.	3304 Sheridan Street	Cheyenne	WY	82009	33,370

[FR Doc. 2011–22872 Filed 9–6–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N163; 81440–1113–0000–F3]

Proposed Safe Harbor Agreement for California Red-legged Frog, California Tiger Salamander, Smith's Blue Butterfly, and Yadon's Piperia at Palo Corona Regional Park, Monterey County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received, from the Monterey Peninsula Regional Park District (Applicant), an application for an enhancement of survival permit for the federally threatened California red-legged frog (*Rana draytonii*) and California tiger salamander (*Ambystoma californiense*) and federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) under the Endangered Species Act of 1973, as amended (Act). This permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service. The Agreement and permit application are available for public comment.

DATES: To ensure we are able to consider your comments, please send them to us by OCTOBER 7, 2011.

ADDRESSES: The documents are available on our *Web site: http://www.fws.gov/ventura.* A limited number of printed copies are available by request. You may request documents or submit comments by any of the following methods.

- *E-mail: fw8SHA_palocorona@fws.gov.* Include ''Palo Corona SHA'' in the subject line of the message.
- *U.S. Mail:* Field Supervisor; U.S. Fish and Wildlife Service; Ventura Fish and Wildlife Office; 2493 Portola Road, Suite B; Ventura, CA 93003.
- *Fax:* Attn: Field Supervisor, (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Eric Morrissette, Safe Harbor Coordinator, Ventura Fish and Wildlife Office at the address above or by telephone at (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by using one of the methods in **ADDRESSES**, or by contacting the individual named in the **FOR FURTHER INFORMATION CONTACT** section. You also may make an appointment to view the documents at the Ventura Fish and Wildlife Office (see **ADDRESSES**) during normal business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent permits that are issued under section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased land use restrictions as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. Application requirements and issuance criteria for permits through Safe Harbor Agreements are found in 50 CFR 17.22(c) and 50 CFR 17.32(c).

We have worked with the Applicant to develop the proposed Agreement for the conservation of the California red-legged frog, California tiger salamander, Smith's blue butterfly, and Yadon's piperia on the property subject to the Agreement (Enrolled Property), which is owned and managed by the Applicant. The Enrolled Property is Palo Corona Regional Park in Monterey County, California. Within the 4,300 acres of land within the Enrolled Property, habitat for the California red-legged frog, California tiger salamander, Smith's blue butterfly, and Yadon's piperia will be restored, enhanced, and managed under a written agreement between the Applicant and Service. We expect that the activities proposed in the Agreement will result in an increase in suitable habitat for these species and provide for their increase in number and their expansion into additional areas that are currently not occupied, thus resulting in a net conservation benefit for these species.

The Agreement provides for the restoration, enhancement, and management of habitat suitable for the California red-legged frog, California tiger salamander, Smith's blue butterfly, and Yadon's piperia on the Enrolled Property. The proposed duration of the Agreement is 30 years, and the proposed term of the enhancement of survival permit is 30 years. The Agreement fully describes the proposed management activities to be undertaken by the Applicant and the net conservation benefits expected to be gained for the California red-legged frog, California tiger salamander, Smith's blue butterfly, and Yadon's piperia.

Upon approval of the Agreement and satisfactory completion of all other applicable legal requirements, and consistent with the Service's Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the Applicant authorizing take of the California red-legged frog, California tiger salamander, and Smith's blue butterfly incidental to the implementation of the management activities specified in the Agreement; incidental to other lawful uses of the Enrolled Property, including normal, routine land management activities; and incidental to the return to pre-Agreement conditions (baseline).

Management activities included in the Agreement will provide for the restoration, enhancement, and management of native habitats within the Enrolled Property. The objective of such activities is to enhance the populations of California red-legged frogs, California tiger salamanders, Smith's blue butterflies, and Yadon's piperia by increasing the quality and quantity of suitable habitat on the Enrolled Property. Take of California red-legged frogs, California tiger salamanders, and Smith's blue butterflies incidental to the aforementioned activities is unlikely; however, it is possible that in the course of such activities or other lawful activities on the Enrolled Property, the Applicant could incidentally take California red-legged frogs, California tiger salamanders, or Smith's blue butterflies thereby necessitating take authority under the permit. Because Yadon's piperia is a federally listed plant species and the Act's take prohibitions in section 9 generally do not apply to listed plants on non-Federal properties, an incidental take permit is not needed for Yadon's piperia.

Baseline conditions have been determined for the Enrolled Property based on the occurrence of California red-legged frog, California tiger salamander, and Smith's blue butterfly and the extent of suitable habitat for the respective species as provided in the Agreement. Baseline conditions were determined for Yadon's piperia for conservation and recovery purposes. The Applicant must maintain baseline

conditions on the Enrolled Property in order to receive coverage regarding incidental take of California red-legged frogs, California tiger salamanders, and Smith's blue butterflies. The Agreement and requested permit would allow the Applicant to return to baseline conditions after the end of the term of the Agreement and prior to the expiration of the 30-year permit, if so desired by the Applicant.

Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). We explain the basis for this determination in an Environmental Action Statement, which also is available for public review.

Individuals wishing copies of the permit application, copies of our draft Environmental Action Statement, and copies of the Agreement, including a map of the proposed permit area, should contact the Ventura Fish and Wildlife Office (see **ADDRESSES**).

If you wish to comment on the permit application or the Agreement, you may submit your comments to one of the addresses listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, under section 10(c) of the Act.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We will evaluate this permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the California red-legged frog, California tiger salamander, and Smith's blue butterfly incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments we receive during the comment period.

The Service provides this notice under section 10(c) of the Act and under implementing regulations for NEPA (40 CFR 1506.6).

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office.

[FR Doc. 2011–22793 Filed 9–6–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14948–A (2651), F–14948–A2 (2651); LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Nunakauiak Yupik Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Nunakauiak Yupik Corporation. The lands are in the vicinity of Toksook Bay, Alaska, and are located in:

Seward Meridian, Alaska

T. 6 N., R. 81 W.,
Secs. 2 to 5, inclusive;
Secs. 7 to 10, inclusive;
Secs. 15 to 21, inclusive;
Secs. 29, 30, and 31.

Containing approximately 9,364 acres.

T. 6 N., R. 82 W.,
Secs. 22 and 29.

Containing approximately 36 acres.
Aggregating approximately 9,400 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 7, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Jennifer Noe,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–22759 Filed 9–6–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14838–A; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Bethel Native Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to

Bethel Native Corporation. The lands are in the vicinity of Bethel, Alaska, and are located in:

Lots 33 and 37, U.S. Survey No. 4117, Alaska.
Containing 9.09 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 7, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Joe J. Labay,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2011–22760 Filed 9–6–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9428, AA–9752, AA–11237, AA–9755, AA–9837, AA–10075, AA–11467; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Calista Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are located south west of Pilot Station, Alaska, and contain 24.99 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 7, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2011–22761 Filed 9–6–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–ET0000; HAG–11–0220; OROR–66533]

Notice of Application for Withdrawal and Public Meeting; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management (BLM) published a notice in the **Federal Register** on August 1, 2011 (76 FR 45848) that contained an incorrect deadline for making public comments and an incorrect location and time for a public meeting.

Correction:

On page 45848, in the first column, line 45, correct the **DATES** caption to read:

DATES: Comments must be received by November 30, 2011.''

On page 45848, in the second column, line 63, correct the date to read: ''November 30, 2011.''

On page 45848, in the third column, line 19, correct the date and meeting location to read: ''will be held on October 26, 2011, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon 97415.''

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/Washington State Office, 503–808–6155, or Kevin Johnson, U.S. Forest Service Pacific Northwest Region, 541–471–6727.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2011–22763 Filed 9–6–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–LLCOF00000–L16520000–XX0000]

Notice of Meeting, Rio Grande Natural Area Commission

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Rio Grande Natural Area Commission will meet as indicated below.

DATES: The meeting will be held from 8 a.m. to 4 p.m. on October 12, 2011.

ADDRESSES: Inn of the Rio Grande, 333 Santa Fe Avenue, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Paul Tigan, Planning and Environmental Coordinator, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215. *Phone:* (303) 239–3949. *E-mail: pdtigan@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 question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr–2). The nine-member Commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan relating to non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics include: Site visit to Rio Grande Natural Area, a review of existing land-use plans, an overview of the Rio Grande Compact and the Closed Basin Project, project timeline development, reports from subcommittees, public comment, and scheduling future commission meetings. This meeting is open to the public. The public is encouraged to make oral comments to the Commission at 3 p.m. or written statements may be submitted for the Commission's consideration. Please send comments to Paul Tigan at the address above by October 10, 2011. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Commission Meeting will be maintained in the San Luis Valley Public Lands Center and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agenda are also available at: *http://www.blm.gov/co/st/en/fo/slvplc/rio_grande_natural.html.*

Helen M. Hankins,

State Director.

[FR Doc. 2011–22791 Filed 9–6–11; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–804]

In the Matter of Certain Led Photographic Lighting Devices and Components Thereof; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 3, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Litepanels, Ltd. of the United Kingdom and Litepanels, Inc. of Van Nuys, California. Supplements to the Complaint were filed on August 24, and August 25, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED photographic lighting devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,972,022 (''the '022 patent''); U.S. Patent No. 7,510,290 (''the '290 patent''); U.S. Patent No. 7,429,117 (''the '117 patent''); U.S. Patent No. 7,318,652 (''the '652 patent''); and U.S. Patent No. 6,948,823 (''the '823 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 30, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe one or more of claims 1 and 57–60 of the '022 patent; claims 9–26, 47, 51, 53–60, and 62 of the '290 patent; claims 1, 2, 5–13, 17–25, 28–35, 38–43, 45–47, and 50 of the '117 patent; claims 1, 2, 5, 7, 10, 11, 15–22, 24–34, and 37 of the '652 patent; claims 17–21, 23–29, 85–88, and 90–93 of the '823 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Litepanels, Ltd., 73 Western Way, Bury St Edmonds, Suffolk IP33 3TB;

United Kingdom, Litepanels, Inc., 16152 Saticoy Street, Van Nuys, CA 91406.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Flolight, LLC, 26 Dillon Ave, Campbell, CA 95123;

Prompter People, Inc., 26 Dillon Ave, Campbell, CA 95123;

IKAN Corporation, 3903 Stoney Brook Drive, Houston, TX 77063;

Advanced Business Computer, Services, LLC, d/b/a Cool Lights USA, 5360 Capital Court, Suite 100, Reno, NV 89502;

Elation Lighting, Inc., 6122 S. Eastern Avenue, Los Angeles, CA 90040;

Fotodiox Inc., 91 Noll Street, Waukegan, IL 60085;

Fuzhou F&V Photographic, Equipment Co., Ltd., C Building, No. 71 Fuguang Road, Fuxing Industrial Development Zone, Fuzhou City, Fujian, 350015, China;

Yuyao Lishuai Photo-Facility Co., Ltd., No. 31 Rongchuang Road, Lizhou Industrial Zone, Lizhou District, Yuyao City, Zhejiang Province, China;

Yuyao Fotodiox Photo Equipment Co., Ltd., No. 31 Rongchuang Road, Lizhou Industrial Zone, Lizhou District, Yuyao City, Zhejiang Province, China;

Shantou Nanguang Photographic Equipment Co., Ltd., Wenhua Road Dongli Chenghai, Shantou City, Guangdong Province, China;

Visio Light, Inc., 7F, No. 249, Jian 1st Road, Jhong He City, Taipei, Taiwan;

Tianjin Wuqing Huanyu Film and TV Equipment Factory, Liudaokou Village, Chagugang Town Wuqing, Tianjin, China 301700;

Stellar Lighting Systems, 1500 Los Angeles, Suite 4, Los Angeles, CA 90015,

Yuyao Lily Collection Co., Ltd., No. 7 North Donghanmen Road, Yuyao, China 315400.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Pursuant to current Commission practice, following the filing of a new Complaint, the Secretary issues a **Federal Register** notice soliciting comments relating to the public interest from complainant, the proposed respondents, other interested parties, and members of the public. The purpose of the solicitation of comments is to enable the Commission to determine whether to delegate to the administrative law judge the taking of evidence related to the public interest. Such notice was not issued in this pre-institution proceeding until August 29, 2011. In order to allow the Commission the opportunity to review any comments concerning the public interest, the Commission reserves the right to delegate the issue of the public interest to the administrative law judge subsequent to instituting this investigation. The Commission will make its decision concerning whether to order the administrative law judge to take evidence on the public interest within one (1) week of issuance of this Notice of Institution.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 31, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–22798 Filed 9–6–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–803]

In the Matter of Certain Dynamic Random Access Memory and Nand Flash Memory Devices and Products Containing Same; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 12, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intellectual Ventures Management, LLC of Bellevue, Washington; Invention Investment Fund I, L.P. of Bellevue, Washington; Invention Investment Fund II, LLC of Bellevue, Washington; Intellectual Ventures I LLC of Bellevue, Washington; and Intellectual Ventures II LLC of Bellevue, Washington. A letter supplementing the complaint was filed on August 1, 2011. An amended complaint was filed on August 12, 2011. A letter supplementing the amended complaint was filed on August 25, 2011. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dynamic random access memory and NAND flash memory devices and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,654,932 (''the '932 patent''); U.S. Patent No. 5,963,481 (''the '481 patent''); U.S. Patent No. 5,982,696 (''the '696 patent''); U.S. Patent No. 5,500,819 (''the '819 patent''); and U.S. Patent No. 5,687,132 (''the '132 patent''). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on August 30, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain dynamic random access memory and NAND flash memory devices and products containing same that infringe one or more of claim 28 of the '932 patent; claims 16 and 17 of the '481 patent; claims 1, 5–7, 13, 18, 19, 21, 23, and 24 of the '696 patent; claims 17 and 19 of the '819 patent; and claims 1, 2, 4, 6, 9, 10, 28, and 29 of the '132 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 201.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1), and shall not include the other issues raised by certain of the respondents in their July 25, 2011, letters to the Commission;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Intellectual Ventures Management, LLC, 3150 139th Avenue SE, Building 4, Bellevue, WA 98005.

Invention Investment Fund I, L.P., 3150 139th Avenue SE., Building 4, Bellevue, WA 98005.

Invention Investment Fund II, LLC, 3150 139th Avenue SE, Building 4, Bellevue, WA 98005.

Intellectual Ventures I LLC, 3150 139th Avenue SE, Building 4, Bellevue, WA 98005.

Intellectual Ventures II LLC, 3150 139th Avenue SE., Building 4, Bellevue, WA 98005.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Hynix Semiconductor Inc., San 136–1, Ami-ri, Bubal-eub, Icheon-si, Gyeonggi-do, Korea.

Hynix Semiconductor America, Inc., 3101 N. 1st Street, San Jose, CA 95134.

Elpida Memory, Inc., Sumitomo Seimei Yaesu Bldg. 3F, 2–1 Yaesu 2-chome Chuo-ku, Tokyo 104–0028, Japan.

Elpida Memory (USA) Inc., 1175 Sonora Court, Sunnyvale, CA 94086.

Acer Inc., 8F, 88, Sec. 1, Hsin Tai Wu Rd., Hsichih, Taipei, Hsien 221, Taiwan.

Acer America Corp., 333 W. San Carlos Street, Suite 1500, San Jose, CA 95110.

ADATA Technology Co., Ltd., 2F, No. 258, Lian Cheng Road, New Taipei City, Taiwan.

ADATA Technology (U.S.A.) Co., Ltd., 17101 Gale Avenue, Hacienda Heights, CA 91745.

Asustek Computer Inc., 15, Li Teh Road, Taipei City 11259, Taiwan.

Asus Computer International Inc., 800 Corporate Way, Fremont, CA 94539.

Dell, Inc., One Dell Way, Round Rock, TX 78682.

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, CA 94304.

Kingston Technology Co., Inc., 17600 Newhope Street, Fountain Valley, CA 92708.

Logitech International S.A., Moulin du Choc, CH–1122, Romanelsur-Morges, Vaud, Switzerland.

Logitech, Inc., 6505 Kaiser Drive, Fremont, CA 94555.

Pantech Co., Ltd., 1–2, DMC Sangam-don Mapo-gu, Seoul, Korea.

Pantech Wireless, Inc., 5607 Glenridge Drive, Suite 500, Atlanta, GA 30342.

Best Buy Co., Inc., 7601 Penn Avenue S, Richfield, MN 55423.

Wal-Mart Stores, Inc., 708 SW, 8th Street, Bentonville, AR 72716.

Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing 3rd Rd., Kueishan, Taoyuan 333, Taiwan.

Nanya Technology Corporation, USA, 5104 Old Ironsides Dr., Suite 113, Santa Clara, CA 95054.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 31, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–22799 Filed 9–6–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 30, 2011, a proposed Consent Decree in *United States of America and the Commonwealth of Pennsylvania* v. *Schwab Family Partnership, et al.,* Civil Action No. 2:10–cv–00412–JD, D.J. Ref. 90–11–2–07622/2, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States and the Commonwealth of Pennsylvania sought reimbursement of response costs incurred and to be incurred in connection with the release or threatened release of hazardous substances at the Franklin Smelting Superfund Site and the Franklin Slag Superfund Site in Philadelphia, Pennsylvania (the ''Sites''). The Consent Decree obligates the Settling Defendants to pay a total of $2,783,750 to the United States and $491,250 to the Commonwealth in reimbursement of past response costs incurred at the Sites. The Settling Defendants will also assign their rights to any future recovery on insurance policies related to business operations at the Sites, and one Settling Defendant will contribute the net proceeds from the sale of two properties to the settlement. The amounts to be paid by each Settling Defendant were agreed upon after review of financial information and a determination of what he or she could pay without incurring undue financial hardship, in accordance with the Environmental Protection Agency's Ability-to-Pay guidance.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America and the Commonwealth of Pennsylvania* v. *Schwab Family Partnership, et al.,* Civil Action No. 2:10–cv–00412–JD, D.J. Ref. 90–11–2–07622/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region 3. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.25 (@ 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–22786 Filed 9–6–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Thursday, September 8, 2011.

PLACE: U.S. Parole Commission, 90 K Street, NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determinations on four petitions for reconsideration in original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street, NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: August 29, 2011.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2011–22565 Filed 9–6–11; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, September 8, 2011.

PLACE: U.S. Parole Commission, 90 K Street, NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of June 21, 2011 meeting minutes; reports from the Chairman, the Commissioners, and senior staff; vote on whether the Rules and Procedures Manual instructions on credit against reparole guidelines in supervised release cases should be revised.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street, NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: August 29, 2011.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2011–22564 Filed 9–6–11; 8:45 am]

BILLING CODE 4410–31–M

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 11–07]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2012 and Countries That Would Be Candidates but for Legal Prohibitions

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: Section 608(d) of the Millennium Challenge Act of 2003 requires the Millennium Challenge Corporation to publish a report that identifies countries that are ''candidate countries'' for Millennium Challenge Account assistance during FY 2012. The report is set forth in full below.

Dated: September 1, 2011.

Melvin F. Williams, Jr.,

Vice President/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2012 and Countries That Would Be Candidates but for Legal Prohibitions

Summary

This report to Congress is provided in accordance with section 608(a) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7701, 7707(a) (the ''Act'').

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance for countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries to achieve lasting economic growth and poverty

reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps in selecting countries with which MCC will seek to enter into a compact, including (a) determining the countries that will be eligible for MCA assistance for fiscal year 2012 (FY12) based on a country's demonstrated commitment to (i) Just and democratic governance, (ii) economic freedom, and (iii) investments in its people; and (b) considering the opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

The countries that are ''candidate countries'' for MCA assistance for FY12 based on per capita income levels and eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act);

The criteria and methodology that the MCC Board of Directors (Board) will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of subsections (a) and (b) of section 607 of the Act in order to determine ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and

The list of countries determined by the Board to be ''MCA eligible countries'' for FY12, identification of such countries with which the Board will seek to enter into compacts, and a justification for such eligibility determination and selection for compact negotiation (section 608(d) of the Act).

This report is the first of three required reports listed above.

Candidate Countries for FY12

The Act requires the identification of all countries that are candidates for MCA assistance for FY12 and the identification of all countries that would be candidate countries but for specified legal prohibitions on assistance. Sections 606(a) and (b) of the Act provide that for FY12 a country shall be a candidate for the MCA if it:

Meets one of the following two income tests:

Has a per capita income equal to or less than the historical ceiling of the International Development Association eligibility for the fiscal year involved (or $1,915 gross national income (GNI) per capita for FY12) (the ''low income category''); or

Is classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved (or $1,916 to $3,975 GNI per capita for FY12) (the ''lower middle income category''); and

Is not ineligible to receive U.S. economic assistance under part I of the Foreign Assistance Act of 1961, as amended, (the ''Foreign Assistance Act''), by reason of the application of the Foreign Assistance Act or any other provision of law.

Pursuant to section 606(c) of the Act, the Board has identified the following countries as candidate countries under the Act for FY12. In so doing, the Board has anticipated that prohibitions against assistance as applied to countries in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117) (the ''FY 2010 SFOAA''), will again apply for FY12, even though the Department of State, Foreign Operations, and Related Programs Appropriations Act for FY12 has not yet been enacted and certain findings under other statutes have not yet been made. As noted below, MCC will provide any required updates on subsequent changes in applicable legislation or other circumstances that affect the status of any country as a candidate country for FY12. All section references identified as prohibitions on assistance to a given country are taken from the FY 2010 SFOAA as carried over by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10) unless another statue is identified.

Candidate Countries: Low Income Category

Afghanistan, Bangladesh, Benin, Bolivia, Burkina Faso, Burundi, Cambodia, Cameroon, Chad, Comoros, Cote D'Ivoire, Djibouti, Ethiopia, Gambia, The; Ghana, Guinea, Haiti, Honduras, India, Kenya, Kyrgyz Republic, Lao PDR, Lesotho, Liberia, Malawi, Mali, Moldova, Mongolia, Mozambique, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tajikistan, Tanzania, Timor-Leste, Togo, Uganda, Vietnam, Zambia

Candidate Countries: Lower Middle Income Category

Angola, Armenia, Belize, Bhutan, Cape Verde, Congo, Republic of the; Egypt, Arab Republic; El Salvador, Fiji, Georgia, Guatemala, Guyana, Indonesia, Iraq, Kiribati, Kosovo, Marshall Islands, Morocco, Paraguay, Philippines, Samoa, Sri Lanka, Swaziland, Tonga, Tuvalu, Ukraine, Vanuatu

Countries That Would Be Candidate Countries but for Legal Prohibitions That Prohibit Assistance

Countries that would be considered candidate countries for FY12, but are ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply for fiscal year 2011 and that are anticipated to apply again for FY12.

Prohibited Countries: Low Income Category

Burma is subject to numerous restrictions, including but not limited to section 570 of the FY 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–208), which prohibits assistance to the government of Burma until it makes progress on improving human rights and implementing democratic government, and due to its status as a major drug-transit or major illicit drug producing country for 2009 (Presidential Determination No. 2009–30 (9/15/2009)).

Central African Republic was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

Dem. Republic of the Congo was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

Eritrea is subject to restrictions due to its status as a Tier III country under the Trafficking Victims Protection Act, as amended, 22 U.S.C. sections 7101 *et seq.*

Guinea-Bissau was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President

determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

Madagascar is subject to section 7008 of the FY 2010 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree and also section 7086(c) of the FY 2010 SFOAA regarding budget transparency.

Mauritania was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

North Korea is subject to numerous restrictions, including section 7007 of the FY 2010 SFOAA which prohibits any direct assistance to the government.

Papua New Guinea was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

Sudan is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 7012 of the FY 2010 SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances, section 7008 of the FY 2010 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree, and section 7070(f) of the FY 2010 SFOAA.

Uzbekistan's central government is subject to section 7076(a) of the FY 2009 SFOAA, which is largely incorporated by reference and carried forward by section 7075 of the FY 2010 SFOAA. This restriction states that funds (other than expanded international military education and training funds) may be made available for assistance to the central government of Uzbekistan only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the United States.

Yemen was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

Zimbabwe is subject to several restrictions, including section 7070(i)(2) of the FY 2010 SFOAA which prohibits assistance (except for macroeconomic growth assistance) to the central government of Zimbabwe, unless the Secretary of State determines and reports to Congress that the rule of law has been restored in Zimbabwe.

Prohibited Countries: Lower Middle Income Category

Micronesia, Fed. Sts. was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

Syria is subject to numerous restrictions, including but not limited to 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 7007 of the FY 2010 SFOAA which prohibits direct assistance, and section 7012 of the FY 2010 SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

Turkmenistan was ranked a Tier III country in the 2010 Trafficking in Persons Report and, subject to a forthcoming Presidential determination, will be subject to restrictions as of October 1, unless the President determines the government has subsequently come into compliance with trafficking in persons requirements or that continuation of assistance is in the national interest.

The countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of the Foreign Assistance Act or any other provision of law for FY12. MCC will include any required updates on such statutory eligibility that affect countries' identification as candidate countries for FY12, at such time as it publishes the notices required by sections 608(b) and 608(d) of the Act or at other appropriate times. Any such updates with regard to the eligibility or ineligibility of particular countries identified in this report will not affect the date on which the Board is authorized to determine eligible countries from among candidate countries which, in accordance with section 608(a) of the Act, shall be no sooner than 90 days from the date of publication of this report.

[FR Doc. 2011–22882 Filed 9–6–11; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: September 2011

TIME AND DATES:

All meetings are held at 2:30 p.m.

Tuesday, September 6;
Wednesday, September 7;
Thursday, September 8;
Tuesday, September 13;
Wednesday, September 14;
Thursday, September 15;
Tuesday, September 20;
Wednesday, September 21;
Thursday, September 22;
Tuesday, September 27;
Wednesday, September 28;
Thursday, September 29.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

Dated: September 2, 2011.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2011–22986 Filed 9–2–11; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board

DATE AND TIME: Tuesday, September 13, 2011, at 7:30 a.m.

PLACE: University of Arizona, Student Union Memorial Center, Catalina and Tucson Rooms, Tucson, Arizona

UPDATES & POINT OF CONTACT: Please refer to the National Science Board website *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

STATUS:

CLOSED SESSION:

September 13, 2011

7:30 a.m.–7:45 a.m.
7:45 a.m.–8 a.m.

OPEN SESSIONS:

September 13, 2011

8 a.m.–8:15 a.m.
8:15 a.m.–9:30 a.m.
9:30 a.m.–10 a.m.
10 a.m.–10:30 a.m.
10:30 a.m.–11 a.m.
11:30 a.m.–12 Noon

MATTERS TO BE DISCUSSED:

Thursday, September 13, 2011

ad hoc Committee on Nominations for the Class of 2012–2018 (NOMS)

Closed Session: 7:30 a.m.–7:45 a.m.

- Approval of Minutes.
- Committee Chairman's Remarks.
- Review and Approval of Recommended list of NSB Nominees for the Class of 2012–2018.
- Update on Committee Activities.

Plenary Executive Closed

Closed Session: 7:45 a.m.–8 a.m.

- Approval of Executive Closed Session Minutes.
- Nominations Committee Recommendations.

Chairman's Introduction and Welcome From the University of Arizona

Open Session: 8 a.m.–8:15 a.m.

Plenary Open

Open Session: 8:15 a.m.–9:30 a.m.

- Presentations on STEM Education and Outreach.

Moderator:

Dr. Leslie Tolbert, Vice President for Research, Graduate Studies, and Economic Development.

Speakers:

Mr. Phil Stokes, SAGUARO Program.
Dr. Jennie Scott, Director of Curriculum and Articulation Services, Pima Community College.
Dr. Maria Teresa Velez, Associate Dean, Graduate College, University of Arizona.
Dr. Randall Richardson, Professor Solid-Earth Geophysics, University of Arizona.
Dr. Sharon Hall, Assistant Professor, School of Life Science, Arizona State University.

CSB Subcommittee on Facilities (SCF)

Open Session: 9:30 a.m.–10 a.m.

- Chairman's Remarks.
- Discuss COMPETES Mid-scale Instrumentation task.

CPP Task Force on Unsolicited Mid-Scale Research (MS)

Open Session: 10 a.m.–10:30 a.m.

- Approval of minutes.
- Discussion of extended outline of MS Task Force final report.
- Update and discussion on the ongoing and future plans of the Task Force.

Task Force on Merit Review (MR)

Open Session: 10:30 a.m.–11 a.m.

- Approval of Minutes.
- Task Force Chairman's Remarks.
- Discussion of Most Recent Draft of the Merit Review Principles/Criteria.
- Discussion of the Draft Outline of the Merit Review Task Force Report.
- Task Force Chairman's Closing Remarks.

CSB Task Force on Data Policies (DP)

Open Session: 11 a.m.–11:30 a.m.

- Chairman's Remarks.
- Approval of minutes.
- Discussion of Recommendations for changes to NSF's Policies.
- Closing remarks from the Chairman.

Plenary Open

Open Session: 11:30 a.m.–12 Noon

- Approval of Open Session Minutes.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.
- Chairman's Closing Remarks.

Ann Ferrante,
Writer-Editor.

[FR Doc. 2011–23006 Filed 9–2–11; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315; NRC–2011–0188]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit 1; Exemption

1.0 Background

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–58, which authorizes operation of the Donald C. Cook Nuclear Plant, Unit 1 (CNP–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Berrien County in Michigan.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.12, ''Specific exemptions,'' the licensee has, by letter dated December 16, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103630358), requested an exemption from 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and Appendix K to 10 CFR part 50, ''ECCS Evaluation Models.'' The regulations in 10 CFR 50.46 contain acceptance criteria for the emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of a zirconium alloy, which is a material different from Optimized ZIRLO™. The licensee's requested exemption relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46 and

Appendix K is needed to support the use of a different fuel rod cladding material. Accordingly, the licensee requested an exemption that would allow the use of Optimized ZIRLO™ fuel rod cladding at CNP–1.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at CNP–1. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Westinghouse topical reports WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' dated July 2006, contain the justification to use Optimized ZIRLO™ fuel rod cladding material in addition to Zircaloy-4 and ZIRLO™ (these topical reports are non-publicly available because they contain proprietary information). The NRC staff approved the use of these topical reports, subject to the conditions stated in the NRC staff's safety evaluation for each topical report. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ were reviewed and approved by the NRC staff (ADAMS Accession No. ML062080569), and demonstrate an acceptable retention of post-quench ductility up to the 10 CFR 50.46 limits of 2200 degrees Fahrenheit and 17 percent equivalent clad reacted. Furthermore, the NRC staff has concluded that oxidation measurements provided by the licensee (ADAMS Accession No. ML073130560) illustrate that oxide thickness (and associated hydrogen pickup) for Optimized ZIRLO™ at any given burnup would be less than that for both zircaloy and ZIRLO™. Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain improved post-quench ductility over ZIRLO™. Finally, the licensee stated that Westinghouse will perform an evaluation to ensure that the Optimized ZIRLO™ fuel rods continue to satisfy 10 CFR 50.46 acceptance criteria utilizing currently NRC-approved loss-of-coolant accident (LOCA) models and methods.

The underlying purpose of 10 CFR part 50, Appendix K, Section I.A.5, ''Metal-Water Reaction Rate,'' is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K of 10 CFR Part 50 requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. Since the use of the Baker-Just equation presumes the use of zircaloy-clad fuel, strict application of the rule would not permit use of the equation for Optimized ZIRLO™ cladding for determining acceptable fuel performance. Westinghouse has demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the Optimized ZIRLO™ advanced alloy as a fuel cladding material.

The NRC-approved topical reports have demonstrated that predicted chemical, thermal, and mechanical characteristics of the Optimized ZIRLO™ alloy cladding are bounded by those approved for ZIRLO™ under anticipated operational occurrences and postulated accidents. Reload cores are required to be operated in accordance with the operating limits specified in the technical specifications and the core operating limits report.

Based on the above, no new accident precursors are created by using Optimized ZIRLO™, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety due to using Optimized ZIRLO™.

Consistent With Common Defense and Security

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at CNP–1. This change to the plant configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to Optimized ZIRLO™, even though the evaluations above show that the intent of the regulation is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50, to allow the use of Optimized ZIRLO™ fuel rod cladding material at CNP–1.

Pursuant to 10 CFR 51.32, the Commission published an environmental assessment for this exemption on August 22, 2011 (76 FR 52356).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of August 2011.

For the Nuclear Regulatory Commission.

Louise Lund,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–22806 Filed 9–6–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 5, 12, 19, 26, and October 3, 10, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 5, 2011

There are no meetings scheduled for the week of September 5, 2011.

Week of September 12, 2011—Tentative

Wednesday, September 14, 2011

9 a.m.

Briefing on the Japan Task Force Report—Short-Term Actions (Public Meeting) (Contact: Rob Taylor, 301–415–3172).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 19, 2011—Tentative

There are no meetings scheduled for the week of September 19, 2011.

Week of September 26, 2011—Tentative

Tuesday, September 27, 2011

9 a.m.

Mandatory Hearing—Southern Nuclear Operating Co., *et al.;* Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4, and Limited Work Authorizations (Public Meeting) (Contact: Rochelle Bavol, 301–415–1651).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 3, 2011—Tentative

Thursday, October 6, 2011

9 a.m.

Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 10, 2011—Tentative

Tuesday, October 11, 2011

9 a.m.

Briefing on the Japan Task Force Report—Prioritization of Recommendations (Public Meeting) (Contact: Rob Taylor, 301–415–3172).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, October 12, 2011

9 a.m.

Mandatory Hearing—South Carolina Public Service Authority (Also Referred to As Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting) (Contact: Rochelle Bavol, 301–415–1651).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on August 29, 2011, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Management and Personnel Issues (Closed—Ex.2 and Ex.6)'' be held August 29, 2011, and on less than one week's notice to the public.

By a vote of 5–0 on August 31, 2011, the Commission determined pursuant to U.S.C. 552b(e) and§ 9.107(a) of the Commission's rules that ''Discussion of Management and Personnel Issues (Closed—Ex.2 and Ex.6)'' be held August 31, 2011, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 1, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–22949 Filed 9–2–11; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

CFC–50 Commission

AGENCY: Office of Personnel Management.

ACTION: Establishment of advisory committee.

SUMMARY: The U.S. Office of Personnel Management announces the establishment of the CFC–50 Advisory Commission. The Commission shall advise the Director of the U.S. Office of Personnel Management (OPM) on strengthening the integrity, the operation and effectiveness of the Combined Federal Campaign (CFC) to ensure its continued growth and success. The Commission is an advisory committee composed of Federal employees, private campaign administrators, charitable organizations and ''watchdog'' groups. The Commission is co-chaired by Thomas Davis and Beverly Byron.

FOR FURTHER INFORMATION CONTACT: Keith Willingham, Director, Combined Federal Campaign, U.S. Office of Personnel Management, 1900 E St., NW., Suite 6484, Washington, DC 20415. Phone (202) 606–2564 FAX (202) 606–5056 or e-mail at *cfc@opm.gov.*

SUPPLEMENTARY INFORMATION: The charter for the CFC–50 Commission publishes as follows:

1. *Committee's Official Designation (Title).* The CFC–50 Commission

2. *Authority.* This charter establishes the CFC–50 Commission in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The Commission is in the public interest and supports the U.S. Office of Personnel Management (OPM) in performing its duties and responsibilities under 5 CFR § 950.

3. *Objectives and Scope of Activities.* The purpose of the Commission is to advise the Director of OPM on strengthening the integrity, the operation and effectiveness of the Combined Federal Campaign (CFC) to ensure its continued growth and success.

4. *Description of Duties.* The Commission shall advise the Director of OPM on matters pertaining to the CFC. Its activities shall include, to the extent permitted by the law:

a. reviewing the present structure of the CFC and recommending changes;

b. reviewing current processes and recommending changes;

c. developing recommendations for innovative ways to improve the CFC; and

d. developing recommendations for changes to the regulations and/or legislation to improve and strengthen the CFC.

5. *Agency Official to Whom the Commission Reports.* The Commission will report recommendations to the OPM Director.

6. *Support.* OPM is responsible for providing administrative services and support to the Commission.

7. *Estimated Annual Operating Costs and Staff Years.* The estimated annual operating expenses of the Commission are $70,000. These expenses include funds to cover actual staff time devoted to preparation for meetings and technical discussions at meetings, expenses for preparing and printing discussion materials and administrative costs for filing the charter, preparing **Federal Register** notices, preparing minutes of the meetings and travel cost of some members to attend meetings. Approximately 0.5 FTE.

8. *Designated Federal Officer (DFO).* The Director, Combined Federal Campaign at OPM shall be appointed as the DFO of the Commission. The DFO will approve or call all of the Commission's and subcommittees' meetings, prepare and approve all meeting agendas, attend all Commission and subcommittee meetings, adjourn any meeting when they determine adjournment to be in the public interest, and chair meetings when directed to do so by the official to whom the Commission reports.

9. *Estimated Frequency of Meetings.* The frequency of meetings will be determined by the co-chairs of the Commission with the approval of the DFO. It is estimated there will be three meetings.

10. *Duration.* It is expected that the Commission will conclude its work in approximately six months.

11. *Termination.* March 31, 2012.

12. *Membership and Designation.* The Commission will include a total of approximately 28 Federal workers and non-government individuals, including civilian, postal and military personnel. The Commission members will represent various perspectives from the CFC community including donors, Federal campaign volunteers, non-government administrators of the campaign, participating charities and watchdog groups. These members will consist of both representatives and special government employees.

13. *Subcommittees.* The co-chairs of the Commission, with the Agency's approval, are responsible for directing the work of the Commission, including the creation of subcommittees necessary to carry out the Commission's mandate. Such committees report to the Commission and will not provide advice directly to the Agency.

14. *Recordkeeping.* The records of the Commission, as well as any formally and informally established subcommittees, shall be maintained in accordance with General Records Schedule 26, Item 2 or other appropriate agency records disposition schedule. These records shall be available for public inspection and copying, subject to applicable exemptions of the Freedom of Information Act, 5 U.S.C. 552.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–22875 Filed 9–6–11; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–56; Order No. 831]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Watson, Alabama 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*): September 12, 2011; *deadline for notices to intervene:* September 26, 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 August 26, 2011, the Commission received a petition for review of the Postal Service's determination to close the Watson post office in Watson, Alabama. The petition was filed by Lori Rich Parsons (Petitioner) and is postmarked August 23, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–56 to consider Petitioner's appeal. If Petitioner would like to further explain her 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 September 30, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

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 September 12, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 12, 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 Commission's 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., eastern time, 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 or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

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. Persons, other than 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 September 26, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site 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 the 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 September 12, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than September 12, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson 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 in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

August 26, 2011	Filing of Appeal.
September 12, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 12, 2011	Deadline for the Postal Service to file any responsive pleading.
September 26, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
September 30, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 20, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 4, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 14, 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).
December 21, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–22705 Filed 9–6–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–57; Order No. 836]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ottosen, Iowa 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*): September 13, 2011; *deadline for notices to intervene:* September 26, 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 August 29, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ottosen post office in Ottosen, Iowa. The petition was filed by the Citizens of Ottosen (Petitioner) and is postmarked August 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–57 to consider Petitioner's appeal. If Petitioner would like to further explain its 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 October 3, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those 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 September 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 13, 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 Commission's 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., eastern time, 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 or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

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. Persons, other than 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 September 26, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site 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 the 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 September 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski 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 in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

August 29, 2011	Filing of appeal.
September 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 13, 2011	Deadline for the Postal Service to file any responsive pleading.
September 26, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 3, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
October 24, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 8, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 15, 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).
December 19, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–22805 Filed 9–6–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29777; 812–13876]

Horizon Technology Finance Corporation, et al.; Notice of Application

August 31, 2011.

AGENCY: Securities and Exchange Commission (Commission).

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a) and 61(a) of the Act.

Applicants: Horizon Technology Finance Corporation (the ''Company''), Horizon Technology Finance Management LLC (the ''Investment Adviser''), Longview SBIC GP LLC (the ''General Partner''), and Longview SBIC LP (''Horizon SBIC'').

Summary of the Application: The Company requests an order to permit it to adhere to a modified asset coverage requirement.

DATES: Filing Dates: The application was filed on March 1, 2011, and amended on August 29, 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 September 26, 2011, and should be accompanied by proof of service on the 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, 312 Farmington Avenue, Farmington, CT 06032.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is 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.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Company, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company's investment objective is to generate current income from the loans it makes and capital appreciation from the warrants it receives when making such loans. The Investment Adviser, a Delaware limited liability company, is the external investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. Horizon SBIC, a Delaware limited liability company, submitted an application to the Small Business Administration (''SBA'') for a license to operate as a small business investment company (''SBIC'') under the Small Investment Act of 1958 (''SBIA''). The application is currently pending, and Applicants represent that they will not rely on the order until the SBIC application has been approved. Horizon SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of Horizon SBIC in the form of limited partnership interests. The General Partner, which is a wholly-owned subsidiary of the Company, is the general partner of Horizon SBIC and owns 1% of Horizon SBIC in the form of a general partnership interest. The Company is the sole manager of the General Partner and owns 100% of the General Partner's equity interests.

Applicants' Legal Analysis:

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly owned subsidiary of the Company (each, a ''Subsidiary'') that is licensed by the SBA to operate under the SBIA as a SBIC and relies on section 3(c)(7) for an exclusion from the definition of ''investment company'' under the Act (each, a ''SBIC Subsidiary'').[2] Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in its capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Horizon SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Horizon SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it was a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition:

Applicants agree that the order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit Horizon SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Horizon SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Horizon SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of Horizon SBIC or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22770 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available managerial assistance with respect to the issuers of such securities.

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and condition of the order.

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 a Closed Meeting on Thursday, September 8, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 9, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

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: September 1, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22901 Filed 9–2–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65241; File No. SR–CBOE–2011–080]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposal To Retire a Pilot Program and To Harmonize CBOE's Rules Regarding Listing Expirations With the Existing Rules of Other Exchanges

August 31, 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 August 22, 2011, the Chicago Board Options Exchange, Incorporated (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 the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to retire a pilot program and to harmonize CBOE's rules regarding listing expirations with the existing rules of other exchanges. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

The purpose of the proposed rule change is to retire the Additional Expiration Months Pilot Program (''Pilot Program'') and to amend CBOE's rules regarding listing expirations. This filing is based on the existing rules of other options exchanges.[4]

CBOE Rules Governing Listing of Expirations

Pursuant to Interpretation and Policy .03 to Rule 5.5, CBOE typically opens four expiration months for each class of options open for trading on the Exchange: The first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. CBOE does not believe that Rule 5.5.03 limits the maximum number of expirations that may be listed. Rules 5.5(a) and 5.5(c) provide CBOE with the flexibility to add additional expirations, which the Exchange has previously done.

Notwithstanding this position and for competitive reasons, in 2010 the Exchange established the Pilot Program pursuant to which CBOE could list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange.[5] The filing to establish the Pilot Program was substantially similar in all material respects to a proposal of the International Securities Exchange, LLC (''ISE'').[6]

After CBOE and ISE established their respective Pilot Programs, ISE submitted a filing in response to a PHLX filing regarding the listing of expirations.[7] In the PHLX filing, PHLX amended its rules so that it could open ''at least one expiration month'' for each class of standard options open for trading on PHLX.[8] PHLX stated in its filing that this amendment was ''based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8'' of NOM. Since PHLX's rules did not hard code an upper limit on the maximum number of expirations that may be listed per class, ISE believed that PHLX (and NOM) had the ability to list expirations that ISE would not be able to currently list under its rules. As a result, ISE amended its rules by adding new Supplementary Material .10 to ISE Rule 504 and Supplementary Material to .04 to ISE Rule 2009 to permit ISE to list additional expiration months on options classes opened for trading on ISE if such expiration months are opened for trading on at least one other national securities exchange.[9]

Because CBOE had adopted a Pilot Program similar to ISE's, CBOE adopted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* NASDAQ Options Market (''NOM'') Chapter IV, Section 6 (Series of Options Contracts Option for Trading) and NASDAQ OMX PHLX, LLC (''PHLX'') Rule 1012 (Series of Options Listed for Trading). *See also* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and NASDAQ–2007–080) and 63700 (January 11, 2011) 76 FR 2931 (January 18, 2011) (SR–PHLX–2011–04). The PHLX filing was based on NOM's existing rules.

[5] *See* Securities Exchange Act Release No. 63185 (October 27, 2010), 75 FR 67419 (November 2, 2010) (SR–CBOE–2010–97). As stated in footnote 5 at page 67419, CBOE does not believe that Rule 5.5.03 limits the maximum number of expiration months that may be listed. Rule 5.5(a) and 5.5(c) provide CBOE with the flexibility to add additional expiration months, which the Exchange has previously done. By establishing the Additional Series Pilot Program, CBOE did not limit its existing ability.

[6] *See* Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR–ISE–2010–91). Unlike CBOE's Rule 5.5, ISE believed that ISE Rule 504(e) hard coded an upper limit on the maximum number of expirations that may be listed per class.

[7] *See* Securities Exchange Act Release No. 64343 (April 26, 2011), 76 FR 24546 (May 2, 2011) (SR–ISE–2011–26).

[8] *See id.* at 24546–24547.

[9] *See id.* at 24547.

new Interpretation and Policy .19 to Rule 5.5 and new Interpretation and Policy .12 to Rule 24.9 that permits CBOE to list additional expiration months on options classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other national securities exchange.[10]

Retire Additional Expiration Months Pilot and Adopt Amended Rules

When CBOE originally established the Pilot Program, the Exchange believed that it had the ability to list more than four expirations per class. Another exchange with a similar expirations listing rule, however, interpreted its rule provisions more restrictively. As a result, CBOE established the Pilot Program for competitive reasons. Now that CBOE has the ability to match the expiration listings of other exchanges [11] (that may exceed six expirations and may occur on a regular basis) the Exchange believes that the Pilot Program is no longer necessary and is proposing to retire it. To affect this change, the Exchange is proposing to delete Interpretation and Policy .18 to Rule 5.5, which sets forth the terms of the Pilot Program, which is currently scheduled to expire on October 31, 2011.

In addition, CBOE's ability to match the expirations listed by other exchanges is set forth in Interpretation and Policy .19 to Rule 5.5. This provision, however, only provides CBOE with the ability to match expirations *initiated* by other options exchanges. To encourage competition and to place CBOE on a level playing field, the Exchange should have the same ability as PHLX and NOM to initiate expirations. Therefore, CBOE is proposing to harmonize its rules with the rules of PHLX and NOM by clarifying that CBOE will open at least one expiration month and one series of for each class open for trading on the Exchange. To affect this change, the Exchange is proposing to amend the text of Rule 5.5(b) to track the rule text of NOM Chapter IV, Section 6 and PHLX Rule 1012 and to delete Interpretation and Policy .03 to Rule 5.5.

Finally, the Exchange is proposing to slightly modify Rule 5.5 regarding the opening of additional series. Specifically, the Exchange proposes to amend Rule 5.5(c) to permit the listing of additional series when (among other reasons) the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.[12] Currently, Rule 5.5(c) permits the listing of additional series when the market price of the underlying stock moves substantially from the initial exercise price or prices. This proposed rule change again tracks PHLX and NOM's existing rule text.

The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that do not put the Exchange at a competitive disadvantage. CBOE's proposal puts the Exchange in the same position as PHLX and NOM and provides the Exchange with the same ability to initiate and match identical expirations across exchanges for products that are multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are initiated by the Exchange and listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [13] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to accommodate requests made by its Trading Privilege Holders and other market participants to list additional expiration months and thus encourages competition without harming investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 [16] and Rule 19b–4(f)(6) thereunder.[17]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will allow the CBOE to initiate the listing of series with the same range of expiration months as are available to its competitor exchanges, subject to certain conditions. Therefore, the Commission designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] *See* Securities Exchange Act Release No. 64614 (June 7, 2011), 76 FR 34278 (June 13, 2011) (SR–CBOE–2011–053).

[11] *See* Rule 5.5.19.

[12] Rule 5.5(c) also permits CBOE to add additional series of options of the same class when the Exchange deems is necessary to maintain an orderly market and to meet customer demand. These ''additional series'' provisions are similar to existing provisions in NOM Chapter IV, Section 6 and PHLX Rule 1012.

[13] 15 U.S.C. 78s(b)(1).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–080 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2011–080. 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–CBOE–2011–080 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22827 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65238; File No. SR–NYSEArca–2011–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Equities Schedule of Fees and Services for Exchange Services (''Fee Schedule'') for Co-Location Services To Correct Several Typographical Errors

August 31, 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 August 24, 2011, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 equities Schedule of Fees and Services for Exchange Services (''Fee Schedule'') for co-location services to correct several typographical errors. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* 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 its Fee Schedule for co-location services to correct several typographical errors.

The Exchange currently offers space at its data center in cabinets with tiered fees for the use of this space corresponding to the aggregated number of kilowatts allocated. However, the Exchange's Fee Schedule provides an incomplete list of power tier levels. Accordingly, the Exchange proposes to amend its Fee Schedule to reflect that the tiered fees are based on the aggregated power allocation of (i) Four to eight kilowatts; (ii) nine to 20 kilowatts; (iii) 21 to 40 kilowatts; or (iv) 41 kilowatts and greater. A co-location user whose power allocation has been at a level that is currently not reflected in the Fee Schedule has been charged according to the tiers set forth herein. For example, a user with twelve kilowatts allocated has been charged $1,200 per-kilowatt per-month for the first 8 kilowatts and $1,050 per-kilowatt per-month for the next 4 kilowatts (between 9 and 12).

In addition to the space that it offers at its data center, the Exchange provides co-location users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products through either the Exchange's Liquidity Center Network (''LCN''), a local area network available in the data center, or the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, to which all co-location users have access. Access is available in either one or ten gigabit capacities, for which co-location users incur an initial charge per connection and an ongoing monthly charge per connection. The Exchange proposes to amend its Fee Schedule to reflect that the initial charge for a one gigabit circuit for Bundled Network Access, Option 3 is $27,000, not $27,500 as currently stated in the Fee Schedule. The change in price is due to a typographical error in the Exchange's previous filing.[3] Co-location users have always been charged $27,000 for this fee and have never been charged the fee of

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100).

$27,500 that is currently stated in the Fee Schedule.

Finally, the Exchange proposes to amend its Fee Schedule to include the ongoing monthly charge per connection for a ten gigabit circuit for LCN access, which is $12,000. The reference to the ongoing monthly charge was erroneously omitted from the Fee Schedule submitted with the Exchange's previous filing.[4] Co-location users have always been charged the $12,000 monthly charge per connection for a ten gigabit circuit for LCN access.

The Exchange believes that the changes proposed herein would not alter co-location users' understanding of the fees charged for co-location and related services. In addition, the changes proposed herein are intended to clarify the applicable fees for co-location and related services—not new or altered fees—and are designed to accurately reflect the fees for co-locating that the Exchange and co-location users already understand to be in effect.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change to the Fee Schedule is equitable because it applies fees for comparable co-location services uniformly to users of those services and because access to the Exchange and the services and products it provides are offered on fair and non-discriminatory terms. The proposed changes would result in clarification of the Exchange's fees for co-location and related services.

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)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–64 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-2011–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–64 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22780 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65237; File No. SR–NYSE–2011–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List for Co-Location Services To Correct Several Typographical Errors

August 31, 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 August 24, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Price List for co-location services to correct several typographical errors. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* 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 its Price List for co-location services to correct several typographical errors.

The Exchange currently offers space at its data center in cabinets with tiered fees for the use of this space corresponding to the aggregated number of kilowatts allocated. However, the Exchange's Price List provides an incomplete list of power tier levels. Accordingly, the Exchange proposes to amend its Price List to reflect that the tiered fees are based on the aggregated power allocation of (i) Four to eight kilowatts; (ii) nine to 20 kilowatts; (iii) 21 to 40 kilowatts; or (iv) 41 kilowatts and greater. A co-location user whose power allocation has been at a level that is currently not reflected in the Price List has been charged according to the tiers set forth herein. For example, a user with twelve kilowatts allocated has been charged $1,200 per-kilowatt per-month for the first 8 kilowatts and $1,050 per-kilowatt per-month for the next 4 kilowatts (between 9 and 12).

In addition to the space that it offers at its data center, the Exchange provides co-location users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products through either the Exchange's Liquidity Center Network (''LCN''), a local area network available in the data center, or the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, to which all co-location users have access. Access is available in either one or ten gigabit capacities, for which co-location users incur an initial charge per connection and an ongoing monthly charge per connection. The Exchange proposes to amend its Price List to reflect that the initial charge for a one gigabit circuit for Bundled Network Access, Option 3 is $27,000, not $27,500 as currently stated in the Price List. The change in price is due to a typographical error in the Exchange's previous filing.[3] Co-location users have always been charged $27,000 for this fee and have never been charged the fee of $27,500 that is currently stated in the Price List.

Finally, the Exchange proposes to amend its Price List to include the ongoing monthly charge per connection for a ten gigabit circuit for LCN access, which is $12,000. The reference to the ongoing monthly charge was erroneously omitted from the Price List submitted with the Exchange's previous filing.[4] Co-location users have always been charged the $12,000 monthly charge per connection for a ten gigabit circuit for LCN access.

The Exchange believes that the changes proposed herein would not alter co-location users' understanding of the fees charged for co-location and related services. In addition, the changes proposed herein are intended to clarify the applicable fees for co-location and related services—not new or altered fees—and are designed to accurately reflect the fees for co-locating that the Exchange and co-location users already understand to be in effect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change to the Price List is equitable because it applies fees for comparable co-location services uniformly to users of those services and because access to the Exchange and the services and products it provides are offered on fair and non-discriminatory terms. The proposed changes would result in clarification of the Exchange's fees for co-location and related services.

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)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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

[3] *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–46 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2011–46. 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–NYSE–2011–46 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22779 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65240; File No. SR–NYSEAmex–2011–65]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Equities Price List for Co-Location Services To Correct Several Typographical Errors

August 31, 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 August 24, 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 equities Price List for co-location services to correct several typographical errors. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* 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 its Price List for co-location services to correct several typographical errors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange currently offers space at its data center in cabinets with tiered fees for the use of this space corresponding to the aggregated number of kilowatts allocated. However, the Exchange's Price List provides an incomplete list of power tier levels. Accordingly, the Exchange proposes to amend its Price List to reflect that the tiered fees are based on the aggregated power allocation of (i) Four to eight kilowatts; (ii) nine to 20 kilowatts; (iii) 21 to 40 kilowatts; or (iv) 41 kilowatts and greater. A co-location user whose power allocation has been at a level that is currently not reflected in the Price List has been charged according to the tiers set forth herein. For example, a user with twelve kilowatts allocated has been charged $1,200 per-kilowatt per-month for the first 8 kilowatts and $1,050 per-kilowatt per-month for the next 4 kilowatts (between 9 and 12).

In addition to the space that it offers at its data center, the Exchange provides co-location users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products through either the Exchange's Liquidity Center Network (''LCN''), a local area network available in the data center, or the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, to which all co-location users have access. Access is available in either one or ten gigabit capacities, for which co-location users incur an initial charge per connection and an ongoing monthly charge per connection. The Exchange proposes to amend its Price List to reflect that the initial charge for a one gigabit circuit for Bundled Network Access, Option 3 is $27,000, not $27,500 as currently stated in the Price List. The change in price is due to a typographical error in the Exchange's previous filing.[3] Co-location users have always been charged $27,000 for this fee and have never been charged the fee of $27,500 that is currently stated in the Price List.

Finally, the Exchange proposes to amend its Price List to include the ongoing monthly charge per connection for a ten gigabit circuit for LCN access, which is $12,000. The reference to the ongoing monthly charge was erroneously omitted from the Price List submitted with the Exchange's previous filing.[4] Co-location users have always been charged the $12,000 monthly charge per connection for a ten gigabit circuit for LCN access.

[3] *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80).

[4] *Id.*

The Exchange believes that the changes proposed herein would not alter co-location users' understanding of the fees charged for co-location and related services. In addition, the changes proposed herein are intended to clarify the applicable fees for co-location and related services—not new or altered fees—and are designed to accurately reflect the fees for co-locating that the Exchange and co-location users already understand to be in effect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change to the Price List is equitable because it applies fees for comparable co-location services uniformly to users of those services and because access to the Exchange and the services and products it provides are offered on fair and non-discriminatory terms. The proposed changes would result in clarification of the Exchange's fees for co-location and related services.

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)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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–2011–65 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–2011–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–65 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22782 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65239; File No. SR–NYSEAmex–2011–66]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Options Fee Schedule for Co-Location Services To Correct Several Typographical Errors

August 31, 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 August 24, 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 options Fee Schedule for co-location services to correct several typographical errors. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov*, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 its Fee Schedule for co-location services to correct several typographical errors.

The Exchange currently offers space at its data center in cabinets with tiered fees for the use of this space corresponding to the aggregated number of kilowatts allocated. However, the Exchange's Fee Schedule provides an incomplete list of power tier levels. Accordingly, the Exchange proposes to amend its Fee Schedule to reflect that the tiered fees are based on the aggregated power allocation of (i) Four to eight kilowatts; (ii) nine to 20 kilowatts; (iii) 21 to 40 kilowatts; or (iv) 41 kilowatts and greater. A co-location user whose power allocation has been at a level that is currently not reflected in the Fee Schedule has been charged according to the tiers set forth herein. For example, a user with twelve kilowatts allocated has been charged $1,200 per-kilowatt per-month for the first 8 kilowatts and $1,050 per-kilowatt per-month for the next 4 kilowatts (between 9 and 12).

In addition to the space that it offers at its data center, the Exchange provides co-location users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products through either the Exchange's Liquidity Center Network (''LCN''), a local area network available in the data center, or the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, to which all co-location users have access. Access is available in either one or ten gigabit capacities, for which co-location users incur an initial charge per connection and an ongoing monthly charge per connection. The Exchange proposes to amend its Fee Schedule to reflect that the initial charge for a one gigabit circuit for Bundled Network Access, Option 3 is $27,000, not $27,500 as currently stated in the Fee Schedule. The change in price is due to a typographical error in the Exchange's previous filing.[3] Co-location users have always been charged $27,000 for this fee and have never been charged the fee of $27,500 that is currently stated in the Fee Schedule.

Finally, the Exchange proposes to amend its Fee Schedule to include the ongoing monthly charge per connection for a ten gigabit circuit for LCN access, which is $12,000. The reference to the ongoing monthly charge was erroneously omitted from the Fee Schedule submitted with the Exchange's previous filing.[4] Co-location users have always been charged the $12,000 monthly charge per connection for a ten gigabit circuit for LCN access.

The Exchange believes that the changes proposed herein would not alter co-location users' understanding of the fees charged for co-location and related services. In addition, the changes proposed herein are intended to clarify the applicable fees for co-location and related services—not new or altered fees—and are designed to accurately reflect the fees for co-locating that the Exchange and co-location users already understand to be in effect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change to the Fee Schedule is equitable because it applies fees for comparable co-location services uniformly to users of those services and because access to the Exchange and the services and products it provides are offered on fair and non-discriminatory terms. The proposed changes would result in clarification of the Exchange's fees for co-location and related services.

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)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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–2011–66 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–2011–66. This

[3] *See* Securities Exchange Act Release No. 63274 (November 8, 2010), 75 FR 69722 (November 15, 2010) (SR–NYSEAmex–2010–101).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

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–NYSEAmex–2011–66 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22781 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65236; File No. SR–NYSEArca–2011–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Options Fee Schedule for Co-Location Services To Correct Several Typographical Errors

August 31, 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 August 24, 2011, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 its options Fee Schedule for co-location services to correct several typographical errors. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* 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 its Fee Schedule for co-location services to correct several typographical errors.

The Exchange currently offers space at its data center in cabinets with tiered fees for the use of this space corresponding to the aggregated number of kilowatts allocated. However, the Exchange's Fee Schedule provides an incomplete list of power tier levels. Accordingly, the Exchange proposes to amend its Fee Schedule to reflect that the tiered fees are based on the aggregated power allocation of (i) four to eight kilowatts; (ii) nine to 20 kilowatts; (iii) 21 to 40 kilowatts; or (iv) 41 kilowatts and greater. A co-location user whose power allocation has been at a level that is currently not reflected in the Fee Schedule has been charged according to the tiers set forth herein. For example, a user with twelve kilowatts allocated has been charged $1,200 per-kilowatt per-month for the first 8 kilowatts and $1,050 per-kilowatt per-month for the next 4 kilowatts (between 9 and 12).

In addition to the space that it offers at its data center, the Exchange provides co-location users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products through either the Exchange's Liquidity Center Network (''LCN''), a local area network available in the data center, or the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, to which all co-location users have access. Access is available in either one or ten gigabit capacities, for which co-location users incur an initial charge per connection and an ongoing monthly charge per connection. The Exchange proposes to amend its Fee Schedule to reflect that the initial charge for a one gigabit circuit for Bundled Network Access, Option 3 is $27,000, not $27,500 as currently stated in the Fee Schedule. The change in price is due to a typographical error in the Exchange's previous filing.[3] Co-location users have always been charged $27,000 for this fee and have never been charged the fee of $27,500 that is currently stated in the Fee Schedule.

Finally, the Exchange proposes to amend its Fee Schedule to include the ongoing monthly charge per connection for a ten gigabit circuit for LCN access, which is $12,000. The reference to the ongoing monthly charge was erroneously omitted from the Fee Schedule submitted with the Exchange's previous filing.[4] Co-location users have always been charged the $12,000 monthly charge per connection for a ten gigabit circuit for LCN access.

The Exchange believes that the changes proposed herein would not alter co-location users' understanding of the fees charged for co-location and related services. In addition, the changes proposed herein are intended to clarify the applicable fees for co-location and related services—not new or altered fees—and are designed to accurately reflect the fees for co-locating that the Exchange and co-location users already understand to be in effect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the

[3] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

objectives of Section 6(b)(4)[6] and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change to the Fee Schedule is equitable because it applies fees for comparable co-location services uniformly to users of those services and because access to the Exchange and the services and products it provides are offered on fair and non-discriminatory terms. The proposed changes would result in clarification of the Exchange's fees for co-location and related services.

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)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–65 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–2011–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–65 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22778 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65233; File No. SR–Phlx–2011–122]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for NASDAQ OMX PSX

August 31, 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 August 25, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees applicable to trading on the NASDAQ OMX PSX system (''PSX''). 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX for trading stocks priced at $1 or more. Currently, PSX charges $0.0025 per share executed for orders that access liquidity. Consistent with PSX's goal of encouraging display of larger order sizes, the Exchange currently offers a rebate of $0.0024 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but only $0.0022 for Displayed Orders with an original order size of less than 2,000.[3] The rebate for Non-Displayed Orders is $0.0010 per share executed.

Effective September 1, 2011, the fee for accessing liquidity will increase to $0.0027 per share executed; the rebate for providing displayed liquidity with an original order size of 2,000 or more shares will increase to $0.0026 per share executed; and the rebate for Displayed Orders with an original order size of less than 2,000 will increase to $0.0024 per share executed. Consistent with PSX's goal of encouraging greater display of liquidity, the rebate for Non-Displayed Orders that provide liquidity will remain $0.0010 per share executed. By increasing its rebate for displayed liquidity, the Exchange hopes to attract more liquidity to PSX.

The Exchange is also correcting two typographical errors in the Order Execution provision of Section VIII of the fee schedule. These corrections do not impact any fees assessed by the Exchange.

[3] The higher credit applies to an order as it is decremented by partial executions, but does not apply in circumstances where an order for 2,000 shares or more is entered and then reduced in size by the entering Participant, such that the order is subsequently in the System for less than 2,000 shares. Moreover, changes to orders that result from system operations other than execution and decrementation are deemed to result in new orders. For example, a Pegged Order is considered a new order each time its price changes. Thus, if a Participant entered a 2,400 share order that posted to the PSX book, the order was executed for 1,000 shares, and the remainder of the order was then executed for 1,400, both of the executions would receive the higher credit. However, if a PSX Participant entered a 2,400 share order and subsequently modified the order down to 1,500 shares, the lower credit would apply. Finally, if a Participant entered a 2,400 share buy order pegged to the national best bid, the order executed for 1,000 shares, and the order then repriced due to a change in the national best bid, the 1,000 share execution would receive the higher 0.0024 credit but a subsequent execution of the repriced order would receive the lower credit because it would be treated as a new order with a size below 2,000 shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity), its usage of Non-Displayed orders, and the size of the orders that it enters. Although the change will result in an increase of the fee charged to access liquidity on PSX, the Exchange believes that the proposed fee to access liquidity is reasonable because it is consistent with Rule 610(c) under Regulation NMS,[6] which found that fees not in excess of $0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees. As the Commission determined in that matter, competition is best able to determine whether a strategy of charging fees set at lower levels, or of charging a higher fee and paying a higher rebate, will be successful.[7] Moreover, the increase in fees to access liquidity will be offset by an increase in the rebate for providing displayed liquidity.

The Exchange believes that the proposal reflects an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange further believes that it is equitable to pay a higher rebate with respect to displayed liquidity, because the Exchange expects that the higher rebate will promote its goal of promoting market transparency through a market structure that provides higher execution priority to orders based on their size and display status.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to the Exchange and thereby make use of its order execution services.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 17 CFR 242.610(c).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily favor the Exchange's competitors in making order routing decisions to the extent that they deem PSX's fees to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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–2011–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–122. 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.[9] 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–2011–122 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22777 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65232; File No. SR–C2–2011–019]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Trading Halts

August 31, 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 August 26, 2011, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make certain conforming and non-substantive amendments to C2 Rule 6.3, *Trading Halts*, as it relates to individual stock trading pauses in underlying stocks. The text of the proposed rule change is available on the Exchange's website (*http://www.c2exchange.com/Legal/RuleFilings.aspx*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The individual stock trading pause pilot rule was developed in consultation with U.S. listing markets to provide for uniform market-wide trading pause standards for certain underlying individual stocks that experience rapid price movement. In conjunction with the pilot, C2 (and other options exchanges) adopted rules that provide that trading in the overlying options on an eligible stock would halt when the primary listing market for the underlying stock issues a trading pause.

The underlying individual stock trading pause pilot was recently expanded to include all NMS stocks.[5] In light of the recent expansion of the underlying individual stock trading pause pilot, C2 is proposing certain conforming and non-substantive amendments to its Rule 6.3. Specifically, the Exchange is proposing to replace a reference to ''eligible underlying stock'' with a conforming reference to ''underlying NMS stock.'' The Exchange is also proposing to include text in the rule confirming that, following an individual stock trading pause, trading will generally resume on the primary listing market for the stock after a period of five minutes, which is consistent with the current pilot and is simply intended to provide more detail in the text explaining the existing pilot's operation.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the

[5] The pilot list of stocks originally included all stocks in the S&P 500 Index, but it has been expanded over time to include all NMS stocks. *See, e.g.*, Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–CBOE–2010–065) (order approving expansion of the individual stock trading pause pilot to include all stocks in the Russell 1000 index and a pilot list of Exchange Traded Products) and 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–CBOE–2011–049) (order approving further expansion of the individual stock trading pause pilot to include all NMS stocks effective August 8, 2011).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule change meets these requirements because it conforms the rule text to reflect the recent expansion of the underlying individual stock trading pause pilot to cover all NMS stocks, which pilot promotes uniformity across markets concerning decisions to pause trading in a stock when there are significant price movements. Additionally, the proposed rule change should provide clarity on the existing operation of the pilot.

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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[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–C2–2011–019 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–C2–2011–019. 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 No. SR–C2–2011–019 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22776 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65221; File No. SR–FINRA–2011–04]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee for the Operations Professional Examination

August 30, 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 August 22, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[5]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Schedule A to the FINRA By-Laws to establish a fee for the new Operations Professional Examination (''Series 99''). Specifically, the proposed rule change would amend Section 4 of Schedule A to the FINRA By-Laws to establish a fee of $125 for a person to take the Series

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The proposed rule change is related to FINRA's recently established registration category and qualification examination requirement for Operations Professionals. *See* Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving File No. SR–FINRA–2011–013).

99 examination. The fee is based on the costs to FINRA to develop and administer the exam.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 16, 2011, the Commission approved FINRA Rule 1230(b)(6), which establishes a registration category and qualification examination requirement for certain operations personnel—Operations Professionals.[6] FINRA is expanding its registration provisions to require registration of certain individuals (''covered persons'') who are engaged in, responsible for or supervising certain member operations functions (''covered functions'') to enhance the regulatory structure surrounding these areas.[7] FINRA Rule 1230(b)(6) is intended, among other things, to increase covered persons' awareness and knowledge that they are operating in a regulated environment designed to protect investors' interests and the integrity of the operations of a broker-dealer.

FINRA has developed the Series 99 examination program to provide reasonable assurance that covered persons understand their professional responsibilities, including key regulatory and control themes, as well as the importance of identifying and escalating red flags that may harm a firm, its customers, the integrity of the marketplace or the public. The examination will test applicants on general securities industry knowledge and its associated regulations and rules.[8] On August 19, 2011, [sic] FINRA filed with the Commission the Series 99 selection specifications and content outline.[9] The examination will be implemented on October 17, 2011.[10]

The proposed rule change would amend Section 4 of Schedule A to the FINRA By-Laws to establish a fee of $125 for a person to take the Series 99 examination. The fee is based on the costs to FINRA to develop and administer the exam.[11]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change and corresponding FINRA Rule 1230(b)(6) will be October 17, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[12] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes the proposed rule change is designed to accomplish these ends by equitably assessing by means of a reasonable examination fee the costs associated with developing and administering the examination program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f)(2) of Rule 19b–4 thereunder.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–042 on the subject line.

[6] *See* Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving File No. SR–FINRA–2011–013). In addition to adopting FINRA Rule 1230(b)(6), the rule change adopted NASD Rule 1120 (Continuing Education Requirements) as new FINRA Rule 1250 (Continuing Education Requirements) with certain changes, including expanding the scope of ''covered registered persons'' subject to the Firm Element to include persons registered as Operations Professionals. *See also Regulatory Notice* 11–33 (July 2011).

[7] *See Regulatory Notice* 11–33 (July 2011) for information regarding the implementation period for Operations Professionals subject to FINRA Rule 1230(b)(6).

[8] FINRA Rule 1230(b)(6)(D) sets forth an exception to the Operations Professional qualification examination requirement for persons who currently hold certain registrations (each an ''eligible registration'') or have held one during the two years immediately prior to registering as an Operations Professional. The exception also applies to persons who do not hold an eligible registration, but prefer an alternative to taking the Operations Professional examination. Such persons may register in an eligible registration category (subject to passing the corresponding qualification examination or obtaining a waiver) and use such registration to qualify for Operations Professional registration.

[9] *See* SR–FINRA–2011–041.

[10] *See Regulatory Notice* 11–33 (July 2011).

[11] Candidates for the Series 99 examination will be able to schedule and take the examination starting on October 17, 2011. Because this is a new examination for a new registration category, FINRA will be assessing the effectiveness of the examination by, in part, evaluating the candidates' performance during the first 60 days of the administration of the examination. Therefore, candidates who take the examination within the first 60 days (between October 17, 2011 and December 16, 2011) will not receive their test results on the day that they take the examination. Instead, such candidates' firms will be notified of test results (*i.e.,* the candidate's score and whether the candidate has passed or failed the examination) on or shortly after December 16, 2011. The test results will be posted to the Central Registration Depository system (''CRD® system'') at that time. Candidates who fail the examination during the initial 60-day rollout will be provided an opportunity to retake the examination at no additional cost.

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2011–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–042 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22764 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65222; File No. SR–FINRA–2011–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt the Selection Specifications and Study Outline for the Operations Professional (''Series 99'') Examination Program

August 30, 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 August 22, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to adopt the selection specifications and content outline for the Operations Professional (''Series 99'') examination program.[4]

The Series 99 examination program is proposed in connection with FINRA Rule 1230(b)(6), a new representative registration category and qualification examination requirement for certain operations personnel. FINRA is not proposing any textual changes to its By-Laws, Schedules to the By-Laws or rules.

A description of the Series 99 examination is included in the attached content outline. Additional information on the examination is included in the Series 99 selection specifications, which FINRA has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to Rule 24b–2 under the Act.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 16, 2011, the Commission approved FINRA Rule 1230(b)(6), which establishes a registration category and qualification examination requirement for certain operations personnel—Operations Professionals.[6] FINRA is expanding its registration provisions to require registration of certain individuals (''covered persons'') who are engaged in, responsible for or supervising certain member operations functions (''covered functions'') to enhance the regulatory structure surrounding these areas.[7] FINRA Rule 1230(b)(6) is intended, among other things, to increase covered persons' awareness and knowledge that they are operating in a regulated environment designed to protect investors' interests and the integrity of the operations of a broker-dealer.

Pursuant to Section 15A(g)(3)(B) of the Act,[8] FINRA is authorized to prescribe standards of training, experience, and competence for persons associated with FINRA members. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Based upon instruction from the Commission staff, FINRA is submitting SR–FINRA–2011–041 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, and is not filing the question bank for Commission review. *See* Letter from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, dated July 24, 2000. The question bank is available for Commission review.

[5] 17 CFR 240.24b–2.

[6] *See* Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving File No. SR–FINRA–2011–013). In addition to adopting FINRA Rule 1230(b)(6), the rule change adopted NASD Rule 1120 (Continuing Education Requirements) as new FINRA Rule 1250 (Continuing Education Requirements) with certain changes, including expanding the scope of ''covered registered persons'' subject to the Firm Element to include persons registered as Operations Professionals. *See Regulatory Notice* 11–33 (July 2011).

[7] *See Regulatory Notice* 11–33 (July 2011) for information regarding the implementation period for Operations Professionals subject to FINRA Rule 1230(b)(6).

[8] 15 U.S.C. 78*o*–3(g)(3)(B).

Series 99 examination program has been developed to provide reasonable assurance that covered persons understand their professional responsibilities, including key regulatory and control themes, as well as the importance of identifying and escalating red flags that may harm a firm, its customers, the integrity of the marketplace or the public. The examination will test applicants on general securities industry knowledge and its associated regulations and rules.[9]

The Series 99 examination consists of 100 multiple-choice questions.[10] Candidates will be allowed 150 minutes to complete the examination. Candidates will receive an informational breakdown of their performance on each section of the examination, along with their overall score and pass/fail status at the completion of the testing session.[11]

A content outline has been prepared to assist member firms in preparing candidates for the Series 99 examination and is available at *http://www.finra.org/brokerqualifications/registeredrep.* The content outline describes the following three topical sections comprising the examination: (1) Basic Knowledge Associated with the Securities Industry (32 questions); (2) Basic Knowledge Associated with Broker-Dealer Operations (48 questions); and (3) Professional Conduct and Ethical Considerations (20 questions).

The selection specifications for the Series 99 examination, which FINRA has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to Rule 24b–2 under the Act,[12] describe additional confidential information regarding the examination.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change and corresponding FINRA Rule 1230(b)(6) will be October 17, 2011.

2. Statutory Basis

FINRA believes that the proposed Series 99 examination program is consistent with Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(g)(3) of the Act,[14] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes the proposed rule change to expand FINRA's registration and qualification requirements to Operations Professionals will help ensure that investor protection mechanisms are in place in all areas of a member's business that could harm the member, a customer, the integrity of the marketplace or the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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 Section 19(b)(3)(A) of the Act[15] and Rule 19b4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–041 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2011–041. 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

[9] FINRA Rule 1230(b)(6)(D) sets forth an exception to the Operations Professional qualification examination requirement for persons who currently hold certain registrations (each an ''eligible registration'') or have held one during the two years immediately prior to registering as an Operations Professional. The exception also applies to persons who do not hold an eligible registration, but prefer an alternative to taking the Operations Professional examination. Such persons may register in an eligible registration category (subject to passing the corresponding qualification examination or obtaining a waiver) and use such registration to qualify for Operations Professional registration.

[10] To ensure that new exam questions meet acceptable testing standards prior to use, each examination includes 10 additional, unidentified ''pre-test'' questions that do not contribute towards the candidate's score. The 10 pre-test questions are randomly distributed throughout the examination.

[11] Candidates for the Series 99 examination will be able to schedule and take the examination starting on October 17, 2011. Because this is a new examination for a new registration category, FINRA will be assessing the effectiveness of the examination by in part, evaluating the candidates' performance during the first 60 days of the administration of the examination. Therefore, candidates who take the examination within the first 60 days (between October 17, 2011 and December 16, 2011) will not receive their test results on the day that they take the examination. Instead, such candidates' firms will be notified of test results (*i.e.,* the candidate's score and whether the candidate has passed or failed the examination) on or shortly after December 16, 2011. The test results will be posted to the Central Registration Depository system (''CRD® system'') at that time. Candidates who fail the examination during the initial 60-day rollout will be provided an opportunity to retake the examination at no additional cost.

[12] 17 CFR 240.24b–2.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*o*–3(g)(3).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–041 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22765 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65226; File No. SR–BX–2011–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Name of the BX Ouch BBO Feed to the BX MatchView Feed and To Modify Its Contents

August 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on August 25, 2011, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The 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, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to change the name of the BX Ouch BBO Feed to the BX MatchView Feed (the ''Feed'') and to modify the contents of the Feed in two ways. The Feed provides a view of how the Exchange views the Best Bid and Offer (''BBO'') available from all market centers for each individual security the Exchange trades.

The Exchange has filed this proposal under Rule 19b–4(f)(6)[5] under the Act and BX has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available from BX's Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* at BX'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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposal regards the BX MatchView Feed (formerly known as the BX Ouch BBO Feed), a data feed that represents the Exchange's view of best bid and offer data received from all market centers. The Feed is available to all Exchange members and market participants equally at no charge, offering all participants transparent, real-time data concerning the Exchange's view of the BBO data. The Exchange makes the Feed available on a subscription basis to market participants that are connected to the Exchange whether through extranets, direct connection, or Internet-based virtual private networks.

Currently, the Feed reflects the Exchange's view of the BBO data, at any given time, based on orders executed on the Exchange and updated quote information from the network processors.[7] The Feed contains the following data elements: symbol, bid price, and ask price.[8] Unlike the BX TotalView feed, the MatchView feed does not contain information about individual orders, either those residing within the Exchange system or those executed or routed by the Exchange. Unlike the network processor feeds containing the National Best Bid and Offer (''NBBO''), the MatchView Feed does not identify either the market center quoting the BBO or the size of the BBO quotes. It merely contains the symbol and bid and offer prices.

The Exchange is modifying the inputs used for calculating the prices reflected on the Feed. Currently, the Feed reflects bids and offers contained on data feeds from the network processors, as well as certain BX orders referenced below. In the future, the Feed will continue to reflect these orders entered on the Exchange but rather than reflect only individual exchange bids and offers received from the network processors, the Feed will reflect individual exchange bids and offers received either from the network processor or directly from an exchange that disseminates bids and offers to vendors via a proprietary data feed. The Exchange will reflect bids and offers from another exchange's proprietary data feed only when the Exchange deems the proprietary data feed to be sufficiently reliable and also faster than the network processor.[9]

This determination—whether to utilize bids and offers from the network processor feed or from a direct proprietary data feed—will be made by the Exchange on a market-by-market basis based upon objective criteria about reliability and speed. The determination, once made, will apply to all bids and offers from an exchange; it will not be made on a stock-by-stock basis. Additionally, the determination,

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[17] 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)(1).

[4] 17 CFR 240.19b–4.

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] The Feed will not reflect all information available to the Exchange. Specifically, the Feed will exclude information about the routing of orders to away exchanges. Thus, although the Exchange execution system and routing engine will know when a bid or offer from an away market is no longer available because the Exchange has routed an order to the bid or offer, the Feed will not reflect such routing activity.

[8] The Feed also contains a time stamp and message type field for reference.

[9] The Exchange is also changing its policies and procedures under Regulation NMS governing the data feeds used by its execution system and routing engine. Current policies state that those systems use data provided by the network processors. In the future, those systems will use data provided either by the network processors or by proprietary feeds offered by certain exchanges directly to vendors. The determination of which data feed to utilize will be the same as the determination made with respect to the Feed. In other words, the Exchange execution system, routing engine and Feed will each utilize the same data for a given exchange although, as set forth in footnote 5, the Feed does not contain all information available to the execution system and routing engine.

once made, will be valid until such time as the away exchange stops disseminating the proprietary data feed in a manner that meets BX's objective criteria (for example, when that exchange experiences operational difficulties that reduce the reliability and speed of its proprietary data feed). For exchanges that do not disseminate proprietary data feeds or whose proprietary data feeds lack sufficient reliability and speed, the Feed will continue to reflect bids and offers disseminated via the network processor feeds.

Additionally, in a previous filing, the Exchange noted that the Feed depicts the Exchange's view of the BBO for all markets other than the Exchange.[10] In one narrow set of circumstances, the Feed will show the BBO for all markets including the Exchange. Specifically, an order received by the Exchange that improves the BBO will be reflected in the Feed when three circumstances are met: (1) The Exchange receives an order marked by the entering member as any visible bookable order that is not an IOC and is an ''Inter-market Sweep'' (an order known as a ''Day ISO''); (2) the Day ISO order is priced higher than the current Best Bid or lower than the current Best Offer disseminated by the network processor or applicable exchange proprietary data feed; and (3) the Day ISO represents the new best bid or offer on the Exchange. In those circumstances, the new best bid or offer on the Exchange will be transmitted to the network processor and then reflected on the Feed (and the Exchange's other proprietary data feeds, such as BX TotalView). As stated above, the Feed does not show the market center responsible (whether the Exchange or an away market) for either the Best Bid or Best Offer reflected on the Feed.

These modifications to the Feed will enhance market transparency and foster competition among orders and markets. Member firms may use the Feed to more accurately price their orders based on the Exchange's view of what the BBO is at any point in time, including bids and offers received via proprietary data feeds which may not be reflected in the official NBBO due to latencies inherent in the NBBO's dissemination. As a consequence, member firms may more accurately price their orders on the Exchange, thereby avoiding price adjustments by the Exchange based on a quote that is no longer available. Additionally, members can use the Feed to price orders more aggressively to narrow the NBBO and provide better reference prices for investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general and with Sections 6(b)(5) of the Act,[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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 Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because it would permit the Exchange to immediately provide the new content of the BX MatchView Feed to market participants. The Commission believes that waiving the 30-day operative delay[17] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–059 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2011–059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[10] *See* Securities Exchange Act Release No. 61452 (Feb. 1, 2010), 75 F.R. (sic) 6232 (Feb. 8, 2010) (filing SR–BX–2010–010).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 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).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–059 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22775 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Compliance Deadline for Qualification Pursuant to Rule 3.6A

August 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''the ''Act''),[1] notice is hereby given that on August 23, 2011, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19((b)(3)(A)(i) of the Act,[2] and Rule 19b–4(f((1)[3] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[4] the Exchange proposes to extend the September 19, 2011 deadline to October 29, 2011 to comply with its rules regarding registration and qualification of individual Trading Permit Holders and individual associated persons.[5] CBOE is not proposing any textual changes to the Rules of CBOE. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission'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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Pursuant to Rule 15b7–1,[6] promulgated under the Exchange Act,[7] ''No registered broker or dealer shall effect any transaction in * * * any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards…established by the rules of any national securities exchange…'' CBOE Rule 3.6A sets forth the requirements for registration and qualification of individual Trading Permit Holders and individual associated persons. In response to a request by the Division of Trading and Markets at the Securities and Exchange Commission (the ''Commission'' or ''SEC''), CBOE recently amended its rules to expand its registration and qualification requirements set forth in CBOE Rule 3.6A to include individual Trading Permit Holders and individual associated persons that are engaged or to be engaged in the securities business of a Trading Permit Holder or TPH organization.[8] CBOE Rule 3.6A provides that these individuals must be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. Further, Rule 3.6A requires, among other things, that an individual Trading Permit Holder or individual associated person submit an application for registration and pass the appropriate qualification examination before the registration can become effective. The revised requirements apply to both CBOE and CBOE Stock Exchange (''CBSX'') Trading Permit Holders and their associated persons.

In conjunction with the registration requirements established by SR–CBOE–2010–084, three new qualification examinations became available on June 20, 2011 in the Central Registration Depository system (''WebCRD''), which is operated by the Financial Industry Regulatory Authority, Incorporated (''FINRA''). These registration categories include the following (the required qualification examinations and prerequisites, as applicable, associated with each registration category are in parentheses): PT—Proprietary Trader (Series 56), CT—Proprietary Trader Compliance Officer (Series 14, Series 56 prerequisite) and TP—Proprietary Trader Principal (Series 24, Series 56 prerequisite). In the Approval Order for SR–CBOE–2010–084, the SEC established a deadline of August 12, 2011 for CBOE and CBSX individual Trading Permit Holders and individual

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 19b–4(f)(1).

[4] 15 U.S.C. 78s(b)(1).

[5] The Commission notes that the extension until October 29, 2011 is an extension of the time to pass the appropriate qualification exam. All individual Trading Permit Holders and individual associated persons not already registered in WebCRD were to be registered as of January 11, 2011. *See* Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010), at 70958.

[6] 17 CFR 240.15b7–1.

[7] 15 U.S.C. 78a *et seq.*

[8] *See* Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR–CBOE–2010–084).

associated persons of CBOE and CBSX Trading Permit Holders to register for and pass the applicable qualification examination(s), approximately seven weeks from the date the qualification exams became available. CBOE recently submitted a rule filing extending the deadline until September 19, 2011.[9] The International Securities Exchange, LLC (''ISE'') recently submitted a rule filing setting forth the content outline for the Series 56.[10] In conjunction with this filing, ISE issued a Regulatory Information Circular [11] establishing a deadline of October 29, 2011 for complying with its new registration and qualification requirements.

CBOE respectfully requests to extend the September 19, 2011 deadline to October 29, 2011 (or such other later compliance date as the Commission deems appropriate for the participating self-regulatory organizations) to be consistent with the deadline provided to ISE members to comply with the registration and qualification requirements.[12] CBOE believes its proposal to extend this deadline is reasonable and necessary in an effort to implement consistent standards for registration and qualification across self-regulatory organizations.

CBOE continues to evaluate the reasonability of the proposed deadline in light of various factors including, but not limited to, the following: (i) Potential disruption to the marketplace if a Market-Maker or Designated Primary Market-Maker does not satisfy the qualification requirements; (ii) system enforced delays in registering for an examination in WebCRD upon an individual's failure of a qualification examination; (iii) examination scheduling limitations due to the volume of individuals required to take the examination(s); and (iv) the ability for those individuals subject to heightened qualification examinations to prepare for, schedule and pass more than one examination in an extremely limited window of time. CBOE will continue to update Commission staff and evaluate whether additional rule filings are necessary to address reasonability concerns in conjunction with requiring compliance within the proposed time frame.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(1) [14] of the Act in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3) [15] of the Act, which authorizes CBOE to prescribe standards of training, experience and competence for persons associated with CBOE members, in that this filing is proposing to extend the deadline for compliance with the standards of training, experience and competence established by the Exchange. CBOE believes that its proposal is reasonable in that it establishes a deadline for compliance with the registration and qualification requirements that is consistent with the deadline in place for ISE members and their associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the 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 proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act [16] and Rule 19b–4(f)(1) thereunder,[17] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–081 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2011–081. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All

[9] *See* Securities Exchange Act Release No. 64946 (July 21, 2011), 76 FR 44972 (July 27, 2011) (SR–CBOE–2011–064).

[10] *See* Securities Exchange Act Release No. 65086 (August 10, 2011), 76 FR 50796 (August 16, 2011) [sic] (SR–ISE–2011–036).

[11] *See* ISE Regulatory Information Circular 2011–15 (issued August 15, 2011).

[12] The International Securities Exchange (''ISE'') received approval for a rule filing establishing substantially similar registration and qualification requirements on February 4, 2011. The Approval Order for SR–ISE–2010–115 provides that ''Associated persons of ISE members will have 90 days from the date the examination becomes available to take and pass the examination.'' *See* Securities Exchange Act Release No. 63843 (February 4, 2011), 76 FR 7884 (February 11, 2011) (SR–ISE–2010–115).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(c)(3).

[16] 15 U.S.C. 78s(b)(3)(A)(i).

[17] 17 CFR 240.19b–4(f)(1).

submissions should refer to File Number SR–CBOE–2011–081 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22774 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65234; File No. SR–MSRB–2011–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Amendments to MSRB Rule G–20 (Gifts and Gratuities) and Related Amendments to MSRB Rule G–8 (Books and Records) and MSRB Rule G–9 (Preservation of Records), and To Clarify That Certain Interpretations by the Financial Industry Regulatory Authority and the National Association of Securities Dealers Would Be Applicable to Municipal Advisors

August 31, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 16, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of proposed amendments to MSRB Rule G–20 (on gifts and gratuities), which would apply the rule to municipal advisors, along with related proposed amendments to Rule G–8 (on books and records) and Rule G–9 (on preservation of records), and to clarify that certain interpretations by the Financial Industry Regulatory Authority (''FINRA'') of its gifts rule (FINRA Rule 3220) and its predecessor, the National Association of Securities Dealers (''NASD'') of its gift rule (NASD Rule 3060), would be applicable to municipal advisors. The MSRB requested that the proposed rule change be made effective on the date that rules defining the term ''municipal advisor'' under the Exchange Act are first made effective by the Commission.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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 Changes

1. Purpose

Existing MSRB Rule G–20. Rule G–20 was adopted by the MSRB to prevent brokers, dealers, and municipal securities dealers (''dealers'') from attempting to induce other organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of the organizations, including, but not limited to, acts of commercial bribery,[3] and to help to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized. The MSRB has interpreted Rule G–20 to preclude the payment by dealers of ''excessive or lavish'' entertainment or travel expenses of issuer personnel, as follows:[4]

Payment of excessive or lavish entertainment or travel expenses may violate Rule G–20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities.

Dodd-Frank Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[5] authorized the MSRB to establish a comprehensive body of regulation for all municipal advisors.[6] The Dodd-Frank Act requires the MSRB to adopt rules for municipal advisors that are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.[7] It also expands the mission of the MSRB to include the protection of municipal entities[8] and obligated persons, in addition to the protection of investors and the public interest.

Proposed amendments to MSRB Rule G–20. Pursuant to the authority granted to it by the Dodd-Frank Act, the MSRB is proposing the amendments to Rule G–20. Just as the existing rule helps to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized, the MSRB seeks to reduce the potential for conflicts of interest in municipal advisory activities.[9] The

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See MSRB Notice 2004–17 (June 15, 2004).*

[4] *See Rule G–20 Interpretation—Dealer Payments in Connection with the Municipal Securities Issuance Process (January 29, 2007); see also In the Matter of RBC Capital Markets Corporation,* SEC Rel. No. 34–59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G–20 and G–17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); *In the Matter of Merchant Capital, L.L.C.,* SEC Rel. No. 34–60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings).

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

[6] ''Municipal advisor'' is defined in Section 15B(e)(4) of the Exchange Act.

[7] *See* Section 15B(b)(2)(C) of the Exchange Act.

[8] ''Municipal entity'' is defined in Section 15B(e)(8) of the Exchange Act as ''any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.''

[9] MSRB Rule D–13 defines the term ''municipal advisory activities'' by reference to Section 15B(e)(4)(A) of the Exchange Act (*i.e.,* (i) providing advice to municipal entities or obligated persons on municipal financial products or the issuance of

Continued

proposed amendments to Rule G–20 would help to ensure that engagements of municipal advisors, as well as engagements of dealers, other municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. The proposed amendments to Rule G–20 would make the rule applicable to municipal advisors and would:

- Prohibit municipal advisors, in connection with their municipal advisory activities, from, directly or indirectly, making a gift or permitting a gift to be made in excess of $100 per year to a natural person other than an employee or partner of the municipal advisor, if such gifts are in relation to the activities of the employer of the recipient of the gift;[10]
- Provide certain exemptions from the above prohibition, including: (i) occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the municipal advisor; or (ii) legitimate business functions sponsored by the municipal advisor that are recognized by the Internal Revenue Service as deductible business expenses;[11]
- Permit contracts of employment or compensation for services rendered by a person other than an employee of the municipal advisor; provided that there is a written agreement[12] between the municipal advisor and the person who is to perform such services, prior to the time of employment or before the services are rendered;[13]
- Remove gifts of reminder advertising as a permissible exemption from the $100 gift limit of Rule G–20(a) for municipal advisors and dealers;[14] and
- Clarify that existing FINRA and NASD interpretations of the FINRA and NASD gift rules, respectively,[15] apply to comparable MSRB provisions of Rule G–20 applicable to municipal advisors, with new FINRA interpretations of its gifts rule made applicable to municipal advisors if the MSRB determines that it is appropriate to do so and receives the approval of the Commission. All NASD and FINRA interpretations that would be made applicable to municipal advisors by this proposed rule change are cited in this filing and would be posted on the MSRB Web site, and cited in the MSRB Rule Book, as interpretations of comparable provisions of Rule G–20.

Municipal advisors would not be subject to Rule G–20(d), which relates to non-cash compensation in connection with primary offerings.

Proposed amendments to MSRB Rule G–8 and Rule G–9. The proposed amendments to Rule G–20 would necessitate related amendments to Rule G–8 (on books and records) and Rule G–9 (on preservation of records). The proposed amendments to Rules G–8 and G–9 would subject municipal advisors to the same recordkeeping and record retention requirements to which dealers would be subject under amended Rule G–20. Specifically, the proposed amendments to Rule G–8 would require municipal advisors and dealers to create and maintain records of any gifts referred to in Rule G–20[16] and all agreements for services referred to in Rule G–20 along with the compensation paid as a result of such agreements. The proposed amendments to Rule G–9 would require municipal advisors to preserve the records required to be made pursuant to the proposed amendments to Rule G–8 for six years.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act provides that the rules of the MSRB shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) and Section 15B(b)(2)(C) of the Exchange Act because it would reduce the potential for conflicts of interest in municipal advisory activities. The proposed amendments to Rule G–20 would also help ensure that engagements of municipal advisors, as well as engagements of dealers, municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of

municipal securities and (ii) solicitations of municipal entities on behalf of others).

Section 15B(e)(9) of the Exchange Act defines the term ''solicitation of a municipal entity or obligated person'' to mean: ''a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.''

[10] *See* proposed Rule G–20(a). The ''municipal advisory activities'' of the municipal advisor covered by the proposed amendments to Rule G–20(a) would include both advice provided to municipal entities and obligated persons and solicitations of municipal entities on behalf of third parties. For example, the proposed rule amendments would apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities and obligated persons for which the municipal advisor is providing advice or seeking to provide advisory services. It would also apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities being solicited by a municipal advisor to award business to a client of the municipal advisor (*e.g.,* employees of a public pension fund who could influence the pension fund's decision award investment advisory business). Even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or obligated person, a gift that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the future also would be covered by the provisions of proposed Rule G–20.

[11] *See* proposed Rule G–20(b).

[12] The written agreement must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

[13] *See* proposed Rule G–20(c).

[14] *See* proposed Rule G–20(b). Those gifts would be addressed, instead, by NASD Notice to Members 06–69 (December 2006), which the proposed rule change would make applicable to municipal advisors (''NASD Notice to Members 06–69'').

[15] *See* NASD Notice to Members 06–69; *FINRA Interpretive Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts) dated December 17, 2007; FINRA Interpretive Letter to Charles Wiegert, NFP Securities dated March 15, 2001;* and *Interpretive Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. dated June 10, 1999.*

[16] The requirement to keep a record of all gifts, including those of business meals and entertainment and sponsored business functions would be a new requirement for dealers, as well as municipal advisors. Those gifts are covered by Rule G–20(b). Previously, only records of gifts covered by Rule G–20(a) were required to be kept.

merit and not as a result of gifts made to employees controlling the award of such business. The proposed amendments to Rules G–8 and G–9 would assist in the enforcement of Rule G–20 by requiring that dealers and municipal advisors create and maintain records of any gifts referred to in Rule G–20 and all agreements for services referred to in Rule G–20, along with the compensation paid as a result of such agreements.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

While the proposed rule change will affect all municipal advisors, it is a necessary regulatory burden because it hampers practices that can harm municipal entities and their citizens by contributing to the violation of the public trust of elected officials that might allow gifts to influence their decisions regarding the awarding of municipal advisory business. While the proposed rule change may burden some small municipal advisors, any such burden is outweighed by the need to protect their issuer clients.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all municipal advisors and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On February 22, 2011, the MSRB requested comment on draft amendments to Rule G–20.[17] The MSRB received eight comment letters (''Comment Letters'') from the following commenters: (1) Catholic Finance Corporation (''CFC''); (2) Robert Fisher (''Mr. Fisher''); (3) Municipal Regulatory Consulting LLC (''MRC''); (4) National Association of Independent Public Finance Advisors (''NAIPFA''); (5) Public Financial Management (''PFM''); (6) Securities Industry and Financial Markets Association (''SIFMA''); and (7) WM Financial Strategies (''WM Financial'').

The Comment Letters are summarized by topic as follows:

• *Comment: The draft amendments to Rule G–20 would prohibit payments for ordinary business expenses of municipal advisors, including, but not limited to, rent and salaries.*

Mr. Fisher and PFM stated that a literal reading of the draft amendments to Rule G–20 would restrict payments made by a municipal advisor related to any part of their municipal advisory business, including the payment of rent and the purchasing of supplies. SIFMA noted that it understood why the wording of the gift prohibition for municipal advisors differed from that of the gift prohibition for dealers (*i.e.,* municipal entities do not have municipal advisory activities), but requested that the MSRB clarify that the municipal advisor provision was intended to be interpreted in the same manner as the dealer provision. NAIPFA stated that the proposed amendments would curtail gifts and gratuities given by municipal advisors for the purpose of soliciting municipal advisory business while leaving the rule for dealers unchanged, which would allow such gift giving related to dealer solicitations of municipal securities business.

MSRB Response: The MSRB did not intend for the draft amendments to Rule G–20 to apply to municipal advisors in a different manner than the rule currently applies to dealers. The difference in wording between draft Rule G–20(a)(ii) (applicable to municipal advisors) and Rule G–20(a)(i) (applicable to dealers) was not substantive. However, the MSRB has determined to revise the draft amendments to Rule G–20 to clarify that dealers and municipal advisors are subject to the same gift limits. Those revisions are reflected in the proposed amendments to Rule G–20(a).

For the avoidance of doubt, the proposed amendments to Rule G–20 that are part of the proposed rule change use the word ''gift,'' rather than ''payment'' in section (a). Such amendment would clarify that the thing or service of value to be given would have to be an actual gift and not payments and/or costs associated with normal business activities of the municipal advisor or the dealer. Because of the use of the term ''gift,'' the proposed amendments would remove references to the terms ''gratuity'' and ''gratuities,'' which are subsumed within the term ''gift.''

• *Comment: The MSRB should clarify that references to ''persons'' in the rule mean ''natural persons,'' consistent with previous MSRB interpretive guidance.*[18]

This change would have the effect of permitting charitable contributions without violation of the rule.

MRC requested that the MSRB speak directly to the issue of charitable contributions by incorporating language addressing such concerns in Rule G–20, or in guidance applicable to either Rule G–20 or Rule G–17, that charitable contributions are not gifts for purposes of Rule G–20 and are not covered by Rule G–20 because Rule G–20 only covers gifts to natural persons. MRC also stated that it is unclear if certain charitable (or similar) contributions might constitute an unfair practice and thereby cause a municipal advisor making the contribution to violate Rule G–17. NAIPFA also requested guidance and clarification regarding charitable contributions that are made either as a result of a solicitation from an employee or elected official of a municipal entity or with a view toward influencing the decision-making of an employee or elected official of a municipal entity.

MSRB Response: The MSRB believes that the concerns raised by MRC will be addressed by amendments to the rule that would change the term ''persons'' to ''natural persons.'' Such amendment would clarify that Rule G–20 covers gifts to individuals and not organizations. In response to the concerns raised by MRC and NAIPFA, the Board has previously determined that the occasional pay to play problems that might be associated with the solicitation of charitable contributions by issuers do not outweigh the benefits of such contributions and that such restrictions would have a negative impact on charitable giving. The proposed rule change does not address gifts under Rule G–17. The MSRB will take MRC's comment regarding the potential applicability of Rule G–17 to gifts under advisement for when it considers future interpretations of Rule G–17.

• *Comment: The draft amendments to Rule G–20 should include an exception to the prohibition of gifts, grants, loans, and other financial assistance or services by a section 501(c)(3) organization within its exempt purpose for the benefit of other nonprofit corporations.*

[17] *See* MSRB Notice 2011–16 (February 22, 2011) (''Notice'').

[18] The MSRB has previously stated that, for purposes of Rule G–20, the term ''person'' refers only to a natural person and that Rule G–20 is intended to discourage municipal securities professionals from attempting to induce individual employees from acting in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. *See* Rule G–20; Interpretive Letter, ''Person'' (March 19, 1980).

CFC stated that the proposed rulemaking should include an exception to the prohibition on payments for any thing of value donated by a municipal advisor that is a nonprofit entity as previously determined by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, so long as such donation is within the exempt purpose of such entity.

MSRB Response: The MSRB has determined to use the term ''natural person,'' which has the effect of permitting gifts to be made to organizations.

• *Comment: The draft amendments to Rule G–20 should prohibit gift giving and/or provide an annual cap for de minimis gifts in order to prevent pay to play activities under the rule.*

Mr. Fisher suggested a general prohibition on gifts under draft Rule G–20(a), subject to a $100 safe harbor for *de minimis* gifts. NAIPFA recommended a prohibition on occasional gifts and, along with WM Financial, suggested an annual gift or gratuity maximum of $100 with the aggregate of all gifts, gratuities, and entertainment not to exceed $250 annually.

MSRB Response: Rule G–20 is intended to prevent commercial bribery and certain activities, such as excessive gift giving, from influencing dealer and municipal advisor selection. The purpose of the proposed amendments to Rule G–20 is only to extend the existing rule to municipal advisors. The proposed amendments would not impose more stringent limitations at this time. However, should the MSRB become aware of abusive behavior in this area, it might determine to revisit these comments.

• *Comment: The draft amendments should apply to gifts to family members of issuer personnel because such gifts can be problematic.*

NAIPFA stated that the proposed amendments to Rule G–20 should apply to gifts and gratuities given to family members of issuer personnel.

MSRB Response: The MSRB has previously stated that the intent of the rule is not to restrict social relationships that do not suggest impropriety.[19] The MSRB believes that an expansion of the rule to family members, as suggested by NAIPFA, would unduly burden dealers and municipal advisors. The MSRB notes, however, that both the existing rule and the proposed amendments prohibit indirect, as well as direct, gifts. A gift to a family member of someone in a position to award business to a municipal advisor would violate the rule if it was indirectly a gift to the person awarding the business and it violated the rule's limits.

• *Comment: The draft amendments to Rule G–8 (on books and records) are burdensome and unnecessary because they would require municipal advisors to collect all third-party employment and service agreements of any kind. In addition, the draft amendments to Rule G–8 do not require reporting of gifts made under existing Rule G–20(b) or the draft amendments to Rule G–20(b).*

PFM stated that the draft recordkeeping requirements increase the data-collection burden of municipal advisors to collect all third party employment and service agreements of any kind. NAIPFA stated that the fact that existing Rule G–8 and the draft amendments to Rule G–8 do not require the reporting of gifts made under Rule G–20(b) exacerbates the potential for pay to play as it relates to such ''occasional gifts'' that are permitted under the rule.

MSRB Response: The MSRB has determined not to make changes to Rule G–20 as a result of PFM's comment in order to maintain consistency of the recordkeeping requirements of the rule for dealers and municipal advisors. The MSRB notes that records of employment agreements need only be kept if a municipal advisor is employing some other person's employee, such as an obligated person client's employee. The MSRB also notes that the recordkeeping requirements would facilitate municipal advisor compliance with proposed Rule G–20 and assist enforcement agencies in monitoring compliance with the rule.

The MSRB has considered NAIPFA's comment and has determined to require municipal advisors and dealers to maintain records of all gifts provided under Rule G–20. Rule G–8 does not currently require recordkeeping of gifts that are described in Rule G–20(b) (*e.g.,* tax deductible business meals and entertainment).[20] While gifts provided under Rule G–20(b) must not be so frequent or so extensive as to raise any question of propriety, the MSRB believes records of such gifts would assist with enforcement efforts. The proposed amendments would likely not be burdensome because, in most cases, records are already kept of such gifts when reimbursement is sought, even if only for Federal income tax purposes. Therefore, from a practical standpoint, the amendments would merely add a requirement that records of such gifts be kept even though reimbursement is not sought. Accordingly, the recordation of all gifts that are given or permitted to be given under Rule G–20 would be required under Rule G–8(a)(xvii)(A) as it applies to dealers and proposed Rule G–8(h)(ii) as it applies to municipal advisors.

• *Comment: The MSRB should confirm that (i) guidance under existing Rule G–20 applies to all provisions of the proposed rulemaking and (ii) relevant FINRA guidance would be applicable to the rule as amended as it has previously applied to the existing rule.*

SIFMA requested that the MSRB reiterate its intent to apply relevant FINRA guidance to the proposed amendments. SIFMA also requested that the MSRB confirm that existing guidance under Rule G–20 applies to all provisions of the proposed rule change.

MSRB Response: The MSRB has previously provided that FINRA and NASD interpretations of comparable provisions of their gifts rules will apply to dealers unless otherwise specified by the MSRB.[21] While the MSRB believes that the existing FINRA and NASD interpretations should also be applicable to municipal advisors, new FINRA interpretations of its gifts rule will not automatically be applicable to municipal advisors. New FINRA interpretations of its gifts rule will be made applicable to municipal advisors if the MSRB determines that it is appropriate to do so and receives the approval of the SEC. All NASD and FINRA interpretations that would be made applicable to municipal advisors by this proposed rule change are cited in this filing and would be posted on the MSRB Web site, and cited in the MSRB Rule Book, as interpretations of comparable provisions of Rule G–20.

The MSRB intends that existing MSRB interpretive guidance under Rule G–20 would be equally applicable to Rule G–20, as amended by the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[19] *See* File No. SR–MSRB–77–12.

[20] Records of gifts under Rule G–20(a) are required to be kept.

[21] *See* File No. SR–MSRB–2005–02.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Interested persons are also invited to submit views and arguments as to whether they can effectively comment on the proposed rule change prior to the date of final adoption of the Commission's permanent rules for the registration of municipal advisors. 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–MSRB–2011–10 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MSRB–2011–10. 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 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 MSRB's offices.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2011–10 and should be submitted on or before September 28, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22726 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65228; File No. SR–Phlx–2011–119]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Reversal and Conversion Strategies

August 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on August 18, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a fee cap on equity options transactions on certain reversals and conversion strategies. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to incentivize market participants by capping option transaction fees related to reversal and conversion strategies to encourage trading on the Exchange. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions are 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.

The Exchange proposes to cap Specialist,[3] Registered Option Trader (''ROT''),[4] SQT,[5] RSQT,[6] Professional,[7] Broker-Dealer and Firm option transaction fees in Multiply Listed Options [8] at $500 per day for reversal and conversion strategies which are executed on the same trading day in the same options class (''Reversal and Conversion Cap''). The Reversal and Conversion Cap will only apply to executions occurring on either of the two days preceding the standard options expiration date, which is typically the third Thursday and Friday of every

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[4] A Registered Options Trader (''ROT'') includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[5] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[6] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[7] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[8] For purposes of this filing, a Multiply Listed security means an option that is listed on more than one exchange.

month.[9] The Exchange proposes to add language to Section II of the Exchange's Fee Schedule entitled, Equity Options Fees, to describe the Reversal and Conversion Cap and define reversals and conversions.

For example, the standard options expiration date for September 2011 is September 17, 2011. Therefore, on the two preceding days, Thursday, September 15, 2011, and Friday, September 16, 2011, Specialists, ROTs, SQTs, RSQTs, Professionals, Broker-Dealers and Firms are eligible for the Reversal and Conversion Cap.

In order to capture the necessary information electronically, the Exchange requires members to designate on the trade ticket whether the trade involves a dividend, merger, short stock interest or reversal and conversion strategy. Specifically, members would be required to enter the proper code, ''Z4'', on the trading ticket and into the system, or directly into the Floor Broker Management System (''FBMS'').[10]

The Exchange also proposes to make an amendment to Section VII of the Fee Schedule entitled, ''Options Floor Broker Subsidy.'' The Exchange currently excludes dividend, merger and short stock interest strategies from the eligible contract computations in computing the monthly eligible contracts for the Options Floor Broker Subsidy (''Subsidy'').[11] The Exchange proposes to also exclude those executions subject to the Reversal and Conversion Cap from the Subsidy. The Exchange proposes to amend Section VII to add language to indicate that executions subject to the Reversal and Conversion Cap will not be included in the eligible contract computations.

The Exchange also proposes to amend the applicability of the dividend,[12] merger [13] and short stock interest [14] strategies in Section II of the Exchange's Fee Schedule. Currently, Specialist, ROT, SQT and RSQT, Firm and Broker-Dealer equity option transaction charges are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.[15] The Exchange proposes to add Professionals to the list of market participants that may cap their options transaction charges for dividend, merger and short stock interest strategies.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed Reversal and Conversion Cap is reasonable because the Exchange is proposing to offer all members an opportunity to reduce option transaction fees in Multiply Listed options for reversals and conversions. Customers are not subject to the Reversal and Conversion Cap because they do not pay option transaction charges for reversal and conversion strategies. The Exchange also believes that this proposal is equitable and not unfairly discriminatory because the Exchange is offering all members, except for Customers, the same opportunity to cap their option transaction fees in Multiply Listed Options for two days every month. Also, this proposal is similar in nature to caps on other exchanges, namely NYSE Arca, Inc. (''NYSEArca''),[18] NYSE Amex, Inc. (''NYSE Amex'') [19] and the Chicago Board Options Exchange, Incorporated(''CBOE'') [20] for reversals and conversions.

The Exchange also believes that its proposal to allow Professionals to cap option transaction charges for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts is reasonable because all other market participants, other than Customers, are able to cap these fees. In addition, the Exchange believes that adding Professionals to the list of market participants that may cap dividend, merger and short stock interest strategies, is equitable and not unfairly discriminatory because the Exchange is offering all members, except for Customers, the opportunity to cap their transaction fees for dividend, merger and short stock interest strategies. Customers do not pay option transaction charges for dividend, merger or short stock interest strategies.

The Exchange believes that amending Section VII to indicate that executions subject to the Reversal and Conversion Cap will not be included in the eligible contract computations of the Subsidy is reasonable since the Exchange currently excludes other strategies that are the subject of a cap. The recipients of the cap on strategies already receive a benefit by capping their options transaction charges and therefore the Exchange believes it is reasonable to exclude those strategies from the Subsidy. Additionally, the Exchange believes that excluding those executions that are subject to the Reversal and Conversion Cap from the Subsidy computation is equitable and not unfairly discriminatory because the exclusion will be applied evenly for all member organizations with Exchange registered floor brokers.

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.

[9] When the standard expiration date is also an Exchange holiday, the trading dates will be brought forward by one day.

[10] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[11] The Exchange currently pays an Options Floor Broker Subsidy (''Subsidy'') to member organizations with Exchange registered floor brokers that enter eligible contracts into the Exchange's FBMS. The Subsidy is paid based on the contract volume on Customer-to-non-Customer as well as non-Customer-to-non-Customer transactions for that month. Only the volume from orders entered by floor brokers into FBMS and subsequently executed on the Exchange qualifies.

[12] A dividend strategy 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 the first business day prior to the date on which the underlying stock goes ex-dividend.

[13] A merger strategy 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, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[14] A short stock interest strategy 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.

[15] Equity option transaction charges for dividend, merger and short stock interest strategies combined are further capped at the greater of $10,000 per member or $25,000 per member organization per month when such members are trading in their own proprietary accounts.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] *See* NYSE Arca's Fee Schedule.

[19] *See* NYSE Amex's Fee Schedule.

[20] *See* CBOE's Fees Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–119 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–2011–119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–119 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22725 Filed 9–6–11; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

AGENCY: Small Business Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 7, 2011.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Director, Disaster Administrative Service, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Disaster Administrative Service, 202–205–7570, *Cynthia/pitts@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Application for benefits (ban) used to determine eligibility and credit worthiness of business owners/businesses who seek Federal assistance in a declared disaster. Respondents are disaster business owners seeking disaster assistance.

Title: ''Disaster Business Loan Application.''

Description of Respondents: Applicants requesting Disaster Business Loan.

Form Number: 5.

Annual Responses: 8,014.

Annual Burden: 18,709.

SUPPLEMENTARY INFORMATION: Application for benefits (loan) used to determine eligibility and credit worthiness of individual victims who seek Federal assistance in a declared disaster. Respondents are disaster victims seeking disaster assistance.

Title: ''Disaster Home Loan Application.''

Description of Respondents: Applicants requesting Disaster Home Loan.

Form Number: 5C.

Annual Responses: 46,462.

Annual Burden: 69,693.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Travis Farris, Assistant Counsel to the Inspector General, Office of Inspector General, Small Business Administration, 409 3rd Street, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Travis Farris, Assistant Counsel to the Inspector General, 202–205–7178, t*ravis.farris@sba/gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration SBA Form 912 is used to collect information needed to make character determinations with respect to applicants for monetary loan assistance or applicants for participation in SBA programs. The information collected is used as the basis for conducting name checks at national Federal Bureau of Investigations (FBI) and local levels.

Title: ''Statement of Personal History.''

Description of Respondents: Applicants for Assistance or Temporary Employment in Disaster.

Form Number: 912.
Annual Responses: 142,000.
Annual Burden: 35,500.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 2011–22721 Filed 9–6–11; 8:45 am]
BILLING CODE

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

The Trade and Investment Partnership for the Middle East and North Africa

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: In his May 19, 2011, speech on recent developments in the Middle East and North Africa (MENA) region, the President called for a Trade and Investment Partnership Initiative to explore ways to further strengthen economic ties both between the United States and MENA countries and among the MENA countries themselves. Over the coming months, the United States, partnering where possible with the European Union and other key countries and entities, will launch a series of initiatives to facilitate more robust trade within the region and promote greater MENA integration with U.S. and other markets.

To ensure that a wide range of priorities and concerns are addressed, U.S. Government officials will continue to reach out to business, non-governmental organizations (NGOs), academia and other stakeholders in order to elicit ideas for shaping future economic engagement with this critical region.

As part of this process, the U.S. Government welcomes written input from members of the public on ideas for deepening economic ties with and among MENA countries.

DATES: Written comments should be submitted no later than October 15, 2011.

Submissions: To facilitate expeditious handling, the public is strongly encouraged to submit documents electronically via *http://www.regulations.gov,* docket number USTR–2011–xxxx. Submissions should contain the term ''2011 Middle East and North Africa Trade'' in the ''Type comment & Upload file:'' field on *http://www.regulations.gov*.

To find the docket, enter the docket number in the ''Enter Keyword or ID'' window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notices'' under ''Document Type'' on the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *http:www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''Help'' tab.) The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Comments'' field.

FOR FURTHER INFORMATION CONTACT: Sonia Franceski, Director for Middle East Affairs, (202) 395–4987, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

Background

The relationship between the United States and countries of the Middle East and North Africa is built upon some of the most important geostrategic and economic links in the world. In order to further reinforce cooperation with, and expand economic ties to, a part of the world undergoing profound change, the President on May 19 called for the launch of a Trade and Investment Partnership Initiative for the MENA region to: (1) Facilitate more trade within the region, (2) build on existing agreements to promote integration with U.S. and European markets, and (3) open the door for those countries that adopt high standards of reform and trade liberalization to construct a regional trade arrangement.

Fostering greater trade and more open economic policies continue to represent positive opportunities for U.S. engagement with the region. With a growing population of over 400 million, an expanding regional GDP topping $2.4 trillion, and $1 trillion in various sovereign investment funds, the nations of the MENA region continue to offer significant potential opportunities for U.S. exporters and investors. Collectively, MENA countries in 2010 ranked as the fifth largest destination for U.S. exports, with a total of $60 billion. Although economic activity in significant parts of the region is still dominated by energy industries, this is by no means universal. Governments in many countries are striving to provide greater job opportunities for predominantly young workforces and (where appropriate) diversify their economies to offset oil/gas price volatility.

The U.S. strategy for encouraging a more open business climate in the MENA region will consist of a series of building blocks, in which the United States attempts to consolidate gains already achieved, to launch new efforts, where possible, to foster the adoption of modern open market policies, and to stimulate greater regional cooperation.

As it pursues this strategy, the United States will seek to intensify its engagement with the EU and other key countries with the aim of reducing or eliminating barriers to trade and investment among MENA countries, and between MENA and developed country markets.

The U.S. Government welcomes concrete ideas from interested stakeholders for specific government actions that can enhance economic integration within the MENA region and increase trade and investment, both with—and within—the MENA region. Such ideas can build on efforts already underway and may cover a broad range of barriers and sectors. Ideally they would identify priorities both for the near and longer term. Based on experience to date, and without suggesting any limitations, the United States has identified the following general areas of focus:

(a) *Technical barriers to trade in goods:* reinforcing efforts to eliminate or substantially lower, where possible, remaining barriers;

(b) *Services:* aiming to substantially improve opportunities for services providers (both large and small) and facilitate services trade and investment in the region across a wide range of sectors;

(c) *Agriculture:* strengthening regulatory cooperation in the field of human, plant and animal health issues, including biotechnology, while recognizing the importance of continuing to improve our respective regulatory processes and of improving our scientific cooperation;

(d) *Trade Facilitation:* improving trans-border shipment of goods by increasing the certainty of how goods will be processed at the border;

(e) *Investment:* exploring practical solutions through changes in domestic law, policies, or practices that could help boost confidence in the rule of law and local institutions in the region and stimulate further inward investment across a wide range of sectors;

(f) *Intellectual property:* improving IPR protection and reducing costs;

(g) *Transparency:* enhancing and promoting public participation in economic policy formulation; and

(h) *SMEs:* improving support systems and access to export opportunities.

L. Daniel Mullaney,

Assistant United States Trade Representative for Europe and the Middle East.

[FR Doc. 2011–22804 Filed 9–6–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2011–0165]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Caffin Gordon, Associate Director of Policy and Quality Control Division, S–35, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W78–312, Washington, DC 20590, 202–366–4648 or by e-mail at *caffin.gordon@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the Web site. An electronic copy is also available for download from the Government Printing Office's Electronic Bulletin Board at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov/nara.*

No Fear Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' (Pub. L. 107–174, Summary). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination'' (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the United States Department of Transportation (USDOT) to provide this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice is to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, and 42 U.S.C. 2000e–16.

If you believe you were a victim of unlawful discrimination on the bases of race, color, religion, sex, national origin, age, and/or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action to try and resolve the matter informally. This must be done before filing a formal complaint of discrimination with USDOT (See, *e.g.,* 29 CFR part 1614).

If you believe you were a victim of unlawful discrimination based on age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. As an alternative to filing a complaint pursuant to 29 CFR part 1614, you can file a civil action in a United States district court under the Age Discrimination in Employment Act (ADEA), against the head of an alleged discriminating agency, after giving the EEOC not less than a 30 day notice of the intent to file such action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, personal delivery, or facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC) (See Contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available. Form OSC–11 is available online at the OSC Web site *http://www.osc.gov/index.htm,* under the filing tab (*Contact Information*). Additionally, you can download the form under the same filing tab, under OSC Forms. Complete this form and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218 Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at 800–872–9855 for additional assistance.

If you are alleging compensation discrimination pursuant to the Equal Pay Act (EPA), and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take, or fail to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 202–036–4505 using Form OSC–11. Alternatively, you may file online through the OSC Web site at *http://www.osc.gov.*

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. 1214 according to 5 U.S.C. 1214(f), USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (*e.g.,* EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Date Issued: August 30, 2011.

Camille Hazeur,

Director, Departmental Office of Civil Rights, United States Department of Transportation.

[FR Doc. 2011–22802 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0085]

Agency Information Collection Activities: Notice of request for approval of a new information collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for approval of a new information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 7, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2011–0085 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lori Fields, 850–553–2204, Florida Field Office, Federal Highway Administration, Department of Transportation, 545 John Knox Road Suite 200, Tallahassee, FL 32310, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: FHWA Exceptional Partnership Workshop Climate Survey.

Type of request: New information collection requirement.

Background: The Federal Highway Administration (FHWA) values the long-standing relationship it shares with the State Departments of Transportation (DOT) throughout the country. These relationships provide significant and considerable benefits to citizens of the respective States in the form of a world-class transportation system. There have been substantial changes to our business including funding, the workforce, State and National policy dynamics and the systems used to deliver products and services to the public. What has not changed is the compelling need for a strong and enduring partnership between the FHWA and the State DOTs to ensure the safety and integrity of our highways and bridges.

The FHWA has initiated a series of workshops entitled ''Exceptional Partnerships'' that are designed to assist its Division Administrators to create and sustain ''exceptional'' partnerships with their State DOTs. As part of these workshops, the FHWA proposes to use a short pre-workshop climate survey to assess the partnership of FHWA Division Administrators and their counterparts at State DOTs, the result of which will be used in the design and delivery of these workshops. The purpose of the short climate survey is to determine: (1) The perspective of the State DOT partners regarding the effectiveness of the partnerships with FHWA Divisions, (2) the factors that contribute to successful relationships, (3) the successes of and challenges to these partnerships, and (4) recommendations for improvements.

FHWA will hire independent contractors to conduct informal phone interviews, approximately thirty minutes in length, with the State DOT counterpart to the participating FHWA's Division Administrators. The contractor will manage the documentation of interview notes. Individual responses will be held in strict confidence. A summary of aggregate data will be provided to the Workshop Design Team to assist in the preparation of workshop content and materials. Quantitative and qualitative data will be gathered and analyzed to show averages, ranges, and trends. A general report of findings will be shared with participants in the workshop, but no specific answers will be shared.

Respondents: 42 State DOT's Chief Executive Officers (8 participants were interviewed previously).

Frequency: 14 respondents will be interviewed annually for three years. This is a one-time collection.

Estimated Average Burden per Response: It will take approximately 30 minutes per participant.

Estimated Total Annual Burden Hours: Approximately 7 hours annually (21 hours total over 3 years).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1)

Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 30, 2011.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2011–22670 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions of FHWA.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are found within the meaning of 23 U.S.C. 139[L](1). These actions relate to a proposed highway project, State Route (SR) 520, Interstate 5 (I–5) to Medina: Bridge Replacement and HOV project in King County, Washington. These actions grant approval of the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139[l](1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 5, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Randolph Everett, Major Projects Oversight Manager, Federal Highway Administration, Jackson Federal Building, 915 2nd Avenue, Room 3142, Seattle, Washington 98174; Telephone 206–202–7538; and e-mail *randolph.everett@fhwa.gov.* Regular office hours for the FHWA Washington Division Oversight Manager are between 8 a.m. and 4:30 p.m. (Pacific Standard Time). You may also contact Allison Hanson, Director of Environmental Services—Mega Projects, SR 520 Bridge Replacement and HOV Program Office, 600 Stewart Street, Suite 520, Seattle, Washington 98101; *telephone:* 206–805–2880; and *e-mail; hansona@wsdot.wa.gov.* The SR 520 Program regular office hours are between 8 a.m. and 5 p.m. (Pacific Standard Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing approval for the following highway project: the SR 520, I–5 to Medina: Bridge Replacement and HOV Project. The project proposes to improve safety and mobility for people and goods across Lake Washington by replacing the SR 520 Portage Bay and Evergreen Point bridges and improve existing roadway between Interstate 5 (I–5) in Seattle and Evergreen Point Road in Medina spanning 5.2 miles. The Selected Alternative for the I–5 to Medina corridor will add continuous HOV lanes and include landscaped lids over SR 520 to reconnect neighborhoods that are currently separated by the highway. The FHWA project numbers are BR–520(49) and BR–520(50).

The actions by the FHWA on this project, and the laws under which such actions were taken, are described in the August 2006 Draft Environmental Impact Statement (EIS), January 2010 Supplemental Draft EIS, the June 2011 Final EIS, and the July 2011 Record of Decision (ROD), and in other documents in the FHWA administrative record for the project. The Draft EIS, the Supplemental Draft EIS, the Final EIS, the ROD, and other documents supporting the decision are available by contacting the FHWA or the Washington State Department of Transportation at the addresses provided above.

The Draft EIS, the Supplemental Draft EIS, the Final EIS, and the ROD can be viewed and downloaded from the project Web site at *http://www.wsdot.wa.gov/Projects/SR520Bridge/EIS.htm* or viewed at local libraries within the project area.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Section 7 of the Endangered Species Act [16 U.S.C. 1536]; Anadromous Fish Conservation Act [16 U.S.C. 757(a–757(g)); Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Wetlands and Water Resources:* Section 7 of the Endangered Species Act [16 U.S.C. 1536]; Clean Water Act, (Section 319 [33 U.S.C. 329]); Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)];].

7. *Navigation:* Rivers and Harbors Act of 1899 [33 U.S.C. 403]; General Bridge Act of 1946 [33 U.S.C. 9 and 11].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11953 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 30, 2011.

Daniel M. Mathis,

Division Administrator. Olympia, Washington.

[FR Doc. 2011–22742 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0193]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 22 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 7, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0193 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

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 Federal Docket Management System (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.*

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:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations 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. The 22 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Johnathan A. Akins

Mr. Akins, age 39, has had ITDM since approximately 1995. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Akins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Akins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Georgia.

Robert G. Bellows

Mr. Bellows, 58, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bellows understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bellows meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Arizona.

Phillip J. Blake

Mr. Blake, 56, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blake understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blake meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Mark A. Blanton

Mr. Blanton, 24, has had ITDM since 2003. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blanton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blanton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Howard T. Cash

Mr. Cash, 55, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cash understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cash meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Heath J. Chesser

Mr. Chesser, 21, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chesser understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chesser meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Kevin F. Connacher

Mr. Connacher, 53, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Connacher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Connacher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL license from Pennsylvania.

Daryl A. Daniels

Mr. Daniels, 60, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Daniels understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daniels meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Carl W. Frentz, Jr.

Mr. Frentz, 52, has had ITDM since the late 1990s. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Frentz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frentz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class M Operator's license from Virginia.

Carie L. Frisby

Ms. Frisby, 47, has had ITDM since 2009. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Frisby understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Frisby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from California.

David A. Gray

Mr. Gray, 58, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gray understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Dean M. Keeven

Mr. Keeven, 51, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keeven understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keeven meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that

he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

David L. Killen

Mr. Killen, 37, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Killen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Killen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Christopher A. LaBudde

Mr. LaBudde, 31, has had ITDM since 1984. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. LaBudde understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. LaBudde meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable proliferative diabetic retinopathy. He holds a Class D operator's license from Illinois.

Brian A. Mankowski

Mr. Mankowski, 29, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mankowski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mankowski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jimmie L. Parrish

Mr. Parrish, 68, has had ITDM since approximately 1 year ago. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Parrish understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Parrish meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Robert L. Scheetz

Mr. Scheetz, 29, has had ITDM since age 20. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Scheetz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scheetz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Washington.

John R. Sheaffer

Mr. Sheaffer, 65, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sheaffer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sheaffer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Benjamin D. Skinner

Mr. Skinner, 26, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Skinner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skinner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Brian L. Vanlerberg

Mr. Vanlerberg, 34, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vanlerberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vanlerberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Robert E. Welling

Mr. Welling, 57, has had ITDM since 1979. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Welling understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Welling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

Keith M. Weymouth

Mr. Weymouth, 42, has had ITDM since 1985. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Weymouth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weymouth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the **DATES** section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: August 29, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–22755 Filed 9–6–11; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0124]

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 13 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 September 7, 2011. The exemptions expire on September 9, 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 June 10, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals and requested comments from the public (76 FR 34136). That notice listed 13 applicants' case histories. The 13 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 allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 13 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 the following:

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 13 exemption applicants listed in this notice fit this category. They are unable to meet the vision standard in one eye for various reasons including retinal scaring, optic nerve hypoplasia, cataract, complete loss of vision, amblyopia, histoplasmosis, exotropia, and aphakia. In most cases, they did not develop their eye conditions recently. Nine of the applicants were born either with 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 8 to 14 years.

Although each applicant has one eye that 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.

Each of these applicants satisfied the testing standards for his/her State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 13 drivers have been authorized to drive a CMV in intrastate commerce although their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 43 years. In the past 3 years, one of the drivers was involved in a crash and none was convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 10, 2011, notice (76 FR 34136).

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 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 CMV 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 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 13 applicants, none of the applicants was convicted for moving violations and one of the applicants was 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 13 applicants listed in the notice of June 10, 2011 (76 FR 34136).

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 13 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 13 exemption applications, FMCSA exempts Eleazar R. Balli, James J. Doan, James A. Ellis, Allen M. Gamber, Michael R. Gratin, Dale L. Giardine, Benjamin C. Hall, Richard A. McGuire, Dennis L. Morgan, Timothy A. Newberry, Neville E. Owens, Peter M. Shirk, and Thomas C. Stonewall 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: August 29, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–22753 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0189]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before October 7, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0189 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

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.*

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:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations 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.'' FMCSA can renew exemptions at the end of each 2-year period. The 16 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Darrell G. Anthony

Mr. Anthony, age 64, had an enucleation of his left eye due to a traumatic injury that he sustained in 1952. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, ''I believe that this patient has the visual capacity to operate a commercial vehicle.'' Mr. Anthony reported that he has driven straight trucks for 47 years, accumulating 4,700 miles and tractor-trailer combinations for 47 years, accumulating 3.3 million miles. He holds a Class A Commercial Driver's License (CDL) from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

Jerry W. Branning

Mr. Branning, 66, has a prosthetic left eye due to a traumatic injury that occurred in 1983. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion this patient has the ability to operate a commercial vehicle.'' Mr. Branning reported that he has driven straight trucks for 20 years, accumulating 2 million miles and tractor-trailer combinations for 28 years, accumulating 3.6 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV. He exceeded the speed limit by 10 mph.

Stacey J. Buckingham

Mr. Buckingham, 43, has a prosthetic left eye due to a traumatic injury that occurred more than 25 years ago. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2011, his optometrist noted, ''He has sufficient vision required to operate a commercial vehicle.'' Mr. Buckingham reported that he has driven straight trucks for 18 years, accumulating 553,000 miles and tractor-trailer combinations for 18 years, accumulating 553,000 miles. He holds a Class D operator's license from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary E. Butler

Mr. Butler, 58, has had complete loss of vision in his right eye due to a traumatic injury sustained more than 4½ years ago. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''I do believe his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Butler reported that he has driven straight trucks for 40 years, accumulating 2 million miles. Within this 40 year time frame, he has also driven tractor-trailer combinations accumulating 2 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronnie J. Fieck

Mr. Fieck, 44, has had macular scarring and glaucoma in his left eye since 2008. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, Ronald has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Fieck reported that he has driven straight trucks for 9 years, accumulating 46,800 miles. He holds a Class D operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James E. Knarr, Sr.

Mr. Knarr, 67, has loss of vision in his left eye due to a corneal transplant in 2006. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2011, his ophthalmologist noted, ''I certify in my medical opinion that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle, consistent with the laws and regulation of DOT guidelines.'' Mr. Knarr reported that he has driven tractor-trailer combinations for 41 years, accumulating 4.2 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Lawson

Mr. Lawson, 47, has had retinal and iris coloboma in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/315. Following an examination in 2011, his optometrist noted, ''He has sufficient vision to operate a commercial vehicle.'' Mr. Lawson reported that he has driven straight trucks for 10 years, accumulating 5,000 miles and tractor-trailer combinations for 5 years, accumulating 75,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas J. Malama

Mr. Malama, 55, has a prosthetic left eye due to a traumatic injury sustained in 1985. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2011, his optometrist noted, ''In my professional opinion, he has sufficient vision and has already demonstrated his ability to perform his driving duties adequately.'' Mr. Malama reported that he has driven straight trucks for 33 years, accumulating 634,000 miles. He holds a Class C operator's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey A. Mueller

Mr. Mueller, 55, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''It is my opinion that Mr. Mueller has sufficient vision to perform the tasks required to operate a CMV.'' Mr. Mueller reported that he has driven tractor-trailer combinations for 22 years, accumulating 2.5 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Harold L. Pearsall

Mr. Pearsall, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in his left eye, 20/25. Following an examination in 2011, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr.

Pearsall reported that he has driven straight trucks for 15 months, accumulating 24,000 miles and tractor-trailer combinations for 8 years, accumulating 205,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Phillip M. Pridgen, Sr.

Mr. Pridgen, 55, has had optic atrophy in his left eye since 1991. The best corrected visual acuity in his right eye is 20/20 and in his left eye, light perception. Following an examination in 2011, his optometrist noted, ''It is my medical opinion that Mr. Pridgen has sufficient vision to operate a commercial vehicle.'' Mr. Pridgen reported that he has driven straight trucks for 2 months, accumulating 12,000 miles and tractor-trailer combinations for 5 years, accumulating 100,000 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eric W. Schmidt

Mr. Schmidt, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/150. Following an examination in 2011, his ophthalmologist noted, ''Once again it is my medical opinion that Mr. Schmidt has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schmidt reported that he has driven straight trucks for 10 years, accumulating 250,000 miles. He holds a Class E operator's license from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald D. Stidham

Mr. Stidham, 49, has a prosthetic right eye due to a traumatic injury that occurred in 2004. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''It is my opinion, that Mr. Stidham has sufficient vision to perform the driving tasks that are required of him, including the operation of commercial vehicles.'' Mr. Stidham reported that he has driven straight trucks for 20 years, accumulating 260,000 miles and tractor-trailer combinations for 6 years, accumulating 156,000 miles. He holds a Class R operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Douglas A. Suraci

Mr. Suraci, 47, has had optic neuropathy and retinal damage in his right eye due to a traumatic injury he sustained in 2004. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my opinion, his fields and eye exam show that he is safe for driving a CMV.'' Mr. Suraci reported that he has driven straight trucks for 17 years, accumulating 3.4 million miles. He holds a Class D operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael L. Watters, Sr.

Mr. Watters, 56, has had complete loss of vision in his right eye due to a traumatic injury sustained in 2004. The visual acuity in his left eye is 20/25. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, Mr. Watters has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Watters reported that he has driven tractor-trailer combinations for 10 years, accumulating 1.14 million miles and buses for 1 year, accumulating 3,060 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes but two convictions for speeding in a CMV and failing to yield the right of way. He exceeded the speed limit by 5 mph.

Keith Wentz

Mr. Wentz, 60, has had a macular scar in his right eye due to radiation treatment since 2002. The best corrected visual acuity in his left eye is 20/20 and in his right eye count-finger vision. Following an examination in 2011, his ophthalmologist noted, ''I feel, in my medical opinion, that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wentz reported that he has driven straight trucks for 5 years, accumulating 125,000 miles and tractor-trailer combinations for 28 years, accumulating 1.4 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business October 7, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 29, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–22757 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2000–7363; FMCSA–2001–9258; FMCSA–2001–9561;FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–20027; FMCSA–2005–21254; FMCSA–2007–27897]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 23, 2011. Comments must be received on or before October 7, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2000–7363; FMCSA–2001–9258; FMCSA–2001–9561;FMCSA–

2003–14504; FMCSA–2003–15268; FMCSA–2005–20027; FMCSA–2005–21254; FMCSA–2007–27897, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 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., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

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 Federal Docket Management System (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.*

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:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Linda L. Billings
Joey E. Buice
John A. Chizmar
Weldon R. Evans
Richard L. Gagnebin
Orasio Garcia
Leslie W. Good
Chester L. Gray
James P. Guth
Britt D. Hazelwood
Gregory K. Lilly
Larry T. Morrison
Kenneth A. Reddick
Leonard Rice, Jr.
Juan M. Rosas
James T. Sullivan
Steven C. Thomas
Larry J. Waldner
Karl A. Weinert

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 64 FR 27027; 64 FR 51568; 65 FR 45817; 65 FR 77066; 66 FR 17743; 66 FR 30502; 66 FR 33990; 66 FR 41654; 66 FR 41656; 66 FR 48504; 68 FR 19598; 68 FR 33570; 68 FR 35772; 68 FR 37197; 68 FR 44837; 68 FR 48989; 68 FR 54775; 70 FR 2701; 70 FR 16887; 70 FR 30999; 70 FR 41811; 70 FR 42615; 70 FR 46567; 70 FR 53412; 72 FR 39879; 72 FR 40362; 72 FR 52421; 72 FR 52419; 72 FR 62896; 74 FR 34394; 74 FR 43221). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 7, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 29, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–22758 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No.; FMCSA–2005–20560; FMCSA–2007–27897; FMCSA–2007–28695]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 27, 2011. Comments must be received on or before October 7, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2005–20560; FMCSA–2007–27897; FMCSA–2007–28695, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 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., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

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 Federal Docket Management System (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.*

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:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Dean N. Brown
Matthew R. Floyd
Christian L. Gremillion
Frank D. Konwinski, Jr.
Paul G. Mathes
Kenneth D. Perkins
Terry W. Pope
Daniel T. Rhodes
Frederick G. Robbins
Stephen E. Shields
Ricky J. Siebels
Don S. Williams
Robert L. Williams, Jr.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (70 FR 17504; 70 FR 30997; 72 FR 27624; 72 FR 39879; 72 FR 46261; 72 FR 52419; 72 FR 54972; 74 FR 18437; 74 FR 41971; 74 FR 43223). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 7, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and if needed, evaluating, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 13 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 29, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–22756 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a final environmental action taken by the Federal Transit Administration (FTA) for the following project: Woodward Avenue Light Rail Transit Project, City of Detroit, Detroit, MI. The purpose of this notice is to announce publicly the environmental decision by FTA on the subject project and to activate the limitation on any claims that may challenge this final environmental action.

DATES: By this notice, FTA is advising the public of final agency action subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, Director, Office of Human and Natural Environment, (202) 366–1626, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, (202) 366–1733. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., E.S.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency action by issuing certain approvals for the public transportation project listed below. The action on this project, as well as the laws under which such action was taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and action that are the subject of this notice are:

Project name and location: Woodward Avenue Light Rail Transit Project, City of Detroit, Detroit, MI. *Project sponsor:* City of Detroit. *Project description:* The project consists of a 9.3-mile Light Rail Transit line along Woodward Avenue from the Central Business District in downtown Detroit to the Michigan State Fairgrounds at 8 Mile Road. The project includes a total of 19 stations. Ancillary facilities include eight traction power sub-

stations, one park and ride lot, one possible temporary vehicle storage and maintenance facility, and one permanent vehicle storage and maintenance facility. The project is mostly within the cities of Detroit and Highland Park. *Final agency actions:* Section 106 Memorandum of Agreement dated June 2011; no use of Section 4(f) resources; project-level air quality conformity; Record of Decision, dated August 2011. *Supporting documentation:* Final Environmental Impact Statement, dated June 2011.

Issued on: August 31, 2011

Elizabeth Day,

Acting Deputy Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2011–22797 Filed 9–6–11; 8:45 am]

BILLING CODE 4910–17–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1086X; Docket No. AB 227 (Sub-No. 12X)]

Pittsburgh & West Virginia Railroad—Abandonment Exemption—in Allegheny County, PA; Wheeling & Lake Erie Railway Company—Discontinuance of Service Exemption—in Allegheny County, PA

Pittsburgh & West Virginia Railroad (PWV) and Wheeling & Lake Erie Railway Company (WLE) (collectively, applicants), have jointly filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for PWV to abandon, and for WLE to discontinue its sublease rights over, approximately 1.82 miles of railroad (the West End Branch) between milepost .58, near Green Tree, and milepost 2.4, near McKees Rocks, in Allegheny County, Pa. The line traverses United States Postal Service Zip Code 15220. Currently, PWV leases the line to Norfolk Southern Railway Company (NSR), which in turn subleases the line to WLE, which operates it.[1]

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic that needs to be rerouted; and (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period. Applicants have further certified that the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 7, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 19, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 27, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

PWV has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 12, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PWV shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PWV's filing of a notice of consummation by September 7, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 1, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2011–22840 Filed 9–6–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Citing *Wheeling Acquisition Corp.—Acquisition & Operation Exemption—Lines of Norfolk & Western Railway,* FD 31591 *et al.* (ICC served Dec. 28, 1990), applicants assert that it is not necessary for NSR, as the current lessee of the line from PWV, to seek discontinuance authority as it is no longer a common carrier on the line.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

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Part II

Department of Health and Human Services

Secretarial Review and Publication of the Annual Report to Congress Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretarial Review and Publication of the Annual Report to Congress Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement

AGENCY: Office of the Secretary of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the Secretary of the Department of Health and Human Services' (HHS) receipt and review of the annual report submitted to the Secretary and Congress by the contracted consensus-based entity as mandated by section 1890(b)(5) of the Social Security Act, as added by section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). The statute requires the Secretary to publish the report in the **Federal Register** together with any comments of the Secretary on the report not later than six months after receiving the report. This notice fulfills those requirements.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich (202) 690–7213.

I. Background

Rising health care costs coupled with the growing concern over the level and variation in quality and efficiency in the provision of health care raise important challenges for the United States. Section 183 of MIPPA also required the Secretary of the Department of Health and Human Services (HHS) to contract with a consensus-based entity to perform various duties with respect to health care performance measurement. These activities support HHS's efforts to achieve value as a purchaser of high-quality, patient-centered, and financially sustainable health care. The statute mandates that the contract be competitively awarded for a period of four years and may be renewed under a subsequent competitive contracting process.

In January, 2009, a competitive contract was awarded by HHS to the National Quality Forum (NQF) for a four-year period. The contract specified that NQF should conduct its business in an open and transparent manner, provide the opportunity for public comment and ensure that membership fees do not pose a barrier to participation in the scope of HHS's contract activities, if applicable.

The HHS four-year contract with NQF includes the following major tasks:

Formulation of a National Strategy and Priorities for Health Care Performance—NQF shall synthesize evidence and convene key stakeholders on the formulation of an integrated national strategy and priorities for health care performance measurement in all applicable settings. NQF shall give priority to measures that: address the health care provided to patients with prevalent, high-cost chronic diseases; provide the greatest potential for improving quality, efficiency and patient-centered health care and may be implemented rapidly due to existing evidence, standards of care or other reasons. NQF shall consider measures that assist consumers and patients in making informed health care decision; address health disparities across groups and areas; and address the continuum of care across multiple providers, practitioners and settings.

Implementation of a Consensus Process for Endorsement of Health Care Quality Measures—NQF shall implement a consensus process for endorsement of standardized health care performance measures which shall consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics such as health status, language capabilities, race or ethnicity, and income level and is consistent across types of providers including hospitals and physicians.

Maintenance of Consensus Endorsed Measures—NQF shall establish and implement a maintenance process to ensure that endorsed measures are updated (or retired if obsolete) as new evidence is developed.

Promotion of Electronic Health Records—NQF shall promote the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information.

Focused Measure Development, Harmonization and Endorsement Efforts To Fill Critical Gaps in Performance Measurement—NQF shall complete targeted tasks to support performance measurement development, harmonization, endorsement and/or gap analysis.

Development of a Public Web Site for Project Documents—NQF shall develop a public Web site to provide access to project documents and processes. The HHS contract work is found at: *http://www.qualityforum.org/projects/ongoing/hhs/.*

Annual Report to Congress and the Secretary—Under section 1890(b)(5)(A) of the Act, by not later than March 1 of each year (beginning with 2009), NQF shall submit to Congress and the Secretary of HHS an annual report. The report shall contain a description of the implementation of quality measurement initiatives under the Act and the coordination of such initiatives with quality initiatives implemented by other payers; a summary of activities and recommendations from the national strategy and priorities for health care performance measurement tasks; and a discussion of performance by NQF of the duties required under the HHS contract. Section 1890(b)(5)(B) of the Social Security Act requires the Secretarial review of the annual report to Congress upon receipt and the publication of the report in the **Federal Register** together with any Secretarial comments not later than 6 months after receiving the report.

The first annual report covered the performance period of January 14, 2009 to February 28, 2009 or the first six weeks post contract award. Given the short timeframe between award and the statutory requirement for the submission of the first annual report, this first report provided a brief summary of future plans. In March 2009, NQF submitted the first annual report to Congress and the Secretary of HHS. The Secretary published a notice in the **Federal Register** in compliance with the statutory mandate for review and publication of the annual report on September 10, 2009 (74 FR 46594).

In March 2010, NQF submitted to Congress and the Secretary the second annual report covering the period of performance of March 1, 2009 through February 28, 2010. The second annual report was published in the **Federal Register** on October 22, 2010 (75 FR 65340) to comply with the statutorily required Secretarial review and publication.

In March 2011, NQF submitted the third annual report to Congress and the Secretary of HHS. This notice complies with the statutory requirement for Secretarial review and publication of the third annual report covering the period of performance of March 1, 2010 through February 28, 2011.

The Patient Protection and Affordable Care Act of 2010 (ACA) was signed into law on March 23, 2011. Section 3014 of this Act included a time-sensitive requirement for NQF to provide input into the national priorities for consideration under for the National Strategy for Quality for Improvement in Healthcare. As a result, one additional activity was added to the contract to fulfill this requirement within the contract year. The NQF convened the National Priorities Partnership and

developed a consensus report on input to HHS on the development of the National Quality Strategy.

II. March 2011—NQF Report to Congress and the HHS Secretary

Submitted in March 2011, the third annual report to Congress and the Secretary spans the period of January 14, 2010 through January 13, 2011.

A copy of NQF's submission of the March 2011 annual report to Congress and the Secretary of HHS can be found at: *http://www.qualityforum.org/projects/hhs/.*

The 2011 NQF annual report is reproduced in section III of this notice.

III. NQF March 2011 Annual Report

Advancing Performance Measurement: NQF Report to Congress 2011

Report to the Congress and the Secretary of the U.S. Department of Health and Human Services, Covering the Period of January 14, 2010, to January 13, 2011 Pursuant to PL 110–275 and Contract #HHSM–500–2009–00010C

NQF Mission

The National Quality Forum (NQF) operates under a three-part mission to improve the quality of American healthcare by:

- Building consensus on national priorities and goals for performance improvement and working in partnership to achieve them;
- Endorsing national consensus standards for measuring and publicly reporting on performance; and
- Promoting the attainment of national goals through education and outreach programs.

As a private-sector standard-setting body recognized under the National Technology Transfer and Advancement Act (Pub. L. 104–113), NQF endorses standardized performance measures, serious reportable events, and safe practices. NQF also serves as the convener of two multi-stakeholder partnerships: the National Priorities Partnership, which provides guidance on setting national priorities, goals, and strategic improvement opportunities; and the Measure Applications Partnership, which recommends measures for use in various public reporting, payment, and other programs.

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Foreword

In 2008, Congress passed the Medicare Improvements for Patients and Providers Act (Pub. L. 110–275),[1] signifying its growing recognition of the systemic nature of the nation's healthcare quality issues. The Act set bearings for the national healthcare performance improvement movement and charted a course for national action, presenting the opportunity to unify the nation's disparate healthcare quality improvement efforts into a coherent national strategy. Importantly, it did not impose top-down direction to achieve its goals. Instead, the Act provides guidance and resources for the federal government to work with a consensus-based entity to identify priorities and performance measures through an open and transparent decision-making process that affords an opportunity for all stakeholders to participate.

On January 14, 2009, the National Quality Forum (NQF) was awarded a contract that addresses the Act's Section 183, which calls for the Department of Health and Human Services (HHS) ''to contract with a consensus-based entity, such as the National Quality Forum,'' to achieve many of these quality improvement goals. This contract subsequently was modified to accommodate specific work called for under the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148).[2] This report summarizes the work performed under this contract between January 14, 2010, and January 13, 2011, the second full year that the HHS contract has been in place.

The first year of the contract was devoted to building infrastructure to support healthcare quality. We are pleased to report that in the second year of the contract, NQF has leveraged that infrastructure to demonstrate real achievements in the areas of the identification of priorities and gaps in available performance measures; adaptation of more than 100 measures for use in electronic health records; and endorsement of 62 new measures. These are concrete, measurable, and sustainable accomplishments in the nation's quality infrastructure that will translate into more effective performance improvement, public reporting, and value-based payment programs. We are grateful to the Congress and HHS for their continued support of NQF and, more broadly, of the quality enterprise in the United States. Their commitment to healthcare quality improvement is thoughtful, clear, and unquestioned. We also thank the more than 430 institutional members of NQF, the hundreds of experts who volunteer to participate in NQF expert panels, and NQF staff, whose efforts have contributed to a healthcare system that is becoming, as the Institute of Medicine (IOM) envisioned in its ''call to action'' a decade ago, safe, effective, patient-centered, timely, efficient, and equitable.

William L. Roper,

Chair, Board of Directors, National Quality Forum.

Janet M. Corrigan,

President and Chief Executive Officer, National Quality Forum.

Notes

1. U.S. Congress, Medicare Improvements for Patients and Providers Act (Pub. L. 110–275), Washington, DC: U.S. Government Printing Office: 2008. Available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ275.110.pdf.* Last accessed December 2010.

2. U.S. Congress, Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), Washington, DC: U.S. Government Printing Office; 2010. Available at *http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf.* Last accessed December 2010.

I. Executive Summary

Key strategies for reforming healthcare include: Publicly reporting performance results to support informed consumer decision-making; aligning payments with value; rewarding providers for investing in health information technology (health IT) and using it to improve patient care; and providing knowledge and tools to healthcare providers and professionals to help them improve their performance. Foundational to the success of all of these efforts is a robust ''quality measurement enterprise'' that includes priorities and goals for improvement; standardized performance measures; an electronic data platform that supports measurement and improvement; use of measures in payment, public reporting, health IT investment programs, and other areas; and performance improvement initiatives in all healthcare settings. Many public- and private-sector organizations have important responsibilities in the quality

measurement enterprise, such as various federal agencies, public and private purchasers, measure developers, the National Quality Forum (NQF), accreditation and certification entities, various quality alliances at the national and community levels, state governments, and others.

Recognizing the widespread and systemic nature of the nation's healthcare quality and cost challenges and the need to build the nation's quality measurement enterprise, Congress passed the Medicare Improvements for Patients and Providers Act (Pub. L. 110–275) in 2008. On January 14, 2009, NQF was awarded a contract that addresses the Act's Section 183, which calls for the Department of Health and Human Services (HHS) ''to contract with a consensus-based entity, such as the National Quality Forum,'' to carry out work related to its quality improvement goals. On September 20, 2010, this contract was modified to accommodate specific work called for under the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148).[1] This report summarizes the work performed under this contract between January 14, 2010, and January 13, 2011. Appendix C provides a list of the reports produced.

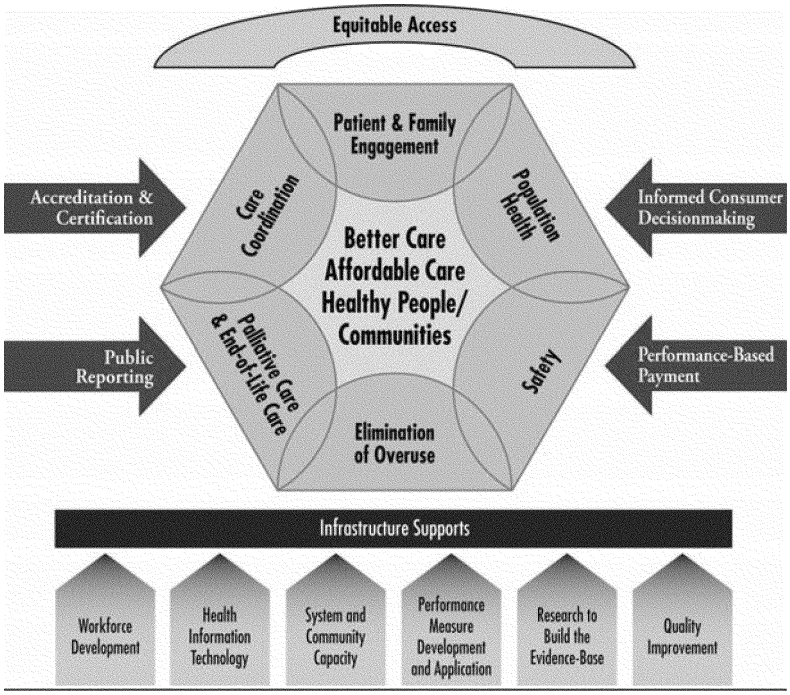
During the contract period, NQF made important contributions to the following quality enterprise functions: setting priorities and goals, endorsing performance measures, building an infrastructure to support performance measurement using an electronic data platform, and providing input to the selection of measures for determining ''meaningful use'' of health IT.

National Priorities

Setting national priorities is a critical first step to addressing our country's serious safety, quality, and cost challenges. Providers cannot measure and improve in all areas at once. Priorities focus attention on those areas most likely to produce the greatest return on investment in terms of better health and healthcare. National priorities, especially when established with input from multiple stakeholders, also serve as a starting point for alignment of public- and private-sector efforts to improve performance. In 2010, NQF made three contributions to national priority-setting initiatives: providing guidance to HHS on the proposed National Health Care Quality Strategy, identifying a prioritized list of high-impact conditions for Medicare beneficiaries, and specifying an agenda for measure development and endorsement to fill gaps in available measures.

The Affordable Care Act calls for HHS to establish a National Health Care Quality Strategy and to consult with a consensus-based entity to convene a multi-stakeholder group to provide input on national priorities for improvement in population health and the delivery of healthcare services. When asked to perform this role, NQF convened the National Priorities Partnership (NPP), a collaborative that now includes 48 leading organizations. In October 2010, NPP submitted its report to HHS, recommending eight priority areas for national action. These include the original six priorities NPP identified in a priority-setting effort in 2008: (1) Patient and family engagement, (2) population health, (3) safety, (4) care coordination, (5) palliative and end-of-life care, and (6) overuse. They also include the addition of two areas of focus: (1) Equitable access to ensure that all patients have access to affordable, timely, and high-quality care; and (2) infrastructure supports (*e.g.,* health IT) to address underlying system changes that will be necessary to attain the goals of the other priority areas. NPP also offered aspirational and actionable goals to be achieved over the next three to five years for each priority area.

Recommendations of the National Priorities Partnership



Source: National Quality Forum (NQF), *Input to the Secretary of Health and Human Services on Priorities for the 2011 National Quality Strategy,* Washington, DC: NQF; 2010. Available at *http://www.nationalprioritiespartnership.org/.* Last accessed February 2011.

Complementing NPP's work, which focused on ''cross-cutting'' areas (*e.g.,* care coordination) that affect all or most patients, was the work of NQF's Measure Prioritization Advisory Committee, which prioritized the top 20 high-impact Medicare conditions that account for more than 90 percent of Medicare costs. Improvements in the safety and effectiveness of the care processes for these conditions can affect the outcomes of millions of Americans and eliminate waste from the health system.

*Prioritized List of 20 High-Impact Medicare Conditions**

(1) Major depression
(2) Congestive heart failure
(3) Ischemic heart disease
(4) Diabetes
(5) Stroke/transient ischemic attack
(6) Alzheimer's disease
(7) Breast cancer
(8) Chronic obstructive pulmonary disease
(9) Acute myocardial infarction
(10) Colorectal cancer
(11) Hip/pelvic fracture
(12) Chronic renal disease
(13) Prostate cancer
(14) Rheumatoid arthritis/osteoarthritis
(15) Atrial fibrillation
(16) Lung cancer
(17) Cataract
(18) Osteoporosis
(19) Glaucoma
(20) Endometrial cancer

*As determined by NQF Measure Prioritization Advisory Committee under contract to HHS.

Source: NQF, *Prioritization of High-Impact Medicare Conditions and Measure Gaps,* Washington, DC: NQF; 2010. Available at *http://www.qualityforum.org/projects/prioritization.aspx#t=2&s=&p=4%7C.* Last accessed February 2011.

Taken together, cross-cutting areas and the prioritized conditions provide a two-dimensional framework for performance measurement. The current portfolio of NQF-endorsed measures includes many measures applicable to these cross-cutting areas and leading conditions, but there are important gaps. To advise HHS on how best to focus measure development resources on filling these gaps, NQF was asked to construct an agenda for measure development and endorsement. In constructing this agenda, the NQF Measure Prioritization Advisory Committee also considered child health measurement needs and the needs of the broader population health community. The final report, *Measure Development and Endorsement Agenda* (January 2011, available at *http://www.qualityforum.org/MeasureDevelopmentandEndorsementAgenda.aspx*), provides prioritized lists of measure gaps in eight areas: (1) Resource use/overuse, (2) care coordination and management, (3) health status, (4) safety processes and outcomes, (5) patient and family engagement, (6) system infrastructure supports, (7) population health, and (8) palliative care. As described below, efforts are well underway to fill these gaps.

Performance Measures

The NQF portfolio of endorsed measures includes more than 625 measures that support the needs of both public- and private-sector stakeholders and are appropriate for use in accountability and quality improvement programs. The measures fall into the following major categories: Measures of patient outcomes (*e.g.,* mortality, readmissions, complications, health functioning); care processes (measures of adherence to practice guidelines, such as prescribing beta antagonists after heart attacks); patient experience (*e.g.,* patient's perception of the quality of hospital care); resource use measures (*e.g.,* average nursing care hours per patient day); and composite measures (*e.g.,* overall indicator of pediatric patient safety constructed from measures of adverse events). Although the total number of measures is sizable, the number applicable to a given provider type—ambulatory practices, emergency services, hospitals, nursing homes, home health, rehabilitation services, mental health and substance abuse providers, kidney dialysis centers, and health plans—is more limited. To meet the needs of many, the portfolio also must accommodate measures that run off different data platforms (*e.g.,* paper records, administrative/claims data, electronic health records) during this period of transition to an electronic platform.

During the contract period, the HHS contract provided support for measure endorsement projects in the following areas: Patient outcomes for the 20 high-impact Medicare conditions; patient safety, including medication safety and healthcare-associated infections; nursing homes; child health; and efficiency and resource use. NQF's endorsement process, which includes evaluation by technical experts and a multi-stakeholder panel, as well as extensive public input, requires up to a year to complete depending on the volume and complexity of measures. On occasion, a project also may be temporarily halted to allow time for the measure developers to change measures in response to NQF requests (for example, two measures of overuse of neck imaging in trauma combined). There were 62 newly endorsed measures resulting from the work conducted during the contract period—14 endorsed prior to the close of the contract period and another 48 awaiting final ratification by the NQF Board (which occurred shortly after the close of the reporting period). See Appendix B for a complete list of newly endorsed measures.

NEWLY ENDORSED MEASURES BY MEASURE TYPE *

Measure type	Number of measures
Outcome	38
Process	8
Patient Experience	6
Resource Use	6
Composite	4
Total	62

*Measures endorsed as a result of HHS contract, 1/14/10 to 2/28/11.

In addition to endorsing new measures, NQF also oversees the updating and maintenance of currently endorsed measures. As a condition of maintaining endorsement, measure developers are required to update their measures to reflect changes in the evidence base. NQF-endorsed measures undergo a comprehensive re-evaluation every three years and must recompete ''head-to-head'' with any new or existing measures for ''best-in-class'' determination. During the contract period, NQF began maintenance of the 47 cardiovascular measures and 44 surgical measures in its portfolio.

NQF also analyzed the implications of the transition from the International Classification of Disease, Ninth Revision, Clinical Modification (ICD–9–CM) to the International Classification of Diseases, Tenth Revision, Clinical Modification and Procedure Coding System (ICD–10–CM/PCS) for quality measurement. As explained in the final report, *ICD–10 CM/PCS Coding Maintenance Operational Guidance* (October 2010, available at *http://www.qualityforum.org/publications/2010/10/ICD-10-CM/PCS_Coding_Maintenance_Operational_Guidance.aspx*), this transition planned for 2013 has significant implications for measure developers, as the majority of NQF-endorsed measures are specified using ICD–9–CM codes.

Technical Infrastructure To Support Measurement Using an Electronic Platform

The American Recovery and Reinvestment Act of 2009 provides $20 billion for investment in health IT and use of that technology to improve patient care. Health IT has the potential to lead to care that is safer, more effective, more affordable, and better coordinated. But to get there, electronic health records (EHRs) and other tools must capture the right data to support performance measurement, and performance measures must be specified to run on an electronic platform. NQF contributions in this area fall into four categories: (1) Development of a Quality Data Model (QDM) that defines the data that must be captured in EHRs and personal health records to support quality measurement and improvement; (2) development of a standard form and an automated tool for measure developers to create eMeasures that can readily be incorporated into vendors' health IT systems; (3) re-specification of 113 performance measures for use with EHRs (*i.e.,* eMeasures); and (4) identification of the types of measures that might be used to ascertain whether EHRs are being used properly by clinicians and to detect any unintended consequences.

The QDM classifies and describes the information needed for quality measurement in a way that health IT vendors understand what data elements to capture (including the most reliable source of the data and the point in time in the care process when it should be recorded), and measure developers know how to specify eMeasures so they will pull the correct information from the EHR. Although the QDM was created in 2009, NQF's Health Information Technology Advisory Committee made important enhancements covered under this contract, such as the development of a comprehensive framework for evolving the model that will accommodate the data needs of new types of measures (*e.g.,* measures of patient engagement in decision-making, long-term functional outcomes, measures that incorporate data on social determinants of health), and updates to data type definitions and elements. The NQF Clinical Decision Support (CDS) Expert Panel also developed a taxonomy of CDS rules and data elements that paves the way for CDS developers to use the QDM in specifying clinical decision support rules (see *Driving Quality and Performance Measurement—A Foundation for Clinical Decision Support* at *http://www.qualityforum.org/Publications/2010/12/Driving_Quality_and_Performance_Measurement_-_A_Foundation_for_Clinical_Decision_Support.aspx*).

To facilitate the specification of eMeasures in a standardized fashion concordant with the QDM, NQF developed a standardized eMeasure format to be used by the more than 50 measure developers. The QDM and eMeasure format taken together will yield important benefits in future years, such as:

- *Reduced health IT costs:* Health IT vendors will be able to identify the data requirements for all the measures in the portfolio of NQF-endorsed measures and will be able to readily incorporate eMeasures from any measure developer in almost a ''turnkey'' fashion.
- *Reduced measure development, testing, and maintenance costs:* Performance measures generally include common components, such as denominators, numerators, exclusions, and sometimes risk-adjustment algorithms. Measure developers may be able to share and reuse certain components of measures (*e.g.,* code sets and rules for identifying patients with Type 2 diabetes on insulin).
- *More useful performance information:* When developers harmonize measures and make use of common definitions and conventions for specifying eMeasures, providers can readily combine measures from different developers into their performance improvement initiatives without introducing ''noise'' into the performance results.

The eMeasure format now is being converted into a software tool known as the Measure Authoring Tool, which will be tested in 2011. NQF will provide training on using the tool to measure developers and others.

The foundational work on the QDM and the eMeasure format conducted in 2009 and 2010 under the contract was critical to the accomplishment of another important objective—the re-specification of 113 measures from paper-based format to eMeasure format. In response to an HHS request to develop eSpecifications for measures currently being used by HHS for public reporting, payment, quality improvement, or other purposes, NQF worked in coordination with the 18 developers of these measures to convert the measures from their current format into the eMeasure format. These eMeasures, along with detailed specifications, can be found on the NQF Web site at *http://www.qualityforum.org/Projects/e-g/eMeasures/Electronic_Quality_Measures.aspx?section=PublicandMemberComment2011-02-012011-04-01.* HHS is using many of the re-specified measures to assess meaningful use of health IT for purposes of awarding incentive payments in 2011.

The fourth and final area of NQF's health IT work focused on answering the question, ''How will we know if health IT is being properly used by clinicians to provide better care?'' To achieve the full potential of health IT to enhance the safety, effectiveness, and affordability of care, clinicians must use the technology as intended. For example, reductions in medication errors will be achieved only if clinicians do not disable or ignore alerts for potential drug interactions. In the report *Driving Quality—A Health IT Assessment Framework for Measurement* (2010, available at *http://www.qualityforum.org/Publications/2010/12/Driving_Quality_-_A_Health_IT_Assessment_Framework_for_Measurement.aspx*), NQF identifies potential types of measures that might be developed and incorporated into EHRs to provide information on when and how the technology is being employed by front-line providers, which in turn can be used to determine if there is a need for more user-friendly interfaces, modifications in work flow, or clinician education and training programs. The report also identifies types of measures that, if incorporated into EHRs, would provide early warning signs of unintended consequences (*e.g.,* selection of an inappropriate order set based on the patient's active diagnoses).

Measure Selection for Applications

Setting National Priorities and Goals serves as an important starting point for selecting measures, but for most applications there are additional considerations. In response to a request from the Office of the National Coordinator for Health IT (ONC), NQF prepared a ''quick turnaround'' report in the summer of 2010 to assist HHS leadership and the Health IT Policy Committee in identifying a parsimonious set of measures that might be used in 2013 to assess meaningful use of health IT. The NQF report *Identification of Potential 2013 e-Quality Measures* (August 2010, available at *http://www.qualityforum.org/projects/i-m/meaningful_use/meaningful_use.aspx*), finalized in August 2010, used the six national priorities identified by NPP as an organizing framework; proposed five criteria that have been utilized to identify measures in each priority area; and based on a review of measures in the NQF portfolio and an environmental

scan of measures used by leading health systems, identified available measures that might be adapted for use in 2013 and beyond.

Summary

This is an extraordinary period of challenges and opportunities for our country's healthcare system. Reforming the healthcare delivery system to provide care that is safe, effective, and affordable necessitates changes in the environment of care. As the Institute of Medicine noted a decade ago in its landmark report *Crossing the Quality Chasm,* public reporting, value-based payment, a national health information network, and programs for dissemination of knowledge and tools are key elements of creating an environment of care that enables and rewards improvement.

Fundamental building blocks for all of these efforts are a vigorous quality measurement enterprise including national priorities that focus our efforts on high-leverage areas with the greatest potential to produce better health and healthcare; the ability to measure, report, and reward performance results; and the ability to share best practices. Building such an enterprise is a shared responsibility of many stakeholders in the public and private sector. NQF is thankful for the opportunity to contribute.

Note: 1. U.S. Congress, *Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148),* Washington, DC: U.S. Government Printing Office; 2010. Available at *http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf.* Last accessed December 2010.

II. About the National Quality Forum

NQF was created in 1999 as a national standard-setting organization for healthcare performance measures. NQF is governed by a Board of Directors that includes healthcare leaders from the public and private sectors, with a majority of its at-large seats held by consumers and those who purchase services on consumers' behalf. A multi-stakeholder organization, NQF's more than 430 members are organized into eight councils—consumers; purchasers; healthcare professionals; health plans; provider organizations; public/community health agencies; quality measurement, research, and quality improvement organizations; and suppliers and industry—thus drawing on the expertise and insight of every sector of the healthcare field.

In establishing national consensus standards, NQF adheres to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) [1] and the Office of Management and Budget's formal definition of consensus.[2] NQF endorses performance measures, preferred practices, serious reportable events, and measurement frameworks through its formal Consensus Development Process (CDP),[3] which provides for extensive multi-stakeholder input. The strict adherence to this CDP qualifies NQF as a voluntary consensus standards-setting organization, granting its endorsed measures special legal standing.

NQF Consensus Development Process

1. Call for Intent to Submit Candidate Standards
2. Call for Nominations
3. Call for Candidate Standards
4. Candidate Consensus Standard Review
5. Public and Member Comment
6. Member Voting
7. Consensus Standards Approval Committee (CSAC) Decision
8. Board Ratification
9. Appeals

The NQF portfolio of voluntary consensus standards includes performance measures, serious reportable events, and preferred practices (*i.e.,* safe practices). A complete list of measures included in the NQF portfolio can be found at *http://www.qualityforum.org/Measures_List.aspx.* There are measures applicable to nearly all healthcare settings (*e.g.,* ambulatory settings, hospitals, nursing homes, home health agencies, health systems) and types of clinicians (*e.g.,* primary care providers, specialists). NQF uses a two-dimensional framework to organize the measures in its portfolio:

- *Cross-cutting areas:* measures that affect all or most patients, such as safety, care coordination, and overuse; and
- *Clinical areas:* measures that apply to patients with specific conditions, such as diabetes, asthma, or congestive heart failure.

Approximately one-third of the measures in NQF's portfolio are measures of patient outcomes (*e.g.,* mortality, readmissions, health functioning, depression screening tool that assesses emotional status and social engagement), or experience of care (*e.g.,* satisfaction). Most of the remaining measures are measures of care processes that can be linked to better outcomes (*e.g.,* medication reconciliation, annual eye and foot exam for patients with diabetes). Approximately 20 percent of endorsed measures relate to the important area of patient safety. The NQF-endorsed Safe Practices for Better Healthcare provide an evidence-based approach to improving patient safety.

The measures included in the NQF portfolio are owned or sponsored by 53 different stewards, which include: Public agencies (*e.g.,* the Centers for Medicare & Medicaid Services [CMS], the Agency for Healthcare Research and Quality), state and community entities (*e.g.,* Minnesota Community Measurement), professional societies (*e.g.,* Physician Consortium for Performance Improvement convened by the American Medical Association, Society of Thoracic Surgeons), accrediting organizations (*e.g.,* the National Committee for Quality Assurance, The Joint Commission), health plans, academic and research institutions, health systems, and others. The portfolio has become a rich resource for national, state, and community-level initiatives that seek the best performance measures to use in public reporting, payment, and quality improvement initiatives.

In recent years, NQF has worked closely with the Department of Health and Human Services (HHS) and measure stewards to re-specify performance measures for use with interoperable electronic health records (EHRs) and personal health records. To date, more than 110 measures have been ''retooled.'' HHS currently uses these retooled measures for activities including ''meaningful use'' measurement in the Electronic Health Records Incentive Programs, the Medicare Hospital Compare public reporting program, and in various value-based payment programs. NQF has encouraged measure stewards to adopt common conventions in specifying eMeasures and in identifying the types of data that must be captured in electronic health records to support quality measurement and improvement.

In addition to its role as a standard-setting body, NQF also serves as the neutral convener of two national multi-stakeholder partnerships. The National Priorities Partnership (NPP) was established in 2007 to set national priorities and goals for performance improvement and released its first report shortly thereafter identifying six original major priority areas: (1) Patient and family engagement, (2) population health, (3) patient safety, (4) care coordination, (5) palliative and end-of-life care, and (6) overuse. NPP currently consists of 42 leading private-sector organizations—including consumers, purchasers, health plans, providers, health professionals, accreditation/certification bodies—and six Federal agencies. These NPP leaders have worked closely over the past three years

to identify priorities for healthcare quality improvement and to engage a broad group of stakeholders in coalescing around these priorities to drive change. In September 2010, in response to a request from HHS, NPP provided input regarding priorities for the 2011 HHS National Quality Strategy.[4] A second multi-stakeholder partnership is the Measure Applications Partnership (MAP). This very new group, still in the formative stages, will be convened for the first time in 2011 to provide input to HHS on the selection of measures for use in various public reporting and payment programs.

In recent years, NQF also has enhanced its health information technology portfolio to contribute to the creation of an interoperable electronic infrastructure that supports quality measurement and improvement. This began with NQF's construction of the Quality Data Model (QDM), a classification system that describes clinical and other information used for quality measurement and provides a standardized terminology to be used in constructing eMeasures. NQF also is working on a Measure Authoring Tool to help measure developers build eMeasures.

Notes

1. U.S. Congress, National Technology Transfer and Advancement Act of 1995 (PL 104–113), Washington, DC: U.S. Government Printing Office, 1995. Available at *http://standards.gov/standards_gov/nttaa.cfm.* Last accessed December 2010.

2. The White House, *U.S. Office of Management and Budget. Circular No. A–119, February 10, 1998,* Washington, DC: U.S. Office of Management and Budget, 1998. Available at *http://www.whitehouse.gov/omb/circulars_a119/.* Last accessed December 2010.

3. National Quality Forum (NQF), *NQF Consensus Development Process, v. 1.8.* Available at *http://www.qualityforum.org/Measuring_Performance/Consensus_Development_Process.aspx.* Last accessed December 2010.

4. National Priorities Partnership. *Input to the Secretary of Health and Human Services on Priorities for the 2011 National Quality Strategy.* Washington, DC: NQF; 2010. Available online at *http://www.nationalprioritiespartnership.org/uploadedFiles/NPP/Non-Partners/Newsletters/NPP%20Input%20to%20HHS%20on%20Priorities%20for%202011%20National%20Quality%20Strategy_Final%20Report%282%29.pdf.* Last accessed February 2011.

III. About the Contract

The Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275) is a wide-ranging law that addresses many aspects of Medicare and Medicaid, including the addition of new benefits for Medicare beneficiaries. Among other things, the Act directs the Secretary of HHS to contract with a consensus-based entity for certain activities relating to healthcare performance measurement.

On January 14, 2009, NQF was awarded a contract, HHSM–500–2009–00010C, under the Act's Section 183. This contract is administered by HHS's Office of the Assistant Secretary for Planning and Evaluation (ASPE), which provides strategic leadership and technical and management oversight for the contract, and by CMS, which provides technical input and operational support. The contract provided up to $10 million for the first year after award, with the option for three $10 million annual renewals through 2012. It calls for NQF to:

- Develop a prioritized list of conditions that impose a heavy health burden on beneficiaries and account for significant costs;
- Identify and endorse measures that various stakeholders can use to assess and improve the care provided to beneficiaries with these conditions, and the performance of providers in various healthcare settings;
- Identify programs to track and disseminate measures;
- Ensure performance measures are regularly and appropriately updated and remain relevant for public reporting and improvement;
- Promote the use of EHRs for performance measurement, reporting, and improvement; and
- Report annually to Congress on the status of the project and progress to date.

This contract had the effect of providing a mandate and stable funding to NQF, granting the organization a source of core funding to pursue this important work in a coordinated, strategic manner. While the work conducted under the contract is intended specifically to benefit all those served by HHS programs, it will have the salutary additional benefit of improving care for all Americans. The work being conducted under this contract directly relates to NQF's core competencies in three areas:

- *Building consensus on National Priorities and Goals:* NQF has convened leaders from major stakeholder groups and through this process has identified National Priorities and Goals for Performance Improvement. This work provides a foundation for the priority-setting efforts under this contract, which focus on clinical conditions. The priorities identification work served as a guide for measure gap analysis and informs work going forward that will result in a harmonized portfolio of high-leverage measures.
- *Endorsing performance measures:* NQF has endorsed more than 625 performance measures and preferred practices under its formal CDP, granting those measures and practices special legal standing as voluntary consensus standards, working toward a goal of achieving a comprehensive yet parsimonious set of performance measures *that map to national priorities and fill critical gaps.*
- *Facilitating the development of performance measures specified for use with electronic health records and personal health records, referred to as eMeasures:* NQF has worked to identify the types of information that need to be included in an EHR to enable electronic reporting on quality metrics and has coordinated the efforts of measure developers to retool 113 measures for use on an electronic platform.

Under the contract, HHS asked that performance measures focus on ''outcomes and efficiencies that matter to patients, align with electronic collection at the front end of care, encompass episodes of care when possible, and will be attributable to providers where possible.''

The work under this contract is divided into 13 tasks. Six of the tasks are procedural—involving an opening meeting, the development of a work plan, the development and implementation of a quality assurance Internal Evaluation Plan, weekly conference calls, monthly progress reports, and the creation of this annual report. The remaining seven call for specific deliverables and are the focus of this report.

Task 6 is the formulation of a national strategy and priorities for healthcare performance measurement. Task 7 is the implementation of a consensus process for endorsing healthcare quality measures. This task includes an evaluation of NQF's consensus development process and the conduct of endorsement projects focusing on known measure gap areas. Task 8 is the maintenance of previously endorsed NQF measures. Task 9 is the promotion of EHRs. Task 11 is the development of a public Web site for project documents. Task 12 calls for measure development, harmonization, and endorsement efforts to fill critical gaps in performance measurement. In 2010, Congress passed the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), which directed HHS to contract with a consensus-based entity to provide multi-stakeholder input into the National Quality Strategy, as well as the

selection of measures for use in various programs by CMS and, potentially, other federal agencies. This contract was modified to perform additional work under Section 3014 of the Affordable Care Act. That work, Task 13, was the convening of the NPP to advise the Secretary of HHS on the development of the National Quality Strategy.

Details of work performed under the HHS contract in each of these tasks are found in Section IV of this report.

IV. HHS-Funded Work

This section describes details of work performed under each task according to the HHS contract in 2010. Appendix A is a summary of the accomplishments under the contract. Appendix C is a list of all final reports produced with links to where they can be found on the NQF Web site.

National Strategy and Priorities (Task 6)

Forming a strategy and setting priorities for performance improvement is crucial to focusing resources on areas that will produce the greatest improvements in terms of better health and healthcare. In 2007, NQF convened NPP, co-chaired by Margaret O'Kane, president of the National Committee for Quality Assurance, and Bernard Rosof, MD, chair of the Physician Consortium for Performance Improvement convened by the American Medical Association. In work predating this contract, NPP identified six priorities as those with the greatest potential to eradicate disparities, reduce harm, and remove waste from the American healthcare system. In its recent report to the Secretary, NPP added two additional priorities. *(See Task 13.)*

Building upon this foundation, in work funded under this contract, NQF undertook the following projects:

- Prioritizing high-impact Medicare conditions and associated measure gaps (Task 6.0);
- Setting a national measure development and endorsement agenda (Task 6.2);
- Analyzing measures targeted under the Meaningful Use portion of the Medicare Electronic Health Record Incentive Program, specifically examining how health IT tools can improve the efficiency, quality, and safety of healthcare delivery (Task 6.4);
- Investigating the use of NQF-endorsed measures (Task 6.1); and
- Analyzing measures being used to gauge quality of care for people with multiple chronic conditions (Task 6.3).

Prioritization of Medicare High-Impact Conditions

In May 2010, NQF published *Prioritization of High-Impact Medicare Conditions and Measure Gaps.*[1] This report was based on the work of NQF's Measure Prioritization Advisory Committee, which prioritized the top 20 high-impact Medicare conditions[2] that account for more than 90 percent of Medicare costs *(see below).* The committee considered multiple dimensions in its analysis, including: cost; prevalence; the potential for improving quality, efficiency, and patient-centeredness; the potential for reducing overuse and waste; variability in provider performance and care delivery; and disparities. In related work under this contract, NQF is endorsing outcome measures for these 20 high-impact conditions. *(See Task 7.1.)*

*Prioritized List of 20 High-Impact Medicare Conditions**

(1) Major depression
(2) Congestive heart failure
(3) Ischemic heart disease
(4) Diabetes
(5) Stroke/transient ischemic attack
(6) Alzheimer's disease
(7) Breast cancer
(8) Chronic obstructive pulmonary disease
(9) Acute myocardial infarction
(10) Colorectal cancer
(11) Hip/pelvic fracture
(12) Chronic renal disease
(13) Prostate cancer
(14) Rheumatoid arthritis/osteoarthritis
(15) Atrial fibrillation
(16) Lung cancer
(17) Cataract
(18) Osteoporosis
(19) Glaucoma
(20) Endometrial cancer

* As determined by NQF Measure Prioritization Advisory Committee under contract to HHS.

Measure Development and Endorsement Agenda

The work on prioritization of conditions fed directly into a related project under this task—the creation of a measure development and endorsement agenda. This prioritization project provides guidance on how best to invest measure development resources and will assist NQF in helping the portfolio of endorsed measures evolve to be most useful for public reporting, performance-based payment, and quality improvement.

The Measure Prioritization Advisory Committee considered the performance measure needs of Medicare, child health, and population health. Key objectives included alignment with the measures needed for new approaches to public reporting and payment in the Affordable Care Act and for the meaningful use provisions in the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). The Measure Prioritization Advisory Committee considered the following: priorities for improvement previously identified by NPP; priorities identified by measure developers; key areas identified during health information technology meaningful use deliberations; disparities-sensitive measure gaps; and gaps identified during previous NQF endorsement activities. The final report, *Measure Development and Endorsement Agenda* (published in January 2011 and available at *http://www.qualityforum.org/MeasureDevelopmentandEndorsementAgenda.aspx#t=2&s=&p=4%7C*), provides prioritized lists of measure gaps in eight areas:

- Resource use/overuse,
- Care coordination and management,
- Health status,
- Safety processes and outcomes,
- Patient and family engagement,
- System infrastructure supports,
- Population health, and
- Palliative care.

Measures for Meaningful Use

In spring 2010, HHS's Office of the National Coordinator for Health Information Technology (ONC) requested a rapid analysis of the types of measures that might be selected to assess meaningful use of health information technology (health IT) in 2013 and a preliminary scan of whether such measures currently are available or could be developed, tested, and endorsed within the requisite timeframe. This project, which became Task 6.4 under the HHS contract, provided a framework for considering various types of measures and an inventory of available EHR-based measures from leading sources. A report, *Identification of Potential 2013 e-Quality Measures,* which was published in August 2010, used the six national priorities identified by NPP as an organizing framework; proposed five criteria that the Health IT Policy Committee and HHS leadership could use to identify a parsimonious set of measures in each priority area; and, based on a review of measures in the NQF portfolio and an environmental scan of measures used by leading health systems, identified available measures that might be adapted for use in 2013. The report also identified potential methodological issues that need to be

addressed before further measure adaptation or *de novo* measure development.

NQF also began two projects under this task order that are currently in process: measure use evaluation (Task 6.1) and the development of an endorsed performance measurement framework for patients with multiple chronic conditions (Task 6.3). For evaluating uses of NQF-endorsed measures, NQF has engaged RAND to conduct an independent, third-party assessment on uptake of endorsed measures for such purposes as payment, public reporting, quality improvement, and accreditation/certification, as well as to examine success factors and implementation barriers. To support the development of a performance measurement framework for patients with multiple chronic conditions, NQF is in the process of engaging researchers to draft a white paper highlighting key measurement-related issues for these patients. A multi-stakeholder committee will consider that input and recommend a measurement framework. The framework will inform future work pertaining to the endorsement of measures of performance for patients with multiple chronic conditions.

Implementation of a Consensus Process for the Endorsement of Quality Measures (Task 7)

Valid, meaningful measures of performance make it possible to gauge the quality of healthcare and focus quality improvement efforts by helping identify what is working and what needs additional improvement. Stakeholder-based endorsement of performance measures via a formal endorsement process has long been NQF's stock in trade. This task involves both a formal evaluation of the endorsement process and a set of consensus projects focused on known measure gap areas.

In the past year, NQF has engaged in several HHS-funded measure endorsement projects and related projects. These have included:

- Measures of performance on healthcare outcomes (Task 7.1);
- Measures of patient safety and other projects specifically related to patient safety (Task 7.3);
- Measures of performance on palliative care (Task 7.4);
- Measures of performance in nursing homes (Task 7.5);
- An evaluation of NQF's consensus development process, with an eye toward making the process more efficient and user friendly (Task 7.6); and
- Measures of performance of care delivered to children (Task 7.8).

Outcome Measures Project

NQF's outcome measures project focused on areas with the greatest potential impact, including common conditions, gaps in measurement of patient-focused outcomes, and transitions across care settings. The first two cycles of this three-cycle project concentrated on the Medicare 20 high-impact conditions list, while the third cycle focused on child and mental health. A significant amount of this work has been completed, resulting in the endorsement of 35 outcome measures.

Outcome measures endorsed as a result of the HHS contractcross-cutting area	Number of measures
Care Coordination	6
Functional Status	2
Healthcare System (readmissions, length of stay)	3
Patient Experience and Engagement	2
Safety (complications, adverse events)	18
Social Determinants	4

Patient Safety

Under the HHS contract in 2010–2011, NQF engaged in four significant patient safety activities:

- *Serious Reportable Events in Healthcare:* NQF's work in this area dates from 2002, when it published its first report listing 27 events that are avoidable and have serious consequences for patients. The project's objective was to establish consensus among consumers, providers, purchasers, researchers, and other healthcare stakeholders about those preventable adverse events that should not occur and to define them in a way that, should they occur, it would be clear what had to be reported. This report was updated in 2006, with one additional event being added. *Serious Reportable Events* has become the foundation of HHS's program of denial of payment for certain hospital-acquired conditions and for many state-based adverse event reporting initiatives. Under the HHS contract, NQF is reviewing the *Serious Reportable Events,* which originally focused on the hospital setting, with an eye toward expanding the list of events and their reach to three new environments of care: ambulatory practice settings (specifically, office-based physician practices); long-term care settings (specifically, skilled nursing facilities); and office-based surgery centers. The list of events also is being expanded to include events that are ''largely preventable'' in addition to those that are entirely preventable. The public comment period for the 29 updated and proposed new *Serious Reportable Events* has closed, and NQF expects to finalize its revision in spring 2011.
- *Patient safety measures:* Currently a multiphase project is underway to identify and endorse patient safety measures. These include measures on medication safety and preventing healthcare-associated infections. Final endorsement of these measures and completion of this project are slated for spring 2011.
- *Public reporting framework for patient safety:* Under the HHS contract, NQF in 2010 completed a consensus development project that resulted in the endorsement of a framework for public reporting of patient safety event information. The intention is for reporting entities to use this framework, *National Voluntary Consensus Standards for Public Reporting of Patient Safety Event Information,* to create a more uniform approach to public reporting.
- *Improving patient safety through state-based reporting in healthcare:* To date, 26 states and the District of Columbia have enacted reporting systems to help practitioners identify and learn from major adverse events. The majority of those states incorporate at least some portion of the NQF list of *Serious Reportable Events* to help establish a more uniform set of criteria by which to report. There remains incongruity among states, however, in the use, implementation approaches, and perspectives toward reporting a variety of patient safety events and, in turn, efforts for improving adverse outcomes from these events. Under the contract, NQF has developed an ongoing effort to engage representatives of states with reporting systems to facilitate communication and inform NQF about successes, barriers, and unintended consequences within adverse event reporting at the state level, including use of NQF's *Serious Reportable Events.*

Palliative Care

Hospice and palliative care services offer physical, emotional, and spiritual care to patients coping with severe or end-of life-illnesses. These programs also help coordinate care of multiple specialists to ensure pain is alleviated and help patients and their families make difficult decisions regarding treatment goals. Unfortunately, more than 1 million people die each year without ever having access to these important services. Many of those lacking adequate access will endure

prolonged and needless suffering and ineffective treatments.

In 2006, NQF endorsed a framework and preferred practices for palliative and hospice care quality.[3] NPP has identified palliative care as a priority area for national action. In 2010, NQF began planning for a project that would seek to endorse performance measures to gauge the quality of palliative and end-of-life care. This project is slated to begin in early 2011.

Nursing Homes

NQF was an early pioneer in advancing measures of nursing home care quality, endorsing an initial set of performance measures in this area in 2004.[4] Building on this work, in 2009 NQF initiated a project to consider additional performance measures for chronic and post-acute care nursing facilities. The measures evaluated were intended to provide tools for regulators, purchasers, and consumers to evaluate the quality of care in these facilities, as well as metrics facilities can use to assess and improve the quality of care they provide. As a result of this project, 21 measures were endorsed. These measures evaluate the resident's physical and clinical conditions and abilities, as well as preferences and life care wishes. Appendix B provides information on these measures.

Evaluation of the Consensus Development Process

NQF uses its formal endorsement process to evaluate and endorse consensus standards, including performance measures, preferred practices, frameworks, and reporting guidelines. The process is designed to call for input and carefully consider the interests of stakeholder groups from across the healthcare industry. *(For details on how the process works, please see Appendix G.)* Because NQF uses this formal process, it is recognized as a voluntary consensus standards-setting organization as defined by the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget Circular A–119.

Just as NQF asks the healthcare system to measure, report, monitor, and constantly improve, the organization expects constant improvement of its own systems, policies, and processes. Thus, under the HHS contract in 2010, NQF engaged subcontractor Mathematica Policy Research, Inc., to evaluate its consensus process. This comprehensive analysis included a technical process analysis, stakeholder analysis, and scan of comparative alternatives. The reviewers found that the NQF consensus process is generally well regarded among its stakeholders; nevertheless, they did suggest specific refinements of the process's timeliness, efficiency, and effectiveness. The final report, *Assessment of the National Quality Forum's Consensus Development Process,* was submitted to NQF in December. In response to the recommendations, NQF already has identified some refinements to the process as described in *NQF Consensus Development Process 2010—A Year in Review* and is considering how to refine its consensus process further.

Child Health Measures

Child health quality is an important, underemphasized area of measure development and endorsement. To date, NQF has endorsed more than 70 pediatric and perinatal measures, with emphasis in the areas of perinatal and neonatal care, chronic illness care, and care for hospitalized children. However, the need for child health quality measures has outpaced the number of available endorsed measures. The recent release of an initial core set of measures for Medicaid and CHIP (Children's Health Insurance Program) voluntary use provides an important step in assessing child health quality by state programs. The Agency for Healthcare Research and Quality National Advisory Council Subcommittee on Children's Healthcare Quality Measures for Medicaid and CHIP Programs (AHRQ SNAC) has identified a number of child health priority areas without adequate measures, including mental health and substance abuse services, other specialty services, and inpatient care.

To assist in these efforts, NQF has embarked on a consensus project to endorse additional measures of child health quality in a project that will complement the AHRQ SNAC collaboration with CMS, CHIP, and Survey and Certification. While the initial core set of Children's Health Insurance Program Reauthorization Act (CHIPRA) measures will be specified by the Secretary of HHS, there may be other appropriate measures that could enhance the portfolio of child health quality measures and could be used in the future for the pediatric quality measurement program as required by CHIPRA. NQF's current project in this area targets measures that could be used in public reporting at the population level (*e.g.,* state) and for certain conditions or cross-cutting areas applicable to the Medicaid population. This project is expected to be completed in summer 2011.

Maintenance of Previously Endorsed NQF Measures (Task 8)

NQF endorsed its first performance measures in 2001. Since then, much has changed about healthcare, performance measurement, the technologies supporting patient care and documentation (which enable performance measurement and reporting), and the NQF endorsement process itself. The science supporting quality measurement and medicine itself is rapidly evolving, and, of particular note, the science and technology of care delivery have changed. It is critically important that NQF keep pace with these changes. Simply put, it is unreasonable and counterproductive to all parties to gauge performance based on anything other than the most up-to-date, best-in-class measures.

NQF has endorsed more than 625 measures. Ensuring these measures remain up to date—a process known as ''measure maintenance''—is a time-consuming and resource-intensive task, but a necessary one. Endorsed measures must be re-evaluated against NQF's measure evaluation criteria[5] and reviewed alongside newly submitted (but not yet endorsed) measures. This head-to-head comparison of new and previously endorsed measures fosters harmonization *(please see Task 12.2 for a description of harmonization)* and helps ensure NQF is endorsing the best available measures.

NQF MEASURE MAINTENANCE CYCLES

CYCLE A–1	CYCLE B–1	CYCLE C–1
Cardiovascular-1	Cancer	Healthcare infrastructure
Surgery-1	Pulmonary/critical care	HEENT
Prevention	Safety-1	Infectious disease
Cardiovascular-2	Disparities	Neurology
Surgery-2	Palliative and end-of-life care	Patient experience and engagement
Endocrine	Perinatal	Functional status

NQF MEASURE MAINTENANCE CYCLES—Continued

CYCLE A–1	CYCLE B–1	CYCLE C–1
GU/GYN	Renal	GI
Mental health	Care coordination	
Musculoskeletal	Safety-2	

Under the HHS contract in 2010, NQF finalized a process for the systematic, complete maintenance of all of its endorsed measures. This process involves reviewing all endorsed measures across 22 topic areas every three years. The numbers of topic areas and measures are subject to change in the future depending on the type and volume of new measures received in upcoming projects. NQF also began work using this new endorsement maintenance process on two major areas for measure maintenance: Cardiovascular and surgery measures. These projects are scheduled for completion later in 2011.

Promotion of Electronic Health Records (Task 9)

The opportunity to improve healthcare through health IT has never been greater. The American Recovery and Reinvestment Act of 2009 provides a $20 billion mandate to ensure health IT plays a central role in transforming care through the EHR Incentive Program and its meaningful use provisions, while the Affordable Care Act ensures that performance measures, supported by an electronic infrastructure, drive a national strategy for quality improvement. Health IT will help ensure care is safer, more affordable, and better coordinated. But to get there, a common language among systems is necessary, and EHRs and other tools must capture the right data to support performance measurement. This will give actionable data to providers, patients, and others working to improve quality.

NQF and Health IT: Putting It in Context

To understand NQF's accomplishments in health IT in 2010–2011, it is important to understand two projects that NQF previously completed in this area:

1. *The Quality Data Model (QDM, formerly known as the Quality Data Set, or QDS):* The QDM, developed by NQF's Health Information Technology Expert Panel (HITEP), is a set of data elements or types of data elements that can be used as the basis for developing harmonized and machine-computable performance measures. It is a classification system that describes clinical quality information so that it may be shared for quality measurement, clinical research, and public health, all of which repurpose information recorded during clinical care. As the QDM is applied to new measures, measure retooling efforts, and supporting EHR use, the model will evolve, requiring oversight and expert advice. The QDM provides direction to measure developers, EHR vendors, and other stakeholders on how to define quality terminology without ambiguity. Although the QDM was developed under an earlier grant from the Agency for Healthcare Research and Quality, its implementation is covered under the current HHS contract. For more information about the QDM, please visit *http://www.qualityforum.org/Projects/h/QDS_Model/Quality_Data_Set_Model.aspx.*

2. *The ''eMeasure'':* The eMeasure is the electronic format for representing a performance measure in a machine-readable electronic format. Through standardization of a measure's structure, metadata, definitions, and logic, the eMeasure provides quality measure consistency and unambiguous interpretation. The eMeasure is becoming part of NQF's measure submission, endorsement, and maintenance requirements. This work was performed in 2009–2010 under the HHS contract as Task 9.3.

NQF's health IT portfolio supports the creation of this electronic infrastructure. In 2010–2011 under the HHS contract, NQF undertook several projects in health IT, including:

- The development of a measure authoring tool (Task 9.1);
- The convening of a Clinical Decision Support Expert Panel (Task 9.2);
- Maintenance of its previously developed Quality Data Model (Task 9.5);
- The convening of a Health IT Utilization Expert Panel (Task 9.6);
- Measure retooling for EHRs (Task 9.7); and
- The convening of an eMeasure Format Review Panel (Task 9.8).

Measure Authoring Tool

Under the HHS contract, NQF is sponsoring the development of a software tool that measure developers will use to create the eMeasure. The tool will be Web based, easy to use, and maintained over time for use in NQF's measure submission process. It will allow a measure developer, knowing clinical concepts, to enter information into the tool and come out with a standard healthcare quality measure format in what is known as Extensible Markup Language, or XML, that any EHR can implement. NQF has engaged a subcontractor, the Iowa Foundation for Medical Care, to develop this tool. It is anticipated that the measure authoring tool will be available for public use by late 2011.

Clinical Decision Support Expert Panel

Properly positioned within an EHR system, clinical decision support (CDS) tools can play an important role in matching patient information with relevant clinical knowledge, thereby helping clinicians incorporate that knowledge into decision-making. CDS is an essential capability of health IT systems; however, a common classification or taxonomy is necessary to enable system developers, system implementers, and the quality improvement community to develop tools, content, and policies that are compatible and support CDS features and functions. In 2010, under the HHS contract, NQF convened an Expert Panel with expertise in CDS and performance measurement. The members of the panel assisted in identifying best practices and reducing duplicative or uncoordinated efforts. In December, the panel published the report *Driving Quality and Performance Measurement—A Foundation for Clinical Decision Support,* featuring a taxonomy for CDS that represents CDS rules and elements, while ensuring concordance with the Quality Data Model (QDM).

Quality Data Model Maintenance

The QDM is a model of presenting information that allows measure developers to express what they want to say, or what information they want to pull from a health record, in a way that EHRs can understand. To ensure the value and use of the QDM, NQF will enhance it periodically in response to evolving needs for performance measurement. While the QDM was created under a separate contract, its maintenance and revision is covered

under the HHS contract. The QDM Version 2.1 is the most current, containing updates to QDM data type definitions as well as additional elements updates, based on comments received on the QDM Version 2 in July 2010. The next version of the QDM will be posted for public comment in spring 2011, following a semi-annual update schedule.

Health IT Utilization Expert Panel

Proper use of health IT (*e.g.,* EHRs, personal health records) and its core features and functions is essential to improving quality of care. However, health IT also can have unintended consequences and introduce safety hazards (*e.g.,* wrong drug chosen due to proximity on the screen to another drug, problem list fails to show all problems). Thus, in 2010, under the HHS contract, NQF convened an expert panel to examine the information needed to measure effective health IT use in order to understand better how health IT tools can improve the efficiency, quality, and safety of healthcare delivery. The panel created a model to measure health IT use, establishing a taxonomy of different types of performance measures that might be developed to assess whether health IT is being used properly by clinicians and others, including assessing whether decision support tools are being used effectively and methods of detecting hazards. The project also identified methods of testing health IT utilization measures and type and level of evidence necessary to support endorsement and will provide guidance pertaining to system certification requirements. The panel published its report, *Driving Quality—A Health IT Assessment,* in December 2010.

Measure Retooling for EHRs

At the request of HHS, NQF in 2010 managed the conversion, or ''retooling,'' of a set of 113 measures from their paper-based format to the eMeasure format, working in coordination with their original 18 developers. These NQF-endorsed quality measures needed to be converted so that the data elements are defined using the eMeasure format and in the context of EHR usage. The goal is to measure quality directly out of EHRs. These measures, a mix of inpatient and ambulatory measures, were chosen by HHS for retooling for potential inclusion in the CMS EHR Incentive Program. The 113 measures, along with detailed eSpecifications, eMeasure code list descriptors, and a guide to how to view and interpret an electronic measure, can be found on the NQF Web site at *http://www.qualityforum.org/Projects/e-g/eMeasures/Electronic_Quality_Measures.aspx.*

The first 44 measures produced were included in the July 2010 Meaningful Use Stage 1 measures. The project included a complete review of efforts required to convert paper-based measures to eMeasure format, including use of the QDM and guidance on how to present logic and timing for each element in a standard manner. NQF incorporated feedback from a large number of public comments in the model used for the final product delivered to HHS. The information learned also was incorporated into the measure authoring tool software development effort. This project was completed under the HHS contract in 2010.

eMeasure Format Review Panel

Closely related to the measure retooling project, NQF in 2010 under the HHS contract convened a body of experts to participate in a panel to conduct a transparent and thorough review of the retooled measures. This panel will oversee an eMeasure review process to evaluate the specifications (structure) and intent (content) of retooled measures. This evaluation ensures that a measure's intent remains intact for continued NQF endorsement. The review panel's work is ongoing.

Development of a Public Web Site (Task 11)

The HHS contract provided funding for NQF to revamp and maintain its Web site, *http://www.qualityforum.org,* to allow measure developers, members, and the public easier access to relevant documents.

Under the HHS contract, NQF in 2010 substantially overhauled its Web site, developing and maintaining content and supporting materials for numerous HHS-supported consensus development projects and other tasks, and adding web analytics to make it easier to determine the actual needs of public consumers seeking information about NQF projects. To facilitate access to endorsed measures, NQF has established a measures database that will be considerably enhanced in 2011 with more advanced search capabilities. NQF also has streamlined its web submission forms to reduce time to process items, created a new health IT content area to reflect the health IT work conducted under this contract, and created commenting tools that allow for open-ended or guided public comments. The Web site now features a content management system with an online measure submission form, an online public and member comment capability, and online voting platform for members. Important pages on the Web site include:

- A page containing all MIPPA-funded consensus development activity, *http://www.qualityforum.org/Projects.aspx;*
- A home for all of its health IT activity, *http://www.qualityforum.org/Topics/Health_Information_Technology_(HIT).aspx;* and
- An online measure submission form, which can be accessed through *http://www.qualityforum.org/Measuring_Performance/Submitting_Standards.aspx.*

Further enhancements planned for 2011 include integrating the Measure Authoring Tool to allow seamless access to measure developers needing to develop eMeasures.

Measure Development, Harmonization, and Endorsement to Fill Gaps (Task 12)

The HHS contract provides for measure development and related activities to fill immediate areas of need that HHS has identified. In 2010, HHS requested work in four areas:

- Efficiency and resource use (Task 12.1);
- Measure harmonization (Task 12.2);
- ICD–10 conversion guidance (Task 12.3); and
- Emergency regionalization (Task 12.5).

Efficiency and Resource Use

Under the HHS contract, NQF in 2010 conducted in two projects related to efficiency. The first focuses on endorsing measures of imaging efficiency, noting that Medicare spends approximately $14 billion annually on outpatient imaging studies.[6] At the close of the reporting period, NQF had sent six imaging efficiency measures to the Board for ratification. (All were subsequently endorsed shortly after the close of the reporting period.) The second project was a white paper on resource use measures, which was posted for public comment in the fall of 2010. This draft white paper, now being revised to respond to HHS and public input, will inform a consensus development project, ongoing in 2011, that will endorse a set of resource use measures to gauge the cost of healthcare services provided.

Harmonization

The current quality landscape includes many quality reporting initiatives and measure developers, as well as a proliferation of measures. Separate quality initiatives—focusing on different settings and patient

populations—often lead to duplicative or overlapping measures. Multiple measures with varying specifications that have essentially the same focus can create confusion in choosing measures for implementation, while differences in measure specifications limit comparability and understanding of measure results across settings or patient populations. Thus, it is necessary to adopt more global, ''harmonized'' quality measures in all settings.

In 2010, under the HHS contract, NQF convened a Steering Committee to develop operational guidance for achieving harmonization within future NQF consensus development projects. The final project report, *Guidance for Measure Harmonization,* was competed in January 2011.

ICD–10 Conversion

In 2013, one of the code sets that HHS uses to classify healthcare will be upgraded. This transition from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes to the International Classification of Diseases, Tenth Revision, Clinical Modification and Procedure Coding System (ICD–10–CM/PCS) has implications for quality measurement because a majority of the diagnoses used to define NQF-endorsed measures are specified using ICD–9–CM codes.

To prepare for this major transition, NQF examined the implications for its measure maintenance procedures and analyzed the impact of code transitions for the measurement community, particularly measure developers, as the healthcare field begins to shape processes to accommodate the necessary measure updates. In October 2010, NQF published a report, *ICD–10–CM/PCS Coding Maintenance Operational Guidance,* detailing a series of recommendations to assist measure developers and NQF in this transition to ICD–10.

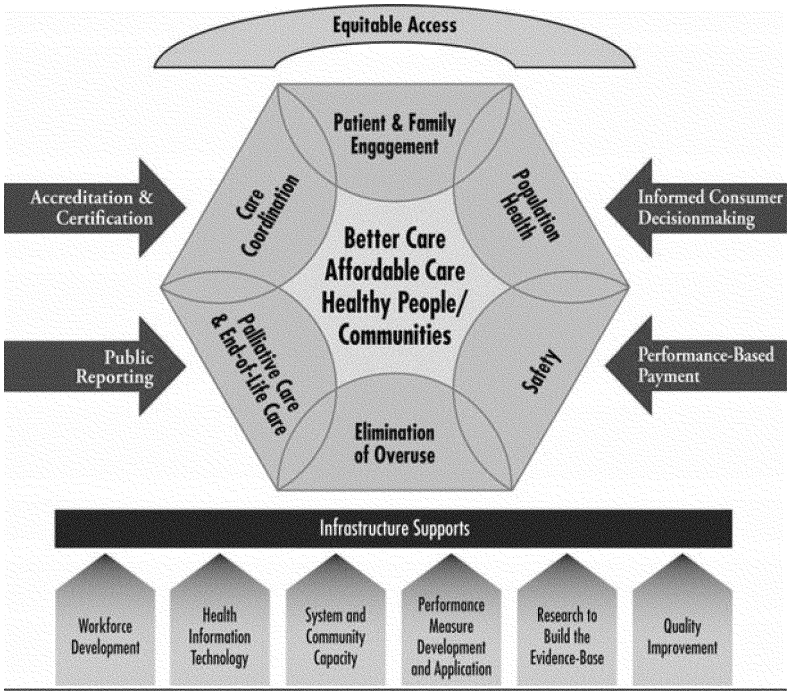
Emergency Regionalization

Regionalizing emergency medical care services—i.e., directing patients to emergency facilities with optimal capabilities for a given type of illness or injury in order to coordinate emergency care across a region—is one policy option for improving care while making more efficient use of medical resources. Under the HHS contract, NQF has undertaken a project to identify quality measures already in place and identify gaps in the measurement of regionalized emergency medical care services that must be filled if one is to provide a detailed picture of the utilization and quality of emergency services at the national, state, and regional levels. The first phase of this work, conducting an environmental scan of existing projects and performance measures and developing a framework to guide measure development and identify gaps as well as points of leverage for regionalization of emergency medical services, was begun in late 2010 and is expected to be completed in early 2012.

Recommendations on the National Quality Strategy (Task 13)

The Affordable Care Act, which became law March 23, 2010, calls for HHS to establish a National Health Care Quality Strategy that will integrate multiple public- and private-sector quality improvement initiatives. This strategy will ultimately include a comprehensive strategic plan and the identification of priorities to improve the delivery of healthcare services, patient health outcomes, and population health. In September 2010, the HHS–NQF contract was modified to comply with Section 3014 of the Affordable Care Act, which requires the Secretary of HHS to consult with a consensus-based entity to convene a multi-stakeholder group to provide input on national priorities for improvement in population health and in the delivery of health care services for consideration under the National Quality Strategy. NQF convened the National Priorities Partnership to accomplish this project, which became Task 13 under the HHS contract.

In October 2010, the NPP submitted its report to HHS, identifying eight priority areas for national action. These include the original six priorities that the NPP identified in 2008—patient and family engagement, population health, safety, care coordination, palliative and end-of-life care, and overuse—and the addition of two areas of focus: Equitable access to ensure that all patients have access to affordable, timely, and high-quality care; and infrastructure supports (*e.g.,* health IT) to address underlying system changes that will be necessary to attain the goals of the other priority areas. NPP also offered aspirational and actionable goals to be achieved over the next three to five years for each priority area.



Notes

1. NQF, *Prioritization of High-Impact Medicare Conditions and Measure Gaps,* Washington, DC: NQF; 2010.
2. The list of the top 20 high-impact Medicare conditions was provided to NQF by HHS, as those conditions that account for 95 percent of Medicare costs based on an analysis of claims in CMS's *Chronic Conditions Warehouse.* Available at *http://ccwdata.org/.* Last accessed January 2011.
3. NQF, *A National Framework and Preferred Practices for Palliative and Hospice Care Quality: A Consensus Report,* Washington, DC: NQF; 2006.
4. NQF, *National Voluntary Consensus Standards for Nursing Home Care: A Consensus Report,* Washington, DC: NQF; 2004.
5. NQF's Measure Evaluation Criteria can be found at *http://www.qualityforum.org/docs/measure_evaluation_criteria.aspx.* Last accessed December 2010.
6. US Government Accountability Office (GAO), *Medicare Part B Imaging Services: Rapid Spending Growth and Shift to Physician Offices Indicate Need for CMS to Consider Additional Management Practices,* Washington, DC: GPO; 2008. Available at *http://www.gao.gov/new.items/d08452.pdf.* Last accessed January 2011.

V. Looking Forward

It now has been just over two years since NQF began its work with HHS under the contract following the Medicare Improvements for Patients and Providers Act. This contract has led to specific, measurable results.

Accomplishments have included:

- The presentation of multi-stakeholder input on the Secretary's National Quality Strategy, with the foundation being laid for a strong public-private partnership focused on achieving the aims of that strategy;
- The endorsement of performance measures in key gap areas, including measures of care transitions for acute myocardial infarction, heart failure, and pneumonia; inpatient psychiatric hospital measures; and measures addressing population health and care coordination; and
- The migration of performance measures to an electronic platform and the development of a process by which measures can be more easily adapted to an electronic format.

Much work remains to be done on these and other initiatives central to improving the quality of American healthcare. But the work performed in the past two years comprises an important foundation upon which the nation's healthcare quality enterprise can continue to build.

In 2011, NQF will continue to convene multiple stakeholders to provide input to HHS on its priority- and goal-setting efforts, endorse and maintain an even greater number of performance measures, and facilitate the integration of performance measurement into electronic health records. Additionally, NQF is just beginning to implement work called for under the Affordable Care Act. This will be centered on the establishment of the Measure Applications Partnership, a multi-stakeholder group that will provide input to the HHS Secretary on the selection of quality measures for public reporting and payment programs.

The nation's quality infrastructure, of which NQF is a part, is still being built—but its foundations are strong. NQF remains committed to working with HHS and its agencies to refashion the American healthcare system into one that is, as the IOM envisioned, safe, timely, effective, efficient, equitable, and patient centered.

Appendix A: Summary of Accomplishments Under the Contract: Jan. 14, 2010, to Jan. 13, 2011

Task	Description	Output	Status (as of 01/13/11)	Notes
6 National Strategy and Priorities				

Task	Description	Output	Status (as of 01/13/11)	Notes
6.0	Prioritization of Medicare high-impact conditions.	Report with list of 20 high-impact conditions, prioritized.	Completed May 2010	*Prioritization of High-Impact Medicare Conditions and Measure Gaps http://www.qualityforum.org/projects/prioritization.aspx#t=2&s=&p=4%7C.*
6.1	Analysis of uses of NQF-endorsed measures.	Work plan and list of research questions completed; report pending.	In progress	Project delayed to address issues of intellectual property and ability of proposed subcontractor to publish under HHS contract.
6.2	Measure development and endorsement agenda.	Report setting agenda for measure development and endorsement.	Completed January 2011.	*Measure Development and Endorsement Agenda http://www.qualityforum.org/MeasureDevelopmentandEndorsementAgenda.aspx#t=2&s=&p=4%7C.*
6.3	Analysis of measures being used to gauge quality of care for people with multiple chronic conditions.	Work plan completed	In progress	Project delayed to address issues of intellectual property and ability of proposed subcontractor to publish under HHS contract.
6.4	Analysis of potential "Meaningful Use" measures.	Report proposing a framework and criteria for selection of 2013 MU measures; and identification of available measures.	Completed July 2010	*Identification of Potential 2013 e-Quality Measures http://www.qualityforum.org/projects/i-m/meaningful_use/meaningful_use.aspx.*
7 Implementation				
7.1	Patient outcomes	Three-phase project endorsing measures specific to outcomes on Medicare high-impact conditions, child health, and mental health.	In progress	Eight measures endorsed during contract year (an additional 27 measures subsequently endorsed in January 2011 after close of reporting period).
7.2	*Care coordination*	*N/A*	*N/A*	*Project moved at HHS request to 2011, to be funded by the Affordable Care Act.*
7.3	Patient safety: Serious Reportable Events (SREs).	Reviewing existing list of SREs for hospitals to identify ones appropriate for other settings; considering potential new SREs for all settings.	In progress	Updated SRE list applicable to new environments of care expected Spring 2011.
7.3	Patient safety: Measures	Two-phase project endorsed new measures of patient safety (*e.g.,* healthcare associated infections, medication safety) and maintaining currently endorsed measures.	In progress	Measures from Phase 1 expected Spring 2011; measures from Phase 2 expected Summer 2011.
7.3	Patient safety: Guidance for publicly reporting safety information.	Report providing public reporting guidance.	Completed September 2010.	*National Voluntary Consensus Standards for Public Reporting of Patient Safety Event Information http://www.qualityforum.org/Projects/Safety_Reporting_Framework/Framework.aspx#t=2&s=&p=5%7C.*
7.3	Patient safety: State-based reporting agencies initiative.	Convened 27 state-based patient safety reporting agencies to discuss safety reporting efforts and share "best practices".	In progress	Final HHS-funded call completed after reporting period (January 24, 2011) per schedule.
7.4	Palliative care	Endorsed measures of palliative care quality.	In progress	Endorsed measures expected November 2011.
7.5	Nursing homes	Endorsed measures of nursing home care quality.	In progress	Project completed and five measures endorsed in February 2011 after close of contract year.
7.6	Evaluation of NQF endorsement process.	Report analyzing NQF Endorsement Process.	Completed January 2011.	*Assessment of the National Quality Forum's Consensus Development Process* (Mathematica Policy Research, Inc.) *http://www.qualityforum.org/Measuring_Performance/Improving_NQF_Process/Improving_NQF_S_Processes.aspx.*
7.8	Child health measures	Endorsed measures specific to the care of children.	In progress	Endorsed measures expected Summer 2011.
8 Measure Maintenance				

Task	Description	Output	Status (as of 01/13/11)	Notes
	NQF measure endorsement and maintenance: process and schedule.	Created systematized process and schedule for maintaining all NQF-endorsed measures over three-year period.	Completed August 2011	
	Cardiovascular measure maintenance.	Two-phase project to endorse new cardiovascular measures and conduct maintenance on existing ones.	In progress	Endorsed measures from Phase 1 anticipated November 2011, from Phase 2 anticipated January 2012.
	Surgery measures maintenance.	Two-phase project to maintain NQF-endorsed surgery measures and consider new ones.	In progress	Endorsed measures from Phase 1 anticipated November 2011; from Phase 2 anticipated January 2012.
9 Health Information Technology				
9.1	Measure authoring tool	Work with subcontractor to create tool that would allow a measure developer to standardize data elements for writing measures electronically.	In progress	Beta version developed by 01/13/11; beta testing to take place late 2011.
9.2	Clinical Decision Support Project.	Produced report on performance measurement and clinical decision support.	Completed December 2010.	*Driving Quality and Performance Measurement—A Foundation for Clinical Decision Support* released in December 2010 *http://www.qualityforum.org/Publications/2010/12/Driving_Quality_and_Performance_Measurement_-_A_Foundation_for_Clinical_Decision_Support.aspx.*
9.5	Quality Data Model (QDM) Maintenance.	Updated QDM to reflect additional types of data needed to support emerging measures (*e.g.,* measures that include social determinants of health).	Ongoing Fall 2010	Released version 2.1 of QDM in Fall 2010 for public comment *http://www.qualityforum.org/Projects/h/QDS_Model/Quality_Data_Model.aspx#t=2&s=&p=3%7C.*
9.6	Health IT Utilization Project.	Produced report on potential types of measures of health IT use and early detection of unintended consequences.	Completed December 2010.	*Driving Quality—A Health IT Assessment Framework* released in December 2010 *http://www.qualityforum.org/Publications/2010/12/Driving_Quality_-_A_Health_IT_Assessment_Framework_for_Measurement.aspx.*
9.7	Measure retooling for EHRs.	Retooled 113 NQF-endorsed measures for use in EHRs.	Completed December 2010.	Measures and eSpecifications have been posted on NQF website for public comment and can be found at *http://www.qualityforum.org/Projects/e-g/eMeasure_Format_Review/eMeasure_Format_Review.aspx#t=2&s=&p=4%7C.*
9.8	eMeasure Format Review Panel.	Convened panel to review retooled measures from Task 9.7 to ensure the eSpecifications of these measures is consistent with the original focus and intent of the measure.	Ongoing	Completed first cycle of review in Fall 2010, following public comment period.
11 Website				
	Public-facing Web site	Update and enhance NQF Web site to support and enable projects funded under this contract.	Ongoing	Added online measure submission form included adapted versions for efficiency measures, new public commenting tool, and improved online voting platform.
12 Measurement Development, Harmonization, and Endorsement				

Task	Description	Output	Status (as of 01/13/11)	Notes
12.1	Efficiency and resource use.	Endorsed measures of imaging efficiency; white paper drafted; endorsed measures of healthcare efficiency.	In progress	Six imaging efficiency measures endorsed February 2011; one imaging efficiency measure was recommended to be combined with an existing NQF measure. White paper being redrafted to respond to comments. Healthcare efficiency resource use measures endorsement project delayed to allow time for developers to complete measures and to better coordinate with related work in HHS, but now underway.
12.2	Harmonization	Report with guidance for measure developers on how to approach harmonization of quality measures across settings and patient populations.	Completed December 2010.	*Guidance for Measure Harmonization* in press.
12.3	ICD–10 conversion guidance.	Report on how to convert from ICD–9 to ICD–10.	Completed September 2011.	*ICD–10–CM/PCS Coding Maintenance Operational Guidance: A Consensus Report http://www.qualityforum.org/Publications/2010/10/ICD–10–CM/PCS_Coding_Maintenance_Operational_Guidance.aspx.*
12.5	Emergency regionalization.	Environmental scan and white paper comparing how regions coordinate and perform on delivering emergency services.	In progress	Final report expected November 2011.
13 National Quality Strategy: Priorities				
	Input on priorities for the National Strategy for Quality Improvement.	Report to the Secretary of HHS with recommendations on priorities and goals for the proposed National Quality Strategy.	Completed October 2010.	*Input to the Secretary of Health and Human Services on Priorities for the 2011 National Quality Strategy http://www.nationalprioritiespartnership.org/.*

Appendix B: List of Measures Endorsed

Includes 62 newly endorsed resulting from the work conducted during the contract period, 14 endorsed prior to the close of the contract period, and another 48 awaiting final ratification by the NQF Board of Directors (which occurred shortly after the close of the contract period).

Measure No.	Measure name	Care setting(s)	Subject/topic area (*e.g.*, condition, setting, cross-cutting area)	Status as of 01/13/2011
OT2–002–09	Risk adjusted colorectal surgery outcome measure.	Hospital	Surgery	Awaiting Board ratification (endorsed 1/17/11).
OT1–008–09	Hospital 30-day risk-standardized readmission rates following percutaneous coronary intervention (PCI).	Hospital	Cardiovascular	Endorsed.
OT1–015–09	Risk adjusted case mix adjusted elderly surgery outcomes measure.	Hospital	Cross-cutting/Surgery	Awaiting Board ratification (endorsed 1/17/11).
OT1–007–09	Hospital risk-standardized complication rate following implantation of implantable cardioverter-defibrillator (ICD).	Hospital	Cardiovascular	Endorsed.
OT1–020–09	Functional capacity in COPD patients before and after pulmonary rehabilitation.	Other	Respiratory/ICU	Endorsed.
OT1–019–09	Health-related quality of life in COPD patients before and after pulmonary rehabilitation.	Other	Respiratory/ICU	Endorsed.
OT1–024–09	Intensive care: in-hospital mortality rate.	Hospital	Respiratory/ICU	Endorsed.

Measure No.	Measure name	Care setting(s)	Subject/topic area (*e.g.*, condition, setting, cross-cutting area)	Status as of 01/13/2011
OT1–023–09	Intensive Care Unit (ICU) length-of-stay (LOS).	Hospital	Respiratory/ICU	Endorsed.
OT1–031–09	Proportion of patients hospitalized with stroke that have a potentially avoidable complication (during the index stay or in the 30-day post-discharge period).	Hospital	Neurology (Stroke)	Awaiting Board ratification (endorsed 1/17/11).
OT1–030–09	Proportion of patients hospitalized with AMI that have a potentially avoidable complication (during the index stay or in the 30-day post-discharge period).	Hospital	Cardiovascular	Awaiting Board ratification (endorsed 1/17/11).
OT2–013–09	Proportion of patients hospitalized with pneumonia that have a potentially avoidable complication (during the index stay or in the 30-day post-discharge period).	Hospital	Respiratory/ICU	Awaiting Board ratification (endorsed 1/17/11).
OT1–013–09	The STS CABG composite score.	Hospital	Surgery	Awaiting Board ratification (endorsed 1/17/11).
OT1–016–09	30-Day post-hospital AMI discharge care transition composite measure.	Hospital	Cardiovascular	Endorsed.
OT1–017–09	30-Day post-hospital HF discharge care transition composite measure.	Hospital	Cardiovascular	Endorsed.
OT2–005–09	30-Day post-hospital pneumonia discharge care transition composite measure.	Hospital	Respiratory/ICU	Awaiting Board ratification (endorsed 1/17/11).
OT2–022–09	Proportion of patients with chronic conditions that have a potentially avoidable complication during the calendar year.	Health Plan; Group; Population.	Cross-cutting	Awaiting Board ratification (endorsed 1/17/11).
OT3–057–10	Asthma admission rate	Other	Outcomes/child health: asthma.	Awaiting Board ratification (endorsed 1/17/11).
OT3–055–10	Gastroenteritis admission rate (pediatric).	Hospital	Outcomes/child health	Awaiting Board ratification (endorsed 1/17/11).
OT3–046–10	Validated family-centered survey questionnaire for parents' and patients' experiences during inpatient pediatric hospital stay.	Hospital	Outcomes/child health: survey, patient experience of care.	Awaiting Board ratification (endorsed 1/17/11).
OT3–045–10	Measure of medical home for children and adolescents.	Other	Outcomes/child health: access to care.	Awaiting Board ratification (endorsed 1/17/11).
OT3–044–10	Children who have inadequate insurance coverage for optimal health.	Other	Outcomes/child health: access to care.	Awaiting Board ratification (endorsed 1/17/11).
OT3–043–10	Pediatric symptom checklist (PSC).	All settings	Outcomes/child health: survey.	Awaiting Board ratification (endorsed 1/17/11).
OT3–041–10	Children who attend schools perceived as safe.	Other	Outcomes/child health: survey.	Awaiting Board ratification (endorsed 1/17/11).
OT3–039–10	Children who live in communities perceived as safe.	Other	Outcomes/child health: survey.	Awaiting Board ratification (endorsed 1/17/11).
OT3–038–10	Children who receive effective care coordination of healthcare services when needed.	Other	Outcomes/child health: access to care.	Awaiting Board ratification (endorsed 1/17/11).
OT3–036–10	Children who had problems obtaining referrals when needed.	Other	Outcomes/child health: access to care.	Awaiting Board ratification (endorsed 1/17/11).
OT3–032–10	Number of school days children miss due to illness.	Other	Outcomes/child health: survey.	Awaiting Board ratification (endorsed 1/17/11).
OT3–031–10	Healthy term newborn	Hospital	Outcomes/child health: perinatal.	Awaiting Board ratification (endorsed 1/17/11).

Measure No.	Measure name	Care setting(s)	Subject/topic area (*e.g.*, condition, setting, cross-cutting area)	Status as of 01/13/2011
OT3–029–10	Standardized adverse event ratio for children and adults undergoing cardiac catheterization for congenital heart disease.	Hospital	Outcomes/child health: cardiology.	Awaiting Board ratification (endorsed 1/17/11).
OT3–028–10	Standardized mortality ratio for neonates undergoing non-cardiac surgery.	Hospital	Outcomes/child health: mortality.	Awaiting Board ratification (endorsed 1/17/11).
OT3–027–10	Ventriculoperitoneal (VP) shunt malfunction rate in children.	Hospital	Outcomes/child health	Awaiting Board ratification (endorsed 1/17/11).
OT3–011–10	Depression remission at twelve months.	Ambulatory care: office, clinic, behavioral health/psychiatric unit.	Mental health/depression	Awaiting Board ratification (endorsed 1/17/11).
OT3–012–10	Depression remission at six months.	Ambulatory care: office, clinic, behavioral health/psychiatric unit.	Mental health/depression	Awaiting Board ratification (endorsed 1/17/11).
OT3–022–10	Depression utilization of the PHQ–9 tool.	Ambulatory care: office, clinic, behavioral health/psychiatric unit.	Mental health/depression	Awaiting Board ratification (endorsed 1/17/11).
OT3–047–10	Inpatient consumer survey	Hospital, long-term acute care hospital, behavioral health/psychiatric unit.	Mental health/patient experience.	Awaiting Board ratification (endorsed 1/17/11).
NH–003–10	Physical therapy or nursing rehabilitation/restorative care for long-stay patients with new balance problem.	Nursing home/skilled nursing facility.	Nursing homes/falls	Awaiting Board ratification (endorsed 2/28/11).
NH–008–10	Percent of residents experiencing one or more falls with major injury (long stay).	Nursing home/skilled nursing facility.	Nursing homes/falls	Awaiting Board ratification (endorsed 2/28/11).
NH–009–10	The percentage of residents on a scheduled pain medication regimen on admission who report a decrease in pain intensity or frequency (short stay).	Nursing home/skilled nursing facility.	Nursing homes/pain	Awaiting Board ratification (endorsed 2/28/11).
NH–010–10	Percent of residents who self-report moderate to severe pain (short stay).	Nursing home/skilled nursing facility.	Nursing homes/pain	Awaiting Board ratification (endorsed 2/28/11).
NH–011–10	Percent of residents who self-report moderate to severe pain (long stay).	Nursing home/skilled nursing facility.	Nursing homes/pain	Awaiting Board ratification (endorsed 2/28/11).
NH–012–10	Percent of residents with pressure ulcers that are new or worsened (short stay).	Nursing home/skilled nursing facility.	Nursing homes/pressure ulcers.	Awaiting Board ratification (time-limited).
NH–013–10	Percent of high-risk residents with pressure ulcers (long stay).	Nursing home/skilled nursing facility.	Nursing homes/pressure ulcers.	Awaiting Board ratification (endorsed 2/28/11).
NH–014–10	Percent of residents who were assessed and appropriately given the seasonal influenza vaccine during the flu season (short stay).	Nursing home/skilled nursing facility.	Nursing homes/immunization	Awaiting Board ratification (endorsed 2/28/11).
NH–015–10	Percent of residents who were assessed and appropriately given the seasonal influenza vaccine (long stay).	Nursing home/skilled nursing facility.	Nursing homes/immunization	Awaiting Board ratification (endorsed 2/28/11).
NH–016–10	Percent of residents who were assessed and appropriately given the pneumococcal vaccine (short stay).	Nursing home/skilled nursing facility.	Nursing homes/immunization	Awaiting Board ratification (endorsed 2/28/11).
NH–017–10	Percent of residents who were assessed and appropriately given the pneumococcal vaccine (long stay).	Nursing home/skilled nursing facility.	Nursing homes/immunization	Awaiting Board ratification (endorsed 2/28/11).
NH–018–10	Percent of residents with a urinary tract infection (long stay).	Nursing home/skilled nursing facility.	Nursing homes/functionality	Awaiting Board ratification (endorsed 2/28/11).

Measure No.	Measure name	Care setting(s)	Subject/topic area (*e.g.*, condition, setting, cross-cutting area)	Status as of 01/13/2011
NH–019–10	Percent of low-risk residents who lose control of their bowels or bladder (long stay).	Nursing home/skilled nursing facility.	Nursing homes/functional status.	Awaiting Board ratification (endorsed 2/28/11).
NH–020–10	Percent of residents who have/had a catheter inserted and left in their bladder (long stay).	Nursing home/skilled nursing facility.	Nursing homes/safety	Awaiting Board ratification (endorsed 2/28/11).
NH–021–10	Percent of residents who were physically restrained (long stay).	Nursing home/skilled nursing facility.	Nursing homes/safety	Awaiting Board ratification (endorsed 2/28/11).
NH–022–10	Percent of residents whose need for help with daily activities has increased (long stay).	Nursing home/skilled nursing facility.	Nursing homes/functionality ..	Awaiting Board ratification (endorsed 2/28/11).
NH–024–10	Percent of residents who lose too much weight (long stay).	Nursing home/skilled nursing facility.	Nursing homes/functionality ..	Awaiting Board ratification (endorsed 2/28/11).
NH–025–10	Percent of residents who have depressive symptoms (long stay).	Nursing home/skilled nursing facility.	Nursing homes/mental health	Awaiting Board ratification (endorsed 2/28/11).
NH–026–10	Consumer Assessment of Health Providers and Systems (CAHPS®) Nursing Home Survey: Discharged Resident Instrument.	Nursing home/skilled nursing facility.	Nursing homes/patient experience.	Awaiting Board ratification (endorsed 2/28/11).
NH–027–10	Consumer Assessment of Health Providers and Systems (CAHPS®) Nursing Home Survey: Long-Stay Resident Instrument.	Nursing home/skilled nursing facility.	Nursing homes/patient experience.	Awaiting Board ratification (endorsed 2/28/11).
NH–028–10	Consumer Assessment of Health Providers and Systems (CAHPS®) Nursing Home Survey: Family Member Instrument.	Nursing home/skilled nursing facility.	Nursing homes/patient experience.	Awaiting Board ratification (endorsed 2/28/11).
IEP–005–10	Pulmonary CT imaging for patients at low risk for pulmonary embolism.	Ambulatory care: ED could consider for additional ambulatory settings: office, clinic and hospital outpatient.	Overuse/safety	Endorsed.
IEP–007–10	Appropriate head CT imaging in adults with mild traumatic brain injury.	Ambulatory care: ED could consider for additional ambulatory settings: office, clinic and hospital outpatient.	Overuse/safety	Endorsed.
IEP–010–10	Cardiac imaging for preoperative risk assessment for non-cardiac low-risk surgery.	Ambulatory care: hospital outpatient.	Overuse/safety	Endorsed.
IEP–014–10	Cardiac stress imaging not meeting appropriate use criteria: preoperative evaluation in low risk surgery patients.	Ambulatory care: hospital outpatient, office.	Overuse/safety	Endorsed.
IEP–015–10	Cardiac stress imaging not meeting appropriate use criteria: routine testing after percutaneous coronary interventions (PCI).	Ambulatory care: hospital outpatient, office.	Overuse/safety	Endorsed.
IEP–016–10	Cardiac stress imaging not meeting appropriate use criteria: testing in asymptomatic, low-risk patients.	Ambulatory care: hospital outpatient, office.	Overuse/safety	Endorsed.

Appendix C: Reports Published by NQF Under the HHS Contract Between January 14, 2010, and January 13, 2011

Prioritization of High-Impact Medicare Conditions and Measure Gaps; Task 6.0; May 2010 *http://www.qualityforum.org/projects/prioritization.aspx#t=2&s=p-4%7C.*

Measure Development and Endorsement Agenda; Task 6.2; January 2011 *http://www.qualityforum.org/MeasureDevelopmentandEndorsementAgenda.aspx.*

Identification of Potential 2013 e-Quality Measures; Task 6.4; August 2010 *http://www.qualityforum.org/projects/i-m/meaningful_use/meaningful_use.aspx.*

National Voluntary Consensus Standards for Public Reporting of Patient Safety Event Information; Task 7.3; September 2010 *http://www.qualityforum.org/Projects/Safety_Reporting_Framework/Framework.aspx#t=2&s=&p=5%7C.*

Assessment of the National Quality Forum's Consensus Development Process (Mathematica Policy Research, Inc.); Task 7.6; December 2010 *http://www.qualityforum.org/Measuring_Performance/Improving_NQF_Process/Improving_NQF_S_Processes.aspx.*

Driving Quality and Performance Measurement: A Foundation For Clinical Decision Support; Task 9.2; December 2010 *http://www.qualityforum.org/Publications/2010/12/Driving_Quality_and_Performance_Measurement_-_A_Foundation_for_Clinical_Decision_Support.aspx.*

Driving Quality—A Health IT Assessment Framework for Measurement: A Consensus Report; Task 9.6; December 2010 *http://www.qualityforum.org/Publications/2010/12/Driving_Quality_-_A_Health_IT_Assessment_Framework_for_Measurement.aspx.*

Guidance for Measure Harmonization; Task 12.2; in press.

ICD–10–CM/PCS Coding Maintenance Operational Guide: A Consensus Report; Task 12.3; October 2010 *http://www.qualityforum.org/Publications/2010/10/ICD–10–CM/PCS_Coding_Maintenance_Operational_Guidance.aspx.*

Input to the Secretary of Health and Human Services on Priorities for the 2011 National Quality Strategy; Task 13; October 2010 *http://www.nationalprioritiespartnership.org.*

Appendix D: NQF Board of Directors

William L. Roper, MD, MPH (Chair), Dean, School of Medicine, Vice Chancellor for Medical Affairs and Chief Executive Officer, UNC Health Care System, University of North Carolina at Chapel Hill.

Andrew Webber (Vice Chair), President and CEO, National Business Coalition on Health.

Gerald M. Shea (Treasurer), Assistant to the President for External Affairs, AFL–CIO.

Richard J. Baron, MD, FACP, President and Founder, Greenhouse Internists.

Lawrence M. Becker, Director, HR Strategic Partnerships, Xerox Corporation.

JudyAnn Bigby, MD, Secretary, Executive Office of Health & Human Services, Commonwealth of Massachusetts.

Janet M. Corrigan, PhD, MBA, President and CEO, National Quality Forum.

Maureen Corry, Executive Director, Childbirth Connection.

Helen Darling, MA, President, National Business Group on Health.

Robert Galvin, MD, MBA, Chief Executive Officer, Equity Healthcare, The Blackstone Group.

Wade Henderson, *Esq.,* President and CEO, Leadership Conference on Civil Rights.

Ardis Dee Hoven, MD, Chair, American Medical Association Board of Trustees and Medical Director, Bluegrass Care Clinic, Affiliated with the University of Kentucky School of Medicine.

Karen Ignagni, MBA, President and CEO, America's Health Insurance Plans (AHIP).

Chris Jennings, President, Jennings Policy Strategies, Inc.

Charles N. Kahn III, MPH, President, Federation of American Hospitals.

Mark B. McClellan, MD, PhD, Senior Fellow and Director, Engelberg Center for Health Care Reform and Leonard D. Schaeffer Chair in Health Policy Studies, The Brookings Institution.

Sheri S. McCoy, Worldwide Chairman of the Pharmaceuticals Group, Johnson & Johnson.

Harold D. Miller, President and CEO, Network for Regional Healthcare Improvement.

Dolores L. Mitchell, Executive Director, Commonwealth of Massachusetts Group Insurance Commission.

Mary Naylor, PhD, RN, FAAN, Director, New Courtland Center for Transitions & Health and Marian S. Ware Professor in Gerontology, University of Pennsylvania School of Nursing.

Debra L. Ness, President, National Partnership for Women & Families.

Samuel R. Nussbaum, MD, Executive Vice President and Chief Medical Officer, WellPoint, Inc.

J. Marc Overhage, MD, PhD, Director, Regenstrief Institute and President and CEO, Health Information Exchange.

John C. Rother, JD, Executive Vice President for Policy and Strategy, AARP.

Bernard M. Rosof, MD, Chair, Board of Directors, Huntington Hospital and Chair, Physician Consortium for Performance Improvement convened by the American Medical Association.

Joseph R. Swedish, FACHE, President and CEO, Trinity Health.

John Tooker, MD, MBA, FACP, Associate Executive Vice President, American College of Physicians.

Richard J. Umbdenstock, President and CEO, American Hospital Association.

CMS

Donald M. Berwick, Administrator.

Designee: Barry Straube, MD, Chief Medical Officer and Director, Office of Clinical Standards and Quality.

AHRQ

Carolyn M. Clancy, MD, Director.

NIH

Francis S. Collins, MD, PhD, Director, National Institutes of Health.

Designee: Barry Portnoy, PhD, Senior Advisor for Disease Prevention.

HRSA

Mary Wakefield, PhD, RN, Administrator.

Designee: Kyu Rhee, MD.

CDC

Thomas R. Frieden, MD, MPH, Director.

Designee: Peter A. Briss, MD, MPH, Captain, U.S. Public Health Service, Medical Director.

Ex Officio (Non-Voting)

Arthur Levin, MPH, (Chair, Consensus Standards Approval Committee), Director, Center for Medical Consumers.

Curt Selquist, (Chair, Leadership Network), Johnson & Johnson Health Care System, Inc. (retired).

Paul C. Tang, MD, MS, Vice President and Chief Medical Information Officer, Palo Alto Medical Foundation and Chair, Health Information Technology Advisory Committee.

Appendix E: NQF Senior Leadership

Janet M. Corrigan, President and Chief Executive Officer.

Karen Adams, Vice President, National Priorities.

Helen Burstin, Senior Vice President, Performance Measures.

Floyd Eisenberg, Senior Vice President, Health Information Technology.

Marybeth Farquhar, Vice President for Performance Measures.
Larry Gorban, Vice President, Operations.
Ann Hammersmith, General Counsel.
Lisa Hines, Vice President, Member Services and Education.
Laura Miller, Senior Vice President and Chief Operating Officer.
Nicole Silverman, Vice President, Federal Program Management.
Mary Shaffran, Vice President, Health Information Technology.
Diane Stollenwerk, Vice President, Community Alliances.
Thomas Valuck, Senior Vice President, Strategic Partnerships.
Kyle Vickers, Chief Information Officer.

Appendix F: National Priorities Partnership

National Committee for Quality Assurance

(Margaret E. O'Kane, MHS, President; NPP Co-Chair)

Physician Consortium for Performance Improvement Convened by the American Medical Association

(Bernard Rosof, MD, Chair; NPP Co-Chair)

AARP
AFL–CIO
Aligning Forces for Quality
Alliance for Home Health Quality and Innovation
Alliance for Pediatric Quality
America's Health Insurance Plans
American Board of Medical Specialties
American Health Care Association
American Medical Informatics Association
American Medical Association
American Nurses Association
AQA
Association of State and Territorial Health Officials
Certification Commission for Health Information Technology
Consumers Union
Hospital Quality Alliance
Institute for Healthcare Improvement
Institute of Medicine
Johnson & Johnson Health Care Systems
The Joint Commission
Leapfrog Group
National Association of Community Health Centers
National Association of Medicaid Directors
National Business Group on Health
National Governors Association
National Hispanic Medical Association
National Initiative for Children's Healthcare Quality
National Partnership for Women & Families
National Quality Forum
Network for Regional Healthcare
Nursing Alliance for Quality Care
Pacific Business Group on Health
Partnership for Prevention
Patient Centered Primary Care Collaborative
Pharmacy Quality Alliance
Planetree
Quality Alliance Steering Committee
U.S. Chamber of Commerce

Ex-Officio Partner Organizations

Agency for Healthcare Research and Quality
Centers for Disease Control and Prevention
Centers for Medicare & Medicaid Services
Health Resources and Services Administration
National Institutes of Health
Veterans Health Administration

Appendix G: NQF Consensus Development Process (Version 1.8)

NQF uses its formal Consensus Development Process (CDP) to evaluate and endorse consensus standards, including performance measures, best practices, frameworks, and reporting guidelines. The CDP is designed to call for input and carefully consider the interests of stakeholder groups from across the healthcare industry.

Because NQF uses this formal CDP, it is recognized as a voluntary consensus standards-setting organization as defined by the National Technology Transfer and Advancement Act of 1995 [1] and Office of Management and Budget Circular A–119.[2] Over the past 10 years, the procedures that form NQF's CDP and its implementation have evolved to ensure that evaluation of candidate consensus standards continues to follow best practices in performance measurement and standards-setting. NQF is currently using version 1.8 of the CDP.

NQF's CDP involves nine principal steps. Each contains several substeps and is associated with specific actions. The steps are:

1. Call for Intent to Submit Candidate Standards
2. Call for Nominations
3. Call for Candidate Standards
4. Candidate Consensus Standard Review
5. Public and Member Comment
6. Member Voting
7. Consensus Standards Approval Committee (CSAC) Decision
8. Board Ratification
9. Appeals

Notes

1. U.S. Congress, *National Technology Transfer and Advancement Act of 1995 (PL 104–113),* Washington, DC: U.S. Government Printing Office; 1995. Available at *http://standards.gov/standards_gov/nttaa.cfm. Last accessed December 2010.*

2. The White House, *U.S. Office of Management and Budget, Circular No. A–119, February 10, 1998,* Washington, DC: Office of Management and Budget; 1998. Available at *http://www.whitehouse.gov/omb/circulars_a119/.* Last accessed December 2010.

Appendix H: List of NQF Member Organizations by Council

Consumer Council

AARP
AFL–CIO
American Federation of Teachers Healthcare
American Hospice Foundation
American Sleep Apnea Association
Childbirth Connection
Citizens for Patient Safety
Coalition for Improving Maternity Services
Community Catalyst
Community Health Foundation of Western and Central New York
Connecticut Center for Patient Safety
Consumer Coalition for Quality Health Care
Consumers Advancing Patient Safety
Consumers' Checkbook
Consumers Union
DES Action USA
Foundation for Informed Medical Decision Making
Health Watch USA
Lamaze International
Mothers Against Medical Error
National Breast Cancer Coalition
National Coalition for Cancer Survivorship
National Consumers League
National Council on Aging
National Health Law Program
National Partnership for Women & Families
National Sleep Foundation
Patient Centered Primary Care Collaborative
PULSE of New York
The Coordinating Center
The Empowered Patient Coalition
The National Consumer Voice for Quality Long-Term Care
The Partnership for Healthcare Excellence
Trauma Support Network
Trust for America's Health

Health Plan Council

Aetna
Alliance of Community Health Plans
America's Health Insurance Plans
Arkansas Medicaid
BlueCross BlueShield Association
CareFirst BlueCross BlueShield
CIGNA HealthCare
Highmark, Inc.
Horizon Blue Cross Blue Shield of New Jersey
Hudson Health Plan
Humana Inc.
Kaiser Permanente
UnitedHealth Group
Universal American Corp
WellPoint

Health Professionals Council

AANAC
Academy of Managed Care Pharmacy
Academy of Medical-Surgical Nurses

American Academy of Audiology
American Academy of Dermatology
American Academy of Family Physicians
American Academy of Hospice and Palliative Medicine
American Academy of Neurology
American Academy of Nurse Practitioners
American Academy of Ophthalmology
American Academy of Orthopaedic Surgeons
American Academy of Otolaryngology-Head and Neck Surgery
American Academy of Pediatrics
American Academy of Physical Medicine and Rehabilitation
American Association of Birth Centers
American Association of Cardiovascular and Pulmonary Rehabilitation
American Association of Clinical Endocrinologists
American Association of Diabetes Educators
American Association of Neurological Surgeons
American Association of Nurse Anesthetists
American Case Management Association
American Chiropractic Association
American College of Cardiology
American College of Emergency Physicians
American College of Gastroenterology
American College of Nurse-Midwives
American College of Obstetricians and Gynecologists
American College of Physician Executives
American College of Physicians
American College of Radiology
American College of Rheumatology
American College of Surgeons
American Dietetic Association
American Gastroenterological Association Institute
American Geriatrics Society
American Health Information Management Association
American Heart Association
American Medical Association
American Medical Directors Association
American Nurses Association
American Optometric Association
American Organization of Nurse Executives
American Osteopathic Association
American Pharmacists Association Foundation
American Physical Therapy Association
American Psychiatric Nurses Association
American Society for Gastrointestinal Endoscopy
American Society for Radiation Oncology
American Society of Anesthesiologists
American Society of Breast Surgeons
American Society of Clinical Oncology
American Society of Colon and Rectal Surgeons
American Society of Health-System Pharmacists
American Society of Hematology
American Society of Pediatric Nephrology
American Society of Plastic Surgeons
American Urological Association
Association for Professionals in Infection Control and Epidemiology
Association for the Advancement of Wound Care
Association of periOperative Registered Nurses
Association of Rehabilitation Nurses
Association of Women's Health, Obstetric and Neonatal Nurses
Council of Medical Specialty Societies
Heart Rhythm Society
Hospice and Palliative Nurses Association
Infectious Diseases Society of America
Infusion Nurses Society
National Academy of Clinical Biochemistry
National Alliance of Wound Care
National Association for Behavioral Health
National Association of Certified Professional Midwives
National Association of Pediatric Nurse Practitioners
National Nursing Staff Development Organization
National Pressure Ulcer Advisory Panel
New York University College of Nursing
Nursing Alliance for Quality Care
Ohio Hospice & Palliative Care Organization
Renal Physicians Association
Society for Academic Emergency Medicine
Society for Cardiovascular Angiography and Interventions
Society for Healthcare Epidemiology of America
Society for Vascular Surgery
Society of Critical Care Medicine
Society of General Internal Medicine
Society of Hospital Medicine
Society of Thoracic Surgeons
Wisconsin Medical Society
Wound, Ostomy and Continence Nurses Society

Provider Council

Adventist Health System
Advocate Physician Partners
Ambulatory Surgery Foundation
Amedisys
American Health Care Association
American Hospital Association
AmSurg Corp.
Ascension Health
Association for Behavioral Health and Wellness
Association of American Medical Colleges
Atlantic Health
Aultman Health Foundation
Aurora Health Care
Baptist Health South Florida
Baptist Memorial Health Care Corporation
BayCare Health System
Baylor Health Care System
BJC HealthCare
Bon Secours St. Francis Health System
Bronson Healthcare Group, Inc.
California Hospital Association
CaroMont Health
Catholic Health Association of the United States
Catholic Health Initiatives
Catholic Healthcare Partners
Cedars-Sinai Medical Center
Child Health Corporation of America
Children's Hospitals and Clinics of Minnesota
CIMPAR, S.C.
City of Hope
Cleveland Clinic
Connecticut Hospital Association
Crozer-Keystone Health System
Dana-Farber Cancer Institute
Detroit Medical Center
DMAA: The Care Continuum Alliance
Emergency Department Practice Management Association
Englewood Hospital and Medical Center
Exeter Health Resources
Federation of American Hospitals
Florida Hospital
Fox Chase Cancer Center
Genesis HealthCare System
Gentiva Health Services
Good Samaritan Hospital
H. Lee Moffitt Cancer Center and Research Institute Hospital, Inc.
Hackensack University Medical Center
Harborview Medical Center
Health Management Associates, Inc.
Healthcare Leadership Council
HealthPartners
HealthSouth Corporation
Henry Ford Health System
Hoag Hospital
Hospital Corporation of America
Hospital for Special Surgery
Illinois Hospital Association
Interim HealthCare Inc.
Johns Hopkins Health System
LHC Group, Inc.
Long-Term Quality Alliance
MaineGeneral Medical Center
Mayo Clinic
MedStar Health
Memorial Hermann Healthcare System
Memorial Sloan-Kettering Cancer Center
Mercy Medical Center
Meridian Health System
Mission Hospital, Inc.
National Association of Children's Hospitals and Related Institutions
National Association of Psychiatric Health Systems
National Association of Public Hospitals and Health Systems
National Consortium of Breast Centers
National Hospice and Palliative Care Organization
National Rural Health Association
NCH Healthcare System
Nemours Foundation
New Jersey Hospital Association
New York Presbyterian Healthcare System
North Mississippi Medical Center
North Shore-Long Island Jewish Health System
North Texas Specialty Physicians
Northwestern Memorial HealthCare
Norton Healthcare, Inc.
OSUCCC–James Cancer Hospital
Park Nicollet Health Services
Partners HealthCare System, Inc.
Pennsylvania Health Care Association
Piedmont Healthcare
Planetree
Premier, Inc.
Providence Health & Services
Robert Wood Johnson University Hospital-Hamilton
Rockford Health System
Roswell Park Cancer Institute
Rush University Medical Center
Saint Barnabas Health Care System
Saint Francis Hospital and Medical Center
Seattle Cancer Care Alliance
Sharp HealthCare
Sisters of Charity of Leavenworth Health System
Sisters of St. Francis Health Services
Southeast Texas Medical Associates, LLP
Stamford Health System
Summa Health System
Surgical Care Affiliates

Sylvester Comprehensive Cancer Center, University of Miami Hospitals and Clinics
Tampa General Hospital
Tenet Healthcare Corporation
Texas Health Resources
The Alliance for Home Health Quality and Innovation
The Health Alliance of Mid America LLC
The National Forum of ESRD Networks
The University of Kansas Hospital
Thomas Jefferson University Hospital
Trinity Health
UMass Memorial Medical Group, Inc.
United Surgical Partners International
University of California-Davis Medical Group
University of Michigan Hospitals & Health Centers
University of Pennsylvania Health System
University of Texas Southwestern Medical Center
University of Texas-MD Anderson Cancer Center
University of Virginia Health System
US Department of Defense-Health Affairs
UW Health
Vanderbilt University Medical Center
Vanguard Health Management
Veterans Health Administration
VHA, Inc.
Virginia Mason Medical Center
Virtua Health
WellSpan Health
WellStar Health System
Yale New Haven Health System

Public/Community Health Agencies Council

Albuquerque Coalition for Healthcare Quality
Aligning Forces for Quality—South Central Pennsylvania
Alliance for Health
Better Health Greater Cleveland
California Office of Statewide Health Planning and Development
Center for Health Care Quality, Department of Health Policy, George Washington University
Centers for Disease Control and Prevention
Central Indiana Alliance for Health
Community Health Alliance-Humboldt County Del-Norte
Greater Detroit Area Health Council
Health Improvement Collaborative of Greater Cincinnati
Health Resources and Services Administration
Healthy Memphis Common Table
Illinois Department of Public Health
Integrated Healthcare Association
Kansas City Quality Improvement Consortium
Maine Quality Forum
Maryland Health Care Commission
Massachusetts Health Quality Partners
Middlesex Hospital
Minnesota Community Measurement
National Academy for State Health Policy
National Association of Health Data Organizations
Oregon Health Care Quality Corporation
P2 Collaborative of Western New York
Puget Sound Health Alliance
Quality Counts
Rhode Island Department of Health
State Associations of Addiction Services
Substance Abuse and Mental Health Services Administration
The HOPE of Wisconsin
Washington State Department of Health
Wisconsin Collaborative for Healthcare Quality

Purchaser Council

Buyers Health Care Action Group
Caterpillar Inc.
Centers for Medicare & Medicaid Services
Colorado Business Group on Health
Employers' Coalition on Health
Florida Health Care Coalition
General Motors Corporation
Health Action Council Ohio
Health Services Coalition
HealthCare 21 Business Coalition
Lehigh Valley Business Coalition on Health Care
Maine Health Management Coalition
Microsoft Corporation
National Association of State Medicaid Directors
National Business Coalition on Health
National Business Group on Health
New Jersey Health Care Quality Institute
Niagara Health Quality Coalition
Pacific Business Group on Health
St. Louis Area Business Health Coalition
The Alliance
The Leapfrog Group
Virginia Business Coalition on Health
Washington State Health Care Authority

QMRI Council

AAAHC Institute for Quality Improvement
ABIM Foundation
ACC/AHA Task Force on Performance Measures
ACS–MIDAS+
Agency for Healthcare Research and Quality
American Academy of Nursing
American Association of Colleges of Nursing
American Board of Medical Specialties
American Board of Optometry
American College of Medical Quality
American Data Network
American Health Quality Association
American Medical Association-Physician Consortium for Performance Improvement
American Medical Informatics Association
American Psychiatric Association for Research and Education
Anesthesia Quality Institute
AYR Consulting Group
Betsy Lehman Center for Patient Safety and Medical Error Reduction
BoozAllenHamilton
California HealthCare Foundation
California Maternal Quality Care Collaborative
Case Management Society of America
Center to Advance Palliative Care
Community Health Accreditation Program
Coral Initiative, LLC
Core Consulting, Inc.
Dallas-Fort Worth Hospital Council Education and Research Foundation
Freedman HealthCare, LLC
Health Level Seven, Inc
Health Services Advisory Group
Healthcare Information and Management Systems Society
HealthGrades
Institute for Clinical Systems Improvement
Institute for Safe Medication Practices
Iowa Foundation for Medical Care
Iowa Healthcare Collaborative
IPRO
Jefferson Health System, Office of Health Policy and Clinical Outcomes
Kidney Care Partners
Louisiana Health Care Quality Forum
Medisolv, Inc.
MHA Keystone Center for Patient Safety & Quality
Milliman Care Guidelines
National Association for Healthcare Quality
National Center for Healthcare Leadership
National Committee for Quality Assurance
National Consensus Project for Quality Palliative Care
National Council of State Boards of Nursing
National Institute for Quality Improvement and Education
National Institutes of Health
National Patient Safety Foundation
Neocure Group
Next Wave
North Carolina Center for Hospital Quality and Patient Safety
Northeast Health Care Quality Foundation
Partnership for Prevention
Pharmacy Quality Alliance
Press Ganey Associates
Professional Research Consultants, Inc.
Quality Indicator Project
Quality Outcomes, LLC
Resolution Health, Inc.
Texas Medical Institute of Technology
The Commonwealth Fund
The Joint Commission
Thomson Reuters
University HealthSystem Consortium
University of Kansas School of Nursing
University of North Carolina-Program on Health Outcomes
URAC
Verilogue, Inc
Virginia Cardiac Surgery Quality Initiative
West Virginia Medical Institute

Supplier/Industry Council

Abbott Laboratories
AMGEN Inc.
Arrowsight, Inc.
AstraZeneca
Boehringer Ingelheim
Bristol-Myers Squibb Company
CareFusion
Deloitte Consulting LLP, Health Sciences and Government
Dialog Medical
Edwards Lifesciences
eHealth Initiative
Eisai, Inc.
Eli Lilly and Company
Elsevier Clinical Decision Support
Epstein Becker & Green, P.C.
GE Healthcare
GlaxoSmithKline
Greenway Medical Technologies
Hospira
MedAssets
MedeAnalytics, Inc.
Merck & Co., Inc
Noblis
Ortho-McNeill-Janssen Pharmaceutical, Inc.
Pfizer
PhRMA
Phytel, Inc.
sanofi pasteur
sanofi-aventis

Siemens Healthcare, USA
The Advanced Medical Technology Association (AdvaMed)
Zynx Health

Acknowledgments

The National Quality Forum wishes to acknowledge the invaluable editorial services of Philip Dunn and the design expertise of Corporate Visions, Inc. This report was printed by MOSAIC Print.

IV. Secretarial Comments on the Annual Report to Congress

The Secretary is pleased with the scope and vision of NQF's March 2011 annual report to Congress (the ''annual report''). An internal multidisciplinary HHS team is working collaboratively with NQF to provide a clear multi-year vision to ensure the most efficient and effective utilization of the HHS contract. The contract with NQF provides a unique opportunity to further enhance HHS' efforts to foster a collaborative, multi-stakeholder approach to increase the availability of national voluntary consensus standards for quality and efficiency measures that can help to ensure broad transparency in achieving value in health care delivery.

Over the past year NQF continued work on tasks outlined in the Statement of Work, including: development of a national strategy for performance measurement and prioritization of measures for development and endorsement; evaluation of NQF's consensus development process; conduct of measure endorsement projects focused on areas where there are gaps in measures, such as outcomes measures and patient safety measures; maintenance of current NQF-endorsed measures; and promotion of Electronic Health Records through such activities as developing a measure authoring software tool, initiation of a taxonomy and rules for clinical decision support that are in accord with the Quality Data Model, retooling of a subset of existing NQF-endorsed measures into electronic measure format, development of a public Web site to make available current NQF activities, and development of evaluation criteria for the endorsement of efficiency and resource use measures. In response to a time-sensitive Affordable Care Act requirement, a new short-term task was added for NQF to provide input into the national priorities for consideration under for the National Strategy Quality for Improvement in Healthcare. The NQF convened the National Priorities Partnership (NPP) and delivered a report that provided actionable input for improvement in population health and in the delivery of health care services.

The Secretary has reviewed the annual report and has the following comments. First, the Secretary notes an inadvertent statement in the annual report that appears at the end of the second paragraph in the section entitled ''II. About the National Quality Forum''. It refers to the Consensus Development Process (CDP) and states that ''strict adherence to this CDP qualifies NQF as a voluntary consensus standards-setting organization, granting its endorsed measures special legal standing''. The CDP qualifies the NQF as a voluntary consensus standards-setting organization, and therefore, the endorsed measures are granted standing as voluntary consensus standards. The endorsed measures are not granted special legal standing. This same issue also arises in the section entitled ''III. About the Contract'' in the second bullet following the third paragraph. The sentence includes the statement that the CDP grants the ''measures and practices special legal standing as voluntary consensus standards''. The CDP grants the measures and practices standing as voluntary consensus standards, but does not grant the measures special legal standing.

Second, the Secretary wishes to clarify a statement that has the potential to be misleading. This statement is included in the annual report's section entitled ''II. About the National Quality Forum''. It appears in the third sentence of the sixth paragraph. This sentence mischaracterizes the quality programs described. In particular, CMS is not ''measuring'' meaningful use for purposes of the EHR program. Rather, if eligible professionals and hospitals are able to demonstrate that they meet the requisite meaningful use criteria, they will receive an incentive payment. In addition, *Hospital Compare* is an internet Web site on which the performance of certain providers is reported; it is not a quality reporting program. The correct reference is to the Medicare Inpatient Quality Reporting program.

Third, the Secretary wishes to clarify a statement in the subsection entitled ''Implementation of a Consensus Process for the Endorsement of Quality Measures (Task 7)'' in the section entitled ''IV. HHS–Funded Work''. The fourth sentence in the first bullet point under the heading ''Patient Safety'' within that subsection could be misleading. It states: ''*Serious Reportable Events* has become the foundation of HHS's program of denial of payment for certain hospital-acquired conditions and for many state based adverse event reporting initiatives.'' This sentence could be interpreted to mean that the NQF's list of serious reportable events is the only basis for HHS's denial of payment for certain hospital-acquired conditions, which is inaccurate.

Fourth, a sentence in the subsection entitled ''Technical Infrastructure to Support Measurement Using an Electronic Platform'' within the section entitled ''I. Executive Summary'' states that the American Recovery and Reinvestment Act of 2009 (ARRA) ''provides $20 billion for investment in health IT and use of that technology to improve patient care.'' Similarly, a sentence in the subsection entitled ''Promotion of Electronic Health Records (Task 9)'' within the section entitled ''IV. HHS–Funded Work'' states that ARRA ''provides a $20 billion mandate to ensure health IT plays a central role in transforming the EHR Incentive Program and its meaningful use provisions * * *.'' ARRA does not specify an amount of funding for the EHR Incentive Program. The final amount will depend on the numbers of providers and professionals that participate in the program and their specific years of participation. ARRA also appropriated $2 billion for the Office of the National Coordinator for Health Information Technology (ONC).

Finally, the information describing Task 9.7 (Measure retooling for EHRs) in Appendix A; Summary of Accomplishments Under the Contract: Jan. 14, 2010 to Jan. 12, 2011 warrants further clarification. During the reporting period, the specifications for 113 measures were drafted and updated. They are undergoing review and public comment and will be further updated by December 2011. The Web site where the measures and eSpecifications were posted for public comment is included in Appendix A.

The Secretary is pleased with the progress and timeliness of the work outlined in the Annual Report.

V. Future Steps

The consensus-based contract with NQF is a four year contract. During this second full performance year of the contract, NQF completed deliverables for each task required by MIPPA and for the short-term requirements of section 3014 in ACA. HHS will continue to task NQF with single year and multi-year projects.

Formulation of a National Strategy and Priorities for Health Care Performance Measurement

During March 2010 to February 2011, NQF recommended eight priority areas for national action to the Department for the National Health Care Quality

Strategy. Two were new: To ensure all patients have access to affordable, timely and high quality care; and to provide infrastructure supports, such as health IT, to address underlying system changes that are necessary to attain the goals of other priorities. The original six priorities were: Patient and family engagement; population health; safety; care coordination; palliative and end-of-life care; and overuse of resources. During the year NQF continued its work on the requirements of MIPPA section 183.

The NQF Prioritization Measure Advisory Committee continued to explore priorities for health care performance measurement and developed a list of 20 prioritized high-impact Medicare conditions and measurement gaps. These conditions account for more than 90 percent of Medicare costs. This work complemented the NPP's additional focus on ''cross-cutting'' areas which affect all or most patients, such as care coordination.

Consensus Development Process for Measure Development

The NQF portfolio includes 625 measures organized into five major categories of quality health care: Patient outcomes; care processes; patient experience; resource use; and composite measures. The measures are used in a variety of provider settings, such as ambulatory care settings, emergency service settings and nursing homes, which operate with different data reporting platforms. To meet the various platform needs, measures need to accommodate paper records, and administrative and claims data. During the year, additional work focused on the endorsement of measures of the 20 high-impact Medicare conditions as well as measures for patient safety, nursing homes and child health. Simultaneously, the NQF conducted reviews for potential endorsement of 62 measures that fit into the five categories above.

Maintenance of Consensus-Based Endorsed Measures

During March 2010 to February 2011, NQF maintained endorsed measures relevant to HHS-wide programs and will continue to maintain consensus-based endorsed measures as developed under the priority process.

Promotion of Electronic Health Records

During March 2010 to February 2011, NQF continued to support the promotion of electronic health records as part of HHS-wide efforts. NQF's contributions during the year focused on four areas: (1) Enhancement of the Quality Data Model, which specifies the necessary data for electronic and personal health records; (2) standardization of eMeasure format for use by more than 50 measure developers; (3) re-specification of a subset of performance measures into eMeasures for use with electronic health records; and (4) identification of types of measures for use in determining whether clinicians are properly using electronic health records as well as to detect any unintended consequences. Initial work was undertaken during the year to incorporate the eMeasure format into a Measure Authoring Tool.

Focused Measure Development, Harmonization, and Endorsement Efforts To Fill Critical Gaps in Performance Measurement

During March 2010 to February 2011, NQF continued to support a variety of performance measurement efforts focused on efficiency, harmonization, the ICD–10 and regionalized emergency care services. Both harmonization and ICD–10 activities that were specified for work were complete within the year. NQF made progress in the area of efficiency with two tasks nearing completion and another undertaken during the year. NQF also initiated work on regionalized emergency care services mid-way through the year and progress in that area continues.

During the next contract year, NQF will focus its work on fulfilling the requirements of ACA section 3014 in addition to the continuation of work as required under MIPPA. NQF will also undertake work to provide further input into the annual National Quality Strategy and selection of quality measures for use in public and private reporting programs and value-based purchasing programs. This work will be included in subsequent annual reports.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the paperwork Reduction Act of 1995 (44 U.S.C. 35)

Dated: August 26, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–22624 Filed 9–6–11; 8:45 am]

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Part III

Department of Homeland Security

8 CFR Parts 103, 214, 274a, et al.
Commonwealth of the Northern Mariana Islands Transitional Worker Classification; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214, 274a, and 299

[CIS No. 2459–08; DHS Docket No. USCIS–2008–0038]

RIN 1615–AB76

Commonwealth of the Northern Mariana Islands Transitional Worker Classification

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: On October 27, 2009, the Department of Homeland Security published an interim rule creating a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification (CW classification) in accordance with title VII of the Consolidated Natural Resources Act of 2008 (CNRA). The CW classification is intended to provide for an orderly transition from the CNMI permit system to the U.S. Federal immigration system under the immigration laws of the United States, including the Immigration and Nationality Act (INA). This final rule implements the CW classification and establishes that a CW transitional worker is an alien worker who is ineligible for another classification under the INA and who performs services or labor for an employer in the CNMI during the five-year transition period. CNMI employers may now petition for such workers. The rule also establishes employment authorization incident to CW status.

DATES: This final rule is effective on October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–1470.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Interim Final Rule
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I. Background

The Commonwealth of the Northern Mariana Islands (CNMI or Commonwealth) is a U.S. territory located in the Western Pacific that has been subject to most U.S. laws for many years. Before November 2009, the CNMI administered its own immigration system under the terms of the 1976 Covenant with the United States. *See* A Joint Resolution to Approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant Act), Public Law 94–241, sec. 1, 90 Stat. 263, 48 U.S.C. 1801 note (1976). On May 8, 2008, President Bush signed into law the Consolidated Natural Resources Act of 2008 (CNRA). *See* Public Law 110–229, 122 Stat. 754, 853 (2008). Title VII of the CNRA extends U.S. immigration laws to the CNMI. *Id.* The stated purpose of the CNRA is to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI (phasing-out the CNMI's nonresident contract worker program while minimizing to the greatest extent practicable the potential adverse economic and fiscal effects of that phase-out), to maximize the CNMI's potential for future economic and business growth, and to assure worker protections from the potential for abuse and exploitation. *See* sec. 701 of the CNRA, 48 U.S.C.A. 1806 note.

Section 702 of the CNRA stated that U.S. immigration laws would apply to the CNMI starting approximately one year after the date of enactment, subject to certain transition provisions unique to the CNMI. *See* 48 U.S.C. 1806(a). On March 31, 2009, the Secretary of Homeland Security postponed the effective date of the transition program from June 1, 2009 (the first day of the first full month commencing one year from the date of enactment of the CNRA) to November 28, 2009, using her discretion provided by the CNRA.[1] The transition period concludes on December 31, 2014. *See* 48 U.S.C. 1806(a)(2).

Since 1978, the CNMI has admitted a substantial number of foreign workers through an immigration system that provides a permit program for foreigners entering the CNMI, such as visitors, investors, and workers. Foreign workers under this program constitute a majority of the CNMI labor force. Such workers outnumber U.S. citizens and other local residents in most industries central to the CNMI's economy.[2] The transitional worker program implemented under this rule is intended to provide for an orderly transition for those workers from the CNMI permit system to the U.S. Federal immigration system under the INA and to mitigate potential harm to the CNMI economy as employers adjust their hiring practices and as foreign workers obtain U.S. immigrant or nonimmigrant status. *See* 48 U.S.C. 1806(d).

The CNRA contains several CNMI-specific provisions affecting foreign workers during the transition period. Section 702(a) of the CNRA mandates that:

- During the transition period, the Secretary of Homeland Security must ''establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits[3] to be issued to prospective employers'' for the transitional workers.
- Foreign workers may qualify for the transitional worker classification if not otherwise eligible for admission under the INA.
- Transitional workers may apply to USCIS during the transition period for a change of status to another nonimmigrant classification or to adjust status to that of a lawful permanent resident in accordance with the INA.
- The transitional worker program will terminate at the end of the transition period unless the program is extended by the U.S. Secretary of Labor. Transitional workers must then adjust or change status to an immigrant or another nonimmigrant status under the INA if they want to remain legally in the CNMI. Otherwise, such transitional workers must depart the CNMI or they will become subject to removal.

See 48 U.S.C. 1806(d).

II. Interim Final Rule

In accordance with the CNRA, on October 27, 2009, DHS published an interim rule amending regulations at 8 CFR 214.2(w) to create a new CNMI-only transitional worker classification (CW classification) intended to be effective for the duration of the transition period. *See* 74 FR 55094. DHS provided a 30-day comment period in the interim rule, which ended on November 27, 2009. *Id.* The interim rule

[1] *See* DHS Press Release, ''DHS Delays the Transition to Full Application of U.S. Immigration Laws in the Commonwealth of the Northern Mariana Islands'' (Mar. 31, 2009), *available at http://www.dhs.gov/ynews/releases/pr_1238533954343.shtm.*

[2] *See* GAO, Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period, GAO–08–466 (Mar. 18, 2008); GAO, U.S. Insular Areas: Economic, Fiscal, and Accountability Challenges. GAO–07–119 (Dec. 12, 2006); GAO, Commonwealth of the Northern Mariana Islands: Serious Economic, Fiscal and Accountability Challenges, GAO–07–746T (Apr. 19, 2007).

[3] The CNRA refers to a system of permits. Note that we have retained this language when referencing the statute. In this context, however, the use of the term ''permit'' is synonymous with CW status, and the latter term is used more extensively in this discussion.

was to become effective on November 27, 2009. *Id.*

On November 25, 2009, the U.S. District Court for the District of Columbia enjoined implementation of the interim rule.[4] *See CNMI* v. *United States,* 670 F. Supp. 2d 65 (D.D.C. 2009). On December 9, 2009, DHS published a notice in the **Federal Register** reopening and extending the public comment period for an additional 30 days. *See* 74 FR 64997. The reopened comment period ended on January 8, 2010. *Id.* The comments received during both comment periods were considered and are discussed below.

The interim rule set forth the requirements and procedures for nonimmigrant status within the transitional worker classification. Specifically, the interim rule included provisions to:

- Classify transitional workers using an admission code of CW–1 for principal transitional workers and CW–2 for dependents;
- Allow aliens who were previously admitted to the CNMI under the CNMI nonresident worker permit programs to be granted CW status by USCIS;
- Allow workers, who would not be eligible for any other lawful status under the INA, to enter or remain in the CNMI as transitional workers during the transition period; and
- Establish eligibility criteria, limitations and parameters for the CW–1 nonimmigrant program as required by or consistent with an interpretation of the applicable provisions of section 702(a) of the CNRA, and prescribe procedural requirements for petitioners. *See* 74 FR 55094.

DHS has complied with the injunction by declining to accept any petition for CW classification under the interim rule or otherwise to implement the interim rule. The interim rule has been incorporated into the Code of Federal Regulations. *See* 8 CFR 214.2(w).

III. Final Rule

This final rule provides the requirements to obtain status as a transitional worker in the CNMI. The final rule adopts most of the changes set forth in the interim rule. The rationale for the interim rule and the reasoning provided in the preamble to the interim rule remain valid with respect to these regulatory amendments, and DHS adopts such reasoning in support of the promulgation of this final rule.

In response to the public comments received on the interim final rule, DHS has modified some provisions for the final rule. These changes are explained in detail in the summary of comments and responses and summarized below:

1. The final rule clarifies the authority and process by which applicants in the CNMI can be granted CW–1 or CW–2 status in the CNMI without having to travel abroad to obtain a nonimmigrant visa. Specifically, it clarifies that DHS may grant a section 212(d)(3)(A)(ii) waiver to an alien who is physically present in the CNMI and approved for an initial grant of CW–1 transitional worker status or CW–2 dependent status in the CNMI. Such aliens will be inadmissible under section 212(a)(7)(B)(i)(II) of the INA for lack of a CW–1 or CW–2 transitional worker visa issued by the U.S. Department of State (DOS) and also may (unless changing to CW–1 status from another nonimmigrant status under the INA) be aliens present in the United States without admission or parole and thus inadmissible under section 212(a)(6)(A)(i) of the INA. This final rule permits a waiver of those two grounds of inadmissibility for aliens lawfully present in the CNMI as defined by new 8 CFR 214.2(w)(1)(v) with appropriate documentation. DHS will determine, on a case-by-case basis, whether an alien is eligible for the waiver. The alien will not have to file a specific form or fee in order to request a waiver of these two grounds of inadmissibility. *See* new 8 CFR 214.2(w)(24).

2. The final rule describes how beneficiaries of approved employer petitions and their dependents (spouses and minor children) may obtain CW status. Principal beneficiaries and their dependents outside the CNMI will be instructed to apply for a visa. For principal beneficiaries within the CNMI, the petition itself (including the biometrics provided under new 8 CFR 214.2(w)(15)) serves as the application for CW–1 status. Dependents present in the CNMI may apply for CW–2 dependent status on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. CW–2 status may not be approved until approval of the CW–1 petition. A spouse or child applying for CW–2 status on Form I–539 (or such alternative form as USCIS may designate) may apply for a waiver of the filing fee based upon inability to pay as provided by 8 CFR 103.7(c). *See* new 8 CFR 214.2(w)(14).

3. The interim rule provided that an alien with CW–1 or CW–2 status who enters or attempts to enter, travels or attempts to travel to any other part of the United States without the appropriate visa or visa waiver, or who violates the conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States, will be deemed to have violated CW–1 or CW–2 status. This final rule retains the travel restriction but provides a limited exception. Philippine nationals who hold CW status or intend to apply for admission to the CNMI in CW status may travel, if otherwise permissible, between the CNMI and the Philippines through Guam so long as the travel is on a direct Guam transit itinerary. Such direct Guam transit will not be considered a violation of the conditions of the Philippine national's CW status. *See* new 8 CFR 214.2(w)(22)(iii).

4. The interim final rule provided for attestations by petitioning employers and biometric collection from beneficiaries in the CNMI. This final rule strengthens the terms of the attestation that the employer must sign with respect to its compliance with the required terms and conditions of employment and compliance with applicable laws. It requires an employer to attest that it is an eligible employer and will continue to comply with the requirements for an eligible employer until such time as the employer no longer employs the worker. *See* new 8 CFR 214.2(w)(6)(ii)(D). The final rule is also more specific as to the information that may be required from beneficiaries regarding immigration status and the need to pay a biometrics fee with each application (unless the beneficiary is under 14 years of age, or is age 79 or older). *See* new 8 CFR 214.2(w)(6)(ii) and (15).

5. The interim final rule provided for need-based waivers of petition filing fees. The final rule also provides for a need-based waiver of the filing fee for dependent family members seeking CW–2 status in the CNMI. *See* new 8

[4] On September 12, 2008, the CNMI government filed a lawsuit challenging the legality of certain provisions of the CNRA and a motion requesting that those provisions be enjoined. On November 2, 2009, the CNMI government filed an amended complaint, alleging violations of the Administrative Procedure Act, which generally provide for notice and public comment before new rules can go into effect, and seeking a preliminary injunction with regard to the CNMI-only transitional worker classification (CW classification) interim final rule. On November 25, 2009, the court issued several rulings in that lawsuit. First, the court agreed with the United States that the provisions of the CNRA extending U.S. immigration law to the CNMI beginning on November 28, 2009 do not violate the Covenant between the United States and the CNMI or the U.S. Constitution. The court dismissed the two counts of the CNMI's complaint alleging these violations. *CNMI* v. *United States,* 670 F. Supp. 2d 65 (D.D.C. 2009). The transition to U.S. immigration law took place on November 28, 2009 as scheduled. The court entered the requested preliminary injunction and enjoined the CNMI-only transitional worker interim final rule. *Id.* On June 21, 2010, the district court entered a minute order staying proceedings pending the promulgation of the CNMI-only transitional worker final rule.

CFR 103.7(c)(3)(iii). The fee provision is also technically revised to conform the rule to 8 CFR 103.7, as reorganized in the DHS final rule, U.S. Citizenship and Immigration Services Fee Schedule, 75 FR 58961 (Sept. 24, 2010).

6. Consistent with the CNRA, the interim final rule provided for a maximum number of CW–1 visas of 22,417 for the time period between the rule's effective date and September 30, 2010. The numerical limitation for that period of time is now moot, so the limitation is revised to extend the 22,417 number to fiscal year 2011 (beginning October 1, 2010). The final rule reduces the number of CW visas by one (to 22,416) for the subsequent fiscal year, fiscal year 2012 beginning October 1, 2011. Unused numbers will not carry over from one fiscal year to the next. *See* new 8 CFR 214.2(w)(1)(viii).

7. The final rule clarifies the impact of a pending petition or application by providing that a foreign national with CW–1 status may under certain circumstances work for a prospective new employer after the prospective new employer files a Form I–129CW petition on the employee's behalf. *See* new 8 CFR 214.2(w)(7)(iii) and 274a.12(b)(23). The final rule also provides that a lawfully present, work authorized and employed beneficiary of a CW–1 petition filed on or before November 27, 2011 applying for a grant of status in the CNMI may lawfully continue the employment in the CNMI until a decision is made on the petition. *See* new 8 CFR 274a.12(b)(23). The final rule makes a conforming clarification to the definition of ''lawfully present in the CNMI'' to ensure that aliens remain eligible for CW status after November 27, 2011 based upon an application for CW status filed before that date. *See* new 8 CFR 214.2(w)(1)(v)(A).

8. The final rule clarifies petition validity and admission periods. A petition is valid for admission to the CNMI in CW status during its validity period, and up to ten days before the start of the validity period. *See* new 8 CFR 214.2(w)(16). Admission to the CNMI and authorized employment in CW status is limited to the petition validity period, not to exceed one year. *See* new 8 CFR 214.2(w)(13). CW status expires ten days after the end of the petition's validity period, when the alien violates his or her status (or, in the case of a status violation caused solely by termination of employment, 30 days after the date of termination if a new employer files a nonfrivolous petition within that 30-day period), or at the end of the transitional worker program, whichever is earlier. *See* new 8 CFR 214.2(w)(7)(v) and (w)(23). The transitional worker program will terminate either upon the end of the transition period or, if the transitional worker provisions of the CNRA are extended by the Secretary of Labor pursuant to 48 U.S.C. 1806(d)(5), at the end of that extended period, whichever is later. *See* new 8 CFR 214.2(w)(23).

9. The final rule clarifies that a biometric services fee may be collected for each beneficiary of a CW–1 petition and or the spouse or children applying for extension or change of status, in addition to the biometrics fee paid at the time of the initial request. The final rule also specifies that a biometric services fee may be required for each beneficiary for which CW–1 status is being requested and for each CW–2 on the application. Further, a biometrics services fee will be required in order to cover the costs of conducting the necessary background checks and for identity verification even when the biometrics of the applicant of beneficiary is stored and reused and not collected again in connection with the new request. *See* new 8 CFR 214.2(w)(15). This change is consistent with biometrics collection policies in other programs managed by USCIS and does not represent a substantive change.

10. The final rule makes a number of other minor clarifying and updating changes, such as removing references to petitions filed before the transition program effective date since no such petitions could have been filed, clarifying the definition of ''transition period'' to extend the time period of the CW program to conform to any extension by the U.S. Secretary of Labor, and updating the definition of ''lawfully present in the CNMI.'' *See, e.g.,* new 8 CFR 214.2(w)(1)(v) and (xi).

11. The interim final rule proposed that denied petitions may be appealed to the USCIS Administrative Appeals Office. *See* new 8 CFR 214.2 (w)(21). The final rule adds the phrase ''or any successor body'' to the provision describing where a denial may be appealed.

IV. Public Comments Received on the Interim Final Rule

During the initial and extended comment periods, DHS received 146 comments from a broad spectrum of individuals and organizations, including the CNMI Governor's Office, the Saipan Chamber of Commerce, a former Senator of the CNMI, and other interested organizations and individuals. DHS considered the comments received and all other material contained in the docket in preparing this final rule. This final rule does not address comments that were beyond the scope of the interim final rule, including those seeking changes to United States statutes, changes to regulations or petitions (outside the scope of the interim rule), or changes to the procedures of other DHS components or agencies. The final rule also does not address comments on the CNMI's government functions. All comments and other docket material are available for viewing at the Federal Docket Management System (FDMS) at *http://www.regulations.gov,* docket number USCIS–2008–0038.

A. Summary of Comments

Of the 146 comments received, four comments supported the provisions in the rule as a whole and welcomed the efforts of DHS to minimize, to the greatest extent practicable, potential adverse economic and fiscal effects of federalization and to maximize the Commonwealth's potential for future economic and business growth.

Most commenters expressed concerns over specific provisions in the interim final rule, such as: The transitional worker eligibility requirements; the exclusion of certain occupational categories; the transitional worker classification's allocation system; the petitioning requirements; the ability to acquire transitional worker status in the CNMI without a visa; the requirement to obtain a visa to re-enter the CNMI; and the length of the transition period. Several commenters suggested limiting the transitional worker classification to foreign workers already in the CNMI. Some opposed the blanket exclusion of certain occupational categories and stated that any exclusion would negatively impact the CNMI economy. Other commenters stated that DHS did not meet the requirement to establish and enforce a transitional worker permit system that provides for the allocation and reduction of workers. Many opposed the petitioning requirement and fees by suggesting the automatic conversion of all CNMI permits into transitional worker status. Others opposed the travel restrictions on the transitional worker classification and the visa requirement to re-enter the CNMI. Some suggested that DHS permit travel in the CW status, on the CNMI permit, or issue a waiver of the visa requirement.

B. General Comments

The comments received and DHS responses are organized by subject area and addressed below.

Sixty-one commenters expressed concern, supported, or offered general suggestions regarding the transitional worker rule.

1. System of Permits Versus System of Status

Two commenters stated that the CNRA did not authorize DHS to create a new status for workers. They argued that transitional worker status is not necessary because DHS only needs to control worker permits. The commenters suggested that the statute provides no basis for transforming the system of ''permits'' for employers into a system of ''status'' for alien workers. They argued that the term ''permit'' applies only to an employer and is not synonymous with the term ''CW status'' which applies only to a worker. The commenters added that DHS created a ''status'' for workers instead of following Congressional intent to create a ''permit'' for employers. The commenters wrote that, by doing so, DHS intended to restrict workers from moving from employment under Commonwealth-approved contracts to Federal permit-approved employment and back again during the first two years of the transition program. The commenters added that the statutory provision allowing ''registration'' of aliens present in the Commonwealth did not authorize DHS to create a separate ''status'' for persons so registered. *See* 48 U.S.C. 1806(e)(3).

DHS interprets the CNRA to authorize DHS to administer the permit system in a manner deemed most reasonable and efficient. *See* 48 U.S.C. 1806(d)(2). The CNRA also authorized DHS, in its discretion, to implement a registration program to aid in the federalization process. *Id.* at 1806(e)(3). The CNRA did not state that the Federal permit system should mirror the current CNMI permit system under its prior immigration laws. It is not reasonable for DHS to administer a permit system outside of the immigration laws of the United States. DHS interprets the CNRA to allow it to establish a classification within its existing system. While the CNMI's formerly applicable immigration law refers to a system of ''permits'' and Federal immigration law refers to ''status,'' both terms apply to the alien's period of stay and conditions of such stay. DHS believes it is reasonable to interpret that the CNMI permit is comparable to the federal immigration status because they both set conditions for the admission of the foreign workers. As such, DHS implemented a transitional worker program to be consistent with federal immigration laws, including all fees, petition and application procedures. Therefore, the final rule requires that employers petition for transitional workers and allows employees to change employers under INA section 248 and obtain lawful permanent status, if eligible, under INA section 245. *See* new 8 CFR 214.2(w)(5) and (7). The CNMI permit system did not offer such flexibility. While DHS did not use the CNRA's registration provision in developing the rule, it provides a transitional program as mandated by the CNRA within the parameters of the existing Federal system.

2. Immediate Implementation

Four out of 61 commenters suggested that the transitional worker rule be immediately implemented to avoid adverse effects on the CNMI's fragile economy. One of these commenters supported the rule as a whole and welcomed the efforts of DHS to provide for an orderly transition by addressing security, foreign labor, illegal activity, and the promotion of U.S. citizen hiring. Another commenter requested that the rule be finalized only after issuance of the congressionally mandated U.S. Government Accountability Office (GAO) report.[5]

DHS appreciates the support of its efforts and the concerns expressed about minimizing the effect of the transition on the CNMI economy. Consistent with the statement of congressional intent in the CNRA, this final rule attempts to avoid adverse effects to the CNMI economy by providing as much flexibility as possible in administering the CW classification. See 48 U.S.C. 1806 note. DHS continues to work with other Federal agencies to coordinate implementation of the CNRA. Such coordination will extend to the statutorily mandated reports to Congress, including the GAO Report (GAO–10–553) released on May 7, 2010, and the recommendations contained therein. Accordingly, DHS has not adopted the suggestions that the final rule be immediately implemented or delayed, and this rule implements the CW classification.

3. Lawful Permanent Residence

Forty-one out of 61 commenters suggested that, to support a stable work force, foreign workers in the CNMI should be given lawful permanent residence, some other improved immigration status, or a pathway to U.S. citizenship. Many of the commenters suggested such status for guest workers who have worked in the CNMI for years. Others suggested lawful permanent residence, some other improved immigration status, or a pathway to U.S. citizenship for all foreign workers, regardless of their time in the CNMI. Some suggested such status for long-term guest workers with U.S.-born children or families within the CNMI.

Three of the commenters suggested that DHS create and grant a unique permanent status (Lawful Permanent Resident (LPR)-CNMI Only) to foreign workers who have been living in the CNMI for 3 years on the enactment date of the CNRA (May 8, 2008), and who are otherwise admissible. One commenter suggested a scoring system to decide how to grant permanent residence. One suggested a permanent CNMI-only H–2 program.

While these suggestions fall outside the scope of this regulation, it is important to note that the CNRA authorizes the Secretary of Homeland Security to create only a nonimmigrant classification in the Commonwealth during the transition period. *See* 48 U.S.C. 1806(d). In compliance with the CNRA, DHS is establishing a nonpermanent classification, available only during the transition period (unless extended by the Secretary of Labor), to provide a guest worker with lawful nonimmigrant status. *See* new 8 CFR 214.2(w)(1)(xi). The CNRA does not provide DHS with authority to create a permanent immigration path specifically for the CNMI, nor does any other law. Under the CNRA, a transitional worker may adjust to lawful permanent resident status throughout the transition period, if eligible through another immigrant-based petition or application under the provisions of the INA. *See* 48 U.S.C. 1806(d)(1). For these reasons, DHS is unable to accept the suggestions of these commenters.

4. Immigration Law

One commenter expressed concern regarding the complexity of the immigration laws and the effect of such complex laws on small businesses. DHS understands the concerns of the commenter and agrees that immigration law is complex. Nonetheless, DHS has no power to change the immigration laws and is unable to make any changes in the rule to address this commenter's concerns. DHS understands that the transition of the CNMI to the U.S. immigration system offers both benefits and challenges to the CNMI population. This rule promulgates provisions governing CW status consistent with other INA nonimmigrant categories. The rule attempts to incorporate standard elements from other nonimmigrant categories to maintain regulatory consistency. Employers wishing to

[5] The GAO report was released on May 7, 2010. *See* GAO, *Commonwealth of the Northern Mariana Islands, DHS Should Finalize Regulations to Implement Federal Immigration Law,* No. GAO–10–553 (May 7, 2010), available at *http://www.go.gov/new.items/d10553.pdf.*

employ foreign workers must abide by all rules set forth in the Code of Federal Regulations. USCIS has conducted extensive outreach to explain the complexities of U.S. immigration law to the community, private sector employers, and CNMI governmental officials, including numerous meetings and information sessions in Saipan, Tinian and Rota with stakeholder groups and the general public, as well as posting informational materials on the USCIS Web site on a variety of CNMI-related topics. Among other things, in October 2009, USCIS conducted outreach on DHS regulations initially implementing the CNRA. In December 2009, USCIS again conducted outreach to employers and the public, focusing on employment eligibility verification (Form I–9) requirements. In January 2011, DHS conducted outreach on Saipan for the December 20, 2010 final rule, E–2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands With Long-Term Investor Status, with community based organizations, CNMI government representatives and local business leaders. USCIS plans to conduct similar outreach efforts for this final rule. In addition to CNMI-specific materials, USCIS also provides helpful explanations of U.S. immigration law on its Web site and provides a dedicated employer information telephone line. Thus DHS believes that it has taken reasonable and substantial action to mitigate any adverse impacts that implementation of the CNRA and the CW classification may entail with respect to availability of information.

5. Labor Law

Five out of 61 commenters expressed concerns regarding the rule's effect on labor laws and the CNMI permitting system. One of these commenters stated that the rule violates the contract workers' rights. Four of the commenters stated that the rule sets up a labor permitting system that fails to address the many issues that have plagued the CNMI nonimmigrant guest workers by eliminating all of the existing labor protections under the previous CNMI immigration system. They added that the rule subjects foreign workers to abuses that currently affect the H–2 visa program and assert that such past abuses were eliminated from the CNMI program. Two of these commenters believe that, given such progress under CNMI law, DHS should support and not seek to eliminate the Commonwealth's guest worker program. The commenters argued that the interim rule failed to provide a reasonable mechanism to facilitate any cooperation between the two systems or any practical means for Commonwealth enforcement of its labor laws in connection with the Federal system.

The CNRA requires the discontinuation of the CNMI's previous immigration system. As required by the CNRA, this final rule creates a new transitional worker classification and recognizes CNMI-issued work permits during the first two years of the transition period. *See* new 8 CFR 214.2(w)(1)(v). Foreign workers granted work authorization from the CNMI government will continue to be work authorized under U.S. immigration law for the duration of the permit's validity or up to two years after the transition program effective date, whichever is shorter. *See* 48 U.S.C. 1806(e)(2). This employment authorization under Federal immigration law affects only the basic privilege to work in the CNMI. Employers in the CNMI remain responsible for complying with other applicable requirements of law, such as wage and hour and occupational safety requirements. DHS assumes that the Commonwealth will continue to enforce its local labor laws to the extent that they are not preempted by Federal immigration law. Nevertheless, DHS cannot accept the commenters' suggestion to replicate or rely on the authorities and processes of the CNMI with respect to work authorization of aliens for establishing and administering the CW classification. Though these commenters indicate that the pre-November 28, 2009 system was a preferable immigration and labor policy to federalization, Congress eliminated that system and required that DHS implement federal immigration law in the CNMI. *See* section 701(a) of the CNRA, 48 U.S.C. 1806 note. Perpetuating CNMI authorities, even if it were lawful to do so under the CNRA, would be contrary to the letter and spirit of the CNRA that Federal transition programs and authority be established as promptly as possible in the CNMI. *Id.*

This final rule incorporates CNMI labor law protections in its description of an eligible employer. *See* new 8 CFR 214.2(w)(4). The rule provides that, in order to be eligible to petition for a transitional worker, an employer must offer terms and conditions of employment consistent with the nature of the occupation or industry in the CNMI. *Id.* It also provides that employers must comply with all U.S. Federal and Commonwealth requirements relating to employment, including but not limited to nondiscrimination, occupational safety, and minimum wage. *Id.* The reference to Commonwealth requirements is intended only to include those aspects of Commonwealth law that are not immigration law. CNMI law relating to employment authorization of aliens is immigration law that has been superseded by the CNRA.

DHS understands the concern of commenters about the possible revival of past worker abuses that occurred in the CNMI. Like workers in other parts of the United States, all employees who work in the CNMI are protected by a variety of Federal civil rights, labor, and workplace safety laws that are enforced by the U.S. Department of Justice (U.S. DOJ) and the U.S. Department of Labor (U.S. DOL).

6. Adverse Effects

Two commenters suggested revising the rule to minimize the serious adverse effect and increased burdens. The commenters did not address any specific actions to take or what effects needed mitigation. DHS therefore has not changed the rule in response to this comment. The interim final rule was drafted consistent with expressed Congressional intent to minimize the potential adverse economic and fiscal effects of the federalization of the CNMI's immigration program. DHS is aware that the CNMI is experiencing a severe economic downturn during the current decline in the world economy. DHS formulated this rule to be as inclusive as it reasonably could within the parameters of the statute. Moreover, DHS has made additional changes in the final rule to that end. This final rule provides for an initial grant of CW–1 transitional worker status or CW–2 dependent status in the CNMI without having to travel abroad to obtain a nonimmigrant visa, for need-based waivers of the filing fee for dependent family members seeking CW–2 status in the CNMI, and, as discussed in more detail below, for a limited travel exception, where appropriate, to the otherwise applicable bar on travel elsewhere in the United States by aliens in CW status, for Philippine nationals who hold CW status and travel between the CNMI and the Philippines directly through Guam. Thus, DHS believes that it has minimized adverse effects and burdens caused by this rule.

7. DOI Report

Five commenters offered suggestions regarding the Department of the Interior's (DOI) Report on the Alien Worker Population in the Commonwealth of the Northern Mariana Islands (the ''DOI Report'').[6] They

[6] *See Secretary of the Interior, Report on the Alien Worker Population in the CNMI* (April 2010),

suggested that the Report to Congress should contain a joint recommendation (from DOI, DHS and the CNMI Governor) to allow guest workers to apply for enhanced status. One of these commenters stated such recommendations to improve immigration status for long-term alien workers can be addressed during the transition period but no later than the April 2010 report. The commenter was concerned that neither Federal agencies nor the CNMI governor reached a decision.

The DOI Report was released in April 2010. DHS continues to work together with other Federal agencies to coordinate the implementation of the CNRA provisions in the Commonwealth. Such coordination extended to the statutorily mandated reports to Congress and any recommendations contained therein.

C. Specific Comments

The specific comments are organized by subject area and addressed below.

1. CNMI-Only Transitional Workers: CW Eligibility Requirements

Twenty-six commenters expressed concern or offered suggestions regarding the rule's eligibility requirements.

(a) Foreign Workers in the CNMI

Five out of 26 commenters suggested that transitional worker status should be limited to guest workers present in the CNMI and should not be available to those abroad. Two of these commenters suggested that the rule intends to admit new foreign workers to the Commonwealth without regard to economic impact or regulatory effect on the Commonwealth. The commenters suggested that the likely effect will be to encourage the entry of very low-wage, unskilled workers, who would displace experienced on-island foreign workers, resulting in unemployment and incentives to fall into illegal status.

Eighteen of 26 commenters suggested that the transitional worker program provide a hiring preference for foreign workers currently in the CNMI. Three of these commenters suggested that DHS place a numerical limitation on transitional workers coming from abroad in order to provide foreign workers in the CNMI with the hiring preference. Six of these commenters suggested that DHS conduct a registration, as mentioned in the CNRA, of alien workers present in the CNMI to ensure that any jobs that need to be performed by the alien workforce would first be offered to on-island workers. Another commenter suggested that DHS conduct a registration to determine the number of guest workers in the CNMI and their corresponding job categories. The commenter wrote that the data on the available workforce may deter employers from hiring abroad. One commenter suggested a hiring preference for Filipino foreign workers in the CNMI. Another suggested that the transitional worker program provide a hiring preference for guest workers present in the CNMI for over 5 years.

The transitional worker program will be available to two groups of aliens in general: (1) Those who are present in the CNMI and (2) those who are abroad. *See* new 8 CFR 214.2(w)(2). In the CNRA, Congress expressed its intent that the transitional worker program provide for an orderly transition from the CNMI permit system to the U.S. Federal system while minimizing potential adverse economic and fiscal effects. *See* 48 U.S.C. 1806 note. Consistent with that intent, this rule does not limit access to workers already present in the CNMI. It provides CNMI employers with the ability and flexibility to maintain their existing foreign workers for current business needs. It also preserves employer access to new workers in order to accommodate new economic opportunities. *See* new 8 CFR 214.2(w)(2).

While information on guest workers and their current job categories may be helpful, DHS does not plan to limit the availability of transitional workers to guest workers currently on the islands. The CNRA requires that the allocation of transitional worker visas be reduced to zero by the end of the transition period, but it does not limit eligibility for the visa to foreign workers in the CNMI. *See* 48 U.S.C. 1806(d)(2). DHS believes that limiting CW–1 issuance to foreign workers already present in the CNMI or to Filipino foreign workers in the CNMI, would run counter to the CNRA's requirement to mitigate harm to the Commonwealth's economy. This rule provides access to foreign workers abroad to preserve the CNMI's ability to meet future demands for labor. DHS, in consultation with other Federal agencies, will consider registration as it continues to evaluate the CNMI's economic needs. Accordingly, no changes were made to the final rule as a result of these comments.

(b) Ineligibility for Another INA Classification

Three commenters expressed concern regarding the rule's requirement that the transitional worker classification be limited to nonimmigrant workers who would not otherwise be eligible for another INA classification. Two of these commenters argued that such a requirement is a misinterpretation of the law and will deprive the Commonwealth of skilled workers. The commenters stated that the CNRA's intent is to preserve a choice: Workers may choose either transitional worker status or another nonimmigrant status. All three commenters were concerned that certain aliens eligible for an INA-based status may only be eligible for transitional worker status because employers would be unable to petition for other INA classifications due to financial difficulties. The commenters stated that they would be unable to meet the income requirements for other INA classifications.

DHS disagrees with these comments. The CNRA requires that the transitional worker classification be used only for foreign workers ''who would not otherwise be eligible for admission under the [INA].'' 48 U.S.C. 1806(d)(2). This final rule states that guest workers eligible for other INA classifications at the time of a petition for CW status must apply for such status. *See* new 8 CFR 214.2(w)(2)(vi). This requirement stems directly from the CNRA requirement. *See* 48 U.S.C. 1806(d)(2). CNMI employers may use the CW classification during the five-year transition period while workers and employers seek to satisfy requirements, such as any necessary professional licenses or educational degrees, for other employment-based status under the INA. DHS is implementing this provision in as flexible a manner as possible. For example, this rule requires only an attestation that the employer does not reasonably believe the position to qualify for another INA nonimmigrant worker classification, as opposed to requiring the employer to petition for other INA classifications before seeking CW status. *See* new 8 CFR 214.2(w)(6)(ii)(G).

2. Employers

Fourteen commenters offered suggestions, or opposed the rule's requirements, for employers and the proposed exclusion of certain occupational categories.

(a) Terms, Conditions of Employment, and Transfers

Two commenters stated that the rule's provision with respect to terms and conditions of employment and transfers will likely lead to abuses. The commenters stated that the DHS rule requires only that an employer ''[o]ffer terms and conditions of employment

available at http:/www.doi.gov/oia/reports/042810_FINAL_CNMI_Report_pdf.

which are consistent with the nature of the petitioner's business and the nature of the occupation, activity, and industry in the CNMI.'' *See* 8 CFR 214.2(w)(4)(iii). They added that employers are not required to attest that they have met this condition. Another commenter suggested that all of the Commonwealth's requirements protecting workers could be undone by contracts that comply fully with the DHS requirement. The commenter then suggested that the DHS rule cannot ''prevent adverse effects on wages and working conditions'' as required by 48 U.S.C. 1806(d)(2). The commenter added that the DHS interim rule provides no protection for a nonimmigrant resident alien who is the subject of a petition that is denied, perhaps due to the negligence of an employer. The commenter further stated that the rule would be more restrictive than the Commonwealth system for transfers.

DHS agrees with the comments that the rule would be strengthened by further incorporating the terms and conditions of an employment requirement into the attestation requirement for employers. DHS has added a requirement that the employer attest that it will comply with the requirements for an eligible employer, which include offering appropriate terms and conditions for the intended CW–1 employment. *See* new 8 CFR 214.2(w)(6)(ii)(D). With respect to the comments expressing a preference for the Commonwealth's requirements protecting workers, a previous discussion in this preamble addressed this subject and explained why DHS cannot adopt these comments. Many of these comments deal with employment, labor, and safety laws that exceed the scope of this rule. By making the procedures for employers as clear and transparent as reasonably possible in order to implement the transitional worker provisions of the CNRA, including promulgation of a specific form for this petition (the I–129CW Form), the final rule provides protections to workers from employer negligence or error. However, it must be understood that these CNRA provisions are employer-based, and have been implemented accordingly. The employer, not the employee, files the petition, and it is the employer's discretionary choice whether or not to do so. This rule provides no steps for employees to take in order to keep their status in the CNMI. *See* new 8 CFR 214.2(w)(5). Thus no additional changes are made in response to these comments.

(b) Blanket Exclusion of Certain Occupational Categories

The interim final rule did not exclude any occupational categories from eligibility for CW workers, but DHS indicated that it was considering excluding dancing, domestic workers, and hospitality workers based upon human trafficking concerns, and specifically invited comment on this subject. Six out of 14 commenters opposed a potential final rule excluding certain occupational categories in order to combat human trafficking and sexual exploitation. These commenters stated that prohibiting a particular occupation will not effectively combat human trafficking. Some argued that the rule hurts the CNMI's successful efforts to stop trafficking under its 2007 reform law. Others stated that the exclusion of the proposed categories will not help deter the worker exploitation problem because exploitation occurs in a wide range of occupational categories and a foreign worker can technically enter any of those occupational categories. The commenters added that a blanket exclusion of any occupational category or legitimate business that supports the CNMI economy runs counter to the CNRA's stated purpose of providing flexibility to maintain existing businesses and expanding tourism and economic development in the CNMI. They also argued that the CNRA does not provide statutory authority for the blanket exclusion and that a blanket exclusion is inappropriate and will cause further economic harm.

Two other commenters added that the exclusion of occupations that serve the tourist industry is not justified and will cause substantial harm. They stated that the proposed exclusion is based on a concern regarding abuse against women and, as such, is discriminatory because it is not gender neutral. The commenters noted that such restrictions are unnecessary because prostitution is a crime under CNMI law.

Commenters suggested that DHS offer protection from exploitation through a system of employment regulation combined with enforcement of the laws intended to protect guest workers regardless of occupational category. The commenters suggested that DHS conduct site visits and that any exclusion or employer debarment be based on a specific finding indicating that a particular business is violating a law, not based on evidence of past abuses. The commenters argued that the rule's requirement that employers must be engaged in legitimate business is not the appropriate regulatory means to address the DHS concern.

DHS agrees that exploitation can occur in any occupational category. The proposed exclusions were supported by the findings of a GAO report and Congressional hearings, which indicated that the excluded occupational categories have been prone to widespread abuse. U.S. Gov't Accountability Office, GAO–08–791, *Commonwealth of the Northern Mariana Islands, Managing Potential Impact of Applying U.S. Immigration Law requires Coordinated Federal Decisions and Additional Data* (2008); *see, e.g., Conditions in the Commonwealth of the Northern Mariana Islands: Hearing before the S. Comm. on Energy and Natural Resources,* 110th Cong. 50 (2007) (testimony of Lauri Bennett Ogumoro and Sister Mary Stella Mangona) (*2007 Senate Hearing*). In addition, DHS notes that the proposed exclusion of certain tourist industry workers was gender neutral and would be applied in a gender neutral manner. Nevertheless, DHS agrees that a blanket exclusion of certain occupations may negatively impact the CNMI's economy. This final rule does not include a blanket exclusion of any specific occupational category, but consistent with the CNRA's requirement for business employers, retains the requirement that all employers must be engaged in a legitimate business. *See* 48 U.S.C. 1806(d)(5)(A); new 8 CFR 214.2(w)(4).

(c) Exclusion of Domestic Workers

Five commenters suggested that the rule should allow domestic workers as transitional workers. One of these commenters disagreed with the requirement that only businesses will be allowed to petition for domestic workers as CW workers. That commenter also argued that individual households should be allowed to employ domestic workers directly and the renewal of the contracts should be based on the proper tax filings of the workers.

Two additional commenters argued that the definition of a ''legitimate business'' cannot be used to bar households from employing caregivers. The commenters argued that the determination as to ''legitimate business'' only relates to the task of determining whether an adequate number of workers are available. As such, they stated that domestic workers are currently entitled to work until the transition period ends. The commenters further stated that DHS may not ''disqualify an entire business on the basis of 'illegal' activity, except on the basis of conviction of a crime, and may not impute the crime of an officer to the entire business without due process.''

They additionally asserted that since DHS seeks to disqualify a business if it engages ''directly or indirectly in any activity that is illegal under Federal or CNMI law,'' the regulations should be clear that only a conviction of a crime can be the basis for this disqualification.

The CNRA transitional worker provisions were intended to address the needs of legitimate businesses. *See* 48 U.S.C. 1806(d)(5)(A). DHS believes that the rule's provision regarding legitimate businesses accords with the CNRA and is lawful and appropriate. While the rule does not prohibit domestic workers from obtaining CW status, for their protection and for the legitimacy of the petition process, the rule reasonably requires that domestic workers be channeled through an established, legitimate business operation. *See* new 8 CFR 214.2(w)(4). The commenters who wrote that domestic workers are currently entitled to work until the transition period ends are incorrect. Workers authorized by the CNMI before November 28, 2009 are authorized to work for up to two years or the date of expiration of their CNMI-issued permit, whichever occurs first—not for the entire transition period. With regard to the comment suggesting the level of criminal activity or proof that should render a petitioning employer ineligible, the CNRA does not require a conviction for the direct or indirect illegal activity provision to be applied. Therefore, DHS has retained that provision unchanged in the final rule.

For the purposes of the transitional worker program, the final rule states that a legitimate business is a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit or is a governmental, charitable or other validly recognized nonprofit entity and meets applicable legal requirements for doing business in the CNMI. *See* new 8 CFR 214.2(w)(1)(vi). The rule is also consistent with the definition of ''doing business'' in other classifications under the INA. *See* 8 CFR 204.5(j)(2). As such, the final rule states that a petitioner is ''doing business'' if engaged in the regular, systematic, and continuous provision of goods or services. *See* new 8 CFR 214.2(w)(1)(ii). An individual employing a household worker is not engaged in the systematic provision of goods or services and is not ''doing business'' for the purpose of the transitional worker program. No change was made as a result of this comment.

Additionally, a stated purpose of the CNRA is to combat human trafficking and other widespread abuse. *See* 48 U.S.C. 1806 note. Congressional hearings held prior to passage of the CNRA focused on the issue of domestic workers in the CNMI. *See, e.g., 2007 Senate Hearing.* Congress was provided with evidence that directly employed domestic workers have been subject to widespread abuse and have been victims of human trafficking. *Id.* Allowing only domestic service companies to file for CW workers is consistent with the decision to not exclude any specific occupational categories and to consider petitions by legitimate businesses on a case by case basis. Therefore, domestic workers will be afforded the same sorts of employment protections as other CW workers in the CNMI, whose employer petitioners must be legitimate businesses under the terms of this final rule. Accordingly, DHS will not change the final rule and will limit filings for CW domestic workers to domestic service companies.

It is important to note that a household worker may still be eligible for transitional worker status if a business petitions for the worker. The occupational category itself is potentially eligible for the transitional worker status. DHS is only limiting such filings for CW workers to domestic service companies operating as legitimate businesses. Therefore, it is possible that domestic workers qualify for transitional worker status through employment by a business which places domestic workers in individual households.

One commenter suggested that domestic workers should be offered permanent immigration status. As previously discussed, the CNRA only authorizes DHS to create a nonimmigrant classification to ensure adequate employment in the Commonwealth during the transition period. *See* 48 U.S.C. 1806(d). There is no authority under the CNRA for DHS to establish an immigrant classification. Thus no change is made in the final rule. The CW classification is a temporary classification, available only during the transition period, to provide a guest worker with lawful nonimmigrant status.

3. CNMI-Only Transitional Worker Allocation System

Thirty commenters offered suggestions for, or opposed, the transitional worker allocation system.

(a) Allocation of Transitional Worker Classifications

Three commenters stated that DHS did not implement a transitional work permit system as required by the CNRA. They stated that DHS was required to establish and enforce a transitional work permit system in the CNMI that provided the criteria for allocating transitional workers to employers or industries during the transition period. *See* 48 U.S.C. 1806(d)(2). Specifically, two of these commenters argued that there were no allocation criteria. One commenter stated that the rule did not describe a system or criteria for allocating how the permits are to be divided among employers. This commenter argued that DHS will be required to allocate permits among CNMI employers whose collective demand for foreign workers is greater than the available number of permits during the following year. The commenter added that reliance on the H visa system is not a substitution for establishing the system required by the CNRA. The second commenter further argued that an annual determination is not an adequate substitute for such a process. A third commenter noted that any system will have to offer careful consideration to the economies of all three islands to avoid the harm that may result from the allocation of all slots to one island such as Saipan.

The CNRA requires the Secretary of Homeland Security to establish a permit system for prospective employers based on any reasonable method. *See* 48 U.S.C. 1806(d)(2). DHS interprets this mandate to allow it to establish a classification within its existing system, which it has done. The Federal immigration system requires employers to submit petitions for their employees. This final rule incorporates standard elements of the Federal immigration system, including the DHS petitioning and classification process, and thus it is consistent with current law, reasonable, and consistent with the intent of the CNRA.

Additionally, the CNRA requires an annual reduction in the number of permits and total elimination of the CW classification by the end of the transition period. *Id.* The CNRA does not dictate how this will occur. As indicated in the interim rule, DHS will publish a **Federal Register** notice announcing the annual numerical limitation. DHS believes that the number of workers provided in the first years in this rule, coupled with the **Federal Register** notice, will be sufficient notice and guidance to implement the required CW classification drawdown.

(b) Numerical Limitation by **Federal Register** Notice

One commenter stated that the CNRA does not authorize the issuance of regulations in piecemeal form over time that address various aspects of the work

permitting system but rather requires one single document. The commenter also opposed the issuance of a **Federal Register** notice related to the numerical limitation. Another commenter suggested that DHS apply a periodic reduction in foreign workers without providing notice or comment.

As noted above, the CNRA provides that DHS may base the system on any reasonable method. *Id.* DHS determined that it is reasonable to base the transitional worker classification on the current nonimmigrant system. As such, this rule promulgates provisions governing the transitional worker classification and incorporates standard elements from current nonimmigrant categories to maintain regulatory consistency.

The CNRA also mandated that DHS provide the Commonwealth with flexibility to maintain existing businesses and develop new economic opportunities yet required an annual reduction in the number of permits and total elimination of the CW classification by the end of the transition period. *See* section 701(b) of the CNRA, 48 U.S.C. 1806 note; 48 U.S.C. 1806(d)(2). Consistent with this mandate, DHS has determined that it is appropriate to publish the CW annual numerical limitation rather than provide a permit reduction plan in this final rule due to the uncertainty of the CNMI's future workforce needs and economic conditions. The Secretary of Homeland Security has determined, in her discretion, that the annual numerical limitation will be published in a future **Federal Register** notice. *See* new 8 CFR 214.2(w)(1)(viii)(D). DHS believes that this method will maximize the Commonwealth's potential for future economic and business growth by providing a flexible mechanism for the continued use of alien workers during the phasing-in of Federal immigration law. DHS also believes that a **Federal Register** notice will provide sufficient public notice of the annual numerical limitation in accordance with the regulations established by this rule. However, as further discussed below, DHS has provided in this final rule the numerical limitation not just until September 30, 2010, as was provided in the interim final rule, but through the end of fiscal year 2012 on September 30, 2012. Given uncertainty about demand for the program, it would not be prudent to try to set numbers for time periods on or after October 1, 2012 at this time. The 22,417 and 22,416 workers provided for the first two years of the CW program in this rule, coupled with the **Federal Register** notice, will be sufficient information to implement the required CW classification drawdown. DHS will need to make the announcement in a timely fashion from the time of the decision to the issuance of the notice providing the new CW classification numerical limit. As such, DHS believes that a **Federal Register** notice is the most appropriate method to use to issue the necessary information.

(c) Total Number of Foreign Workers in the Work Force

One commenter suggested that DHS adopt the CNMI's proposed revision of the interim rule with regard to assessing the total alien work force and total work force. The same commenter took issue with the figures DHS used to project the number of CW grants of status. The commenter stated that the DHS estimate of 13,543 foreign workers in-status and 1,000 workers out-of-status who may be brought into lawful status under CNMI law was incorrect. The commenter stated that DHS incorrectly estimated the number of immediate relatives of foreign workers who may be eligible for CW–2 status. The commenter further stated that DHS's 2010 projections were also incorrect because most workers will be working under CNMI-issued permits and most employers will be employing workers under existing CNMI-approved contracts. As such, these workers would not need to enter the Federal immigration system for at least two years.

DHS disagrees with the commenter and believes that its estimate of the number of foreign workers is reasonable. The final rule sets forth the maximum number of persons who may be granted transitional worker status based on the CNMI government estimate of the nonresident workers as of May 8, 2008, the date of enactment of the CNRA. The 22,417 number was the total number of foreign workers working in the Commonwealth, according to the CNMI government, on that date.[7] In addition to the CNMI estimate,[8] DHS used data compiled by GAO and other credible resources in the development of this rule. *See, e.g.,* GAO–08–791, August 2008. DHS agrees with the commenter that the CNRA does not require that an employer petition for an INA benefit. Instead, employers have the option to retain the CNMI benefits during the grandfathered period or petition for INA benefits. As such, the number of CW petitions filed is directly connected to individual business decisions made by each CNMI employer's business needs. Therefore, the estimate is affected by a variety of factors that are not within DHS control. Thus, DHS has not adopted this commenter's suggestions in the final rule.

The interim final rule set a numerical limitation for the first year of the transition period (November 28, 2009 through September 30, 2010) at 22,417, with the limitation for fiscal year 2011 (beginning October 1, 2010) and subsequent fiscal years to be published via subsequent Notice in the **Federal Register**. Given the mootness at this time of transitional worker numbers for the period before October 1, 2010, the need for employers to have current usable information about the number of CW workers available for fiscal year 2011 and the expected expiration of a large number of ''umbrella permits'' in late 2011, this final rule updates the limitation to set the maximum number of CW–1 visas for fiscal year 2011 at 22,417. *See* new 8 CFR 214.2(w)(1)(viii)(A). In order to provide additional information and certainty to CNMI employers, the final rule also establishes the limitation for fiscal year 2012 (beginning October 1, 2011). New 8 CFR 214.2(w)(1)(viii)(B). As required by the CNRA, the number is reduced for fiscal year 2012, compared to fiscal year 2011; however, the reduction is only by one visa, in order to effectively maintain a steady level of available visas for the first two years of the CW program and accommodate potential demand caused by the expiration en masse of umbrella permits early in fiscal year 2012. Thus, 22,417 is the maximum number of CW–1 visas for fiscal year 2011, and 22,416 will be the maximum CW–1 visas available in fiscal year 2012. *See* new 8 CFR 214.2(w)(1)(viii). DHS does not expect the full number of available visas to be used, especially the fiscal year 2011 allocation, given the effective date of the final rule within that fiscal year and the continuing validity of umbrella permits. Nevertheless, setting the maximum this high will easily meet the projected CW visas needed by employers to transition umbrella permit holders to CW–1 status, regardless of the actual number of workers currently present on the island. Consistent with other classifications, if the numerical limitation is not reached for a specified fiscal year, the unused numbers do not carry over to the next fiscal year. This clarification in the final rule is necessary because (unlike the interim final rule) the final rule establishes the numerical limitation for more than one

[7] *See* Letter from Benigno Fitial, Governor of CNMI, to Richard C. Barth, Assistant Sec'y for Policy Dev., and Stewart A. Baker, Assistant Sec'y for Policy, Office of Policy, DHS (July 18, 2008) (Fitial letter), *available at http://www.regulations.gov* under DHS Docket No. USCIS–2008–0038.

[8] *See* Fitial letter.

fiscal year. While the umbrella permits do not expire until November 27, 2011, employers should apply well in advance of that date to ensure that their petitions are adjudicated and CW status granted before November 27, 2011. Although an employer cannot petition more than six months before the employment is to begin, an employer who needs the services of a worker with an umbrella permit need not wait until six months before the expiration to apply for CW status to replace the umbrella permit. The six-month time frame is based upon when the employer needs the worker, not when the worker's current immigration status expires. *See* new 8 CFR 214.2(w)(12)(ii).

(d) Reduction of Transitional Workers

Four commenters stated that DHS did not implement the statutory requirement that DHS establish and enforce a transitional work permit system in the CNMI that provides for a reduction in the number of transitional workers to zero by December 31, 2014. They stated that the rule only established a numerical cap. Without a reduction plan, employers cannot operate their businesses and plan for future access to foreign labor. Similarly, two commenters requested clarification on DHS' intent to draw down foreign workers to zero by the end of the transition period. One of these commenters also argued that the rule did not identify any criteria or methodology that will be used to reduce the number of permits on an annual basis. Specifically, the commenter disagreed with the DHS assertion that a permit reduction plan was not established due to a lack of specific data on the foreign worker population and due to the uncertainty of the CNMI's future economic conditions. The commenter stated that the DHS claim that specific data was unavailable was later impeached when DHS offered very specific figures regarding the number of foreign workers in the CNMI and suggested that DHS should have chosen an alternative set forth in the 2008 GAO report. Those alternatives set forth a range of possible outcomes in terms of impact on the Commonwealth's economy.

As discussed above, the final rule sets forth the maximum number of workers who may be granted transitional worker status during fiscal years 2011 and 2012. *See* new 8 CFR 214.2(w)(1)(viii). DHS based this number on the CNMI government estimate of the nonresident workers as of May 8, 2008, the enactment date of the CNRA.[9] DHS believes that it is prudent to consider this estimate as a baseline for the maximum number of possible transitional workers in the CNMI.

DHS did not establish a methodology for reducing the number of transitional workers, ultimately to zero by the end of the transition period. DHS believes that any methodology will require flexibility to adjust to the future needs of the CNMI economy. A methodology or formula set forth in a regulation does not provide such flexibility. Additionally, the CNRA only requires that DHS reduce the number of transitional workers on an annual basis. *See* 48 U.S.C. 1806(d)(2). It does not mandate an actual specific reduction. The final rule retains the interim rule's provision that the number of transitional workers will be reduced by at least one transitional worker per year. *See* new 8 CFR 214.2(w)(1)(viii)(C). As described above, this rule provides that the number of transitional workers will be reduced by one CW worker in fiscal year 2012 compared to the previous year, setting the maximum number of CW–1 visas at 22,416. This approach will ensure that there is a fully adequate supply of CW visas that encourages transition from the umbrella permit system to CW status for needed workers during fiscal years 2011 and 2012. *See* new 8 CFR 214.2(w)(1)(viii). For the years following fiscal year 2012, DHS will assess the CNMI's workforce needs on a yearly basis. *See* new 8 CFR 214.2(w)(1)(viii)(C).

(e) Reduction Plan Suggestions: Limiting Access to Foreign Workers

Two commenters suggested that transitional worker status should be limited to foreign workers present in the CNMI only, as opposed to any workers abroad sought to be imported under the transitional worker program. One of these commenters argued that the shortage of jobs in the Commonwealth makes it unnecessary for employers to go abroad for additional employees. One commenter suggested that such a limitation will help curb the incidents of human trafficking and help in the mandated reduction of transitional workers. Another commenter argued that allowing workers to come to the CNMI conflicts with the statutory goal of phasing-out all contract workers. The commenter added that the goal to ultimately phase-out contract workers would be furthered by preventing hiring from abroad and providing transitional worker status only to the current foreign work force in the CNMI.

While the CNRA requires that the allocation of transitional worker classifications be reduced to zero by the end of the transition period, it does not limit eligibility for the visa to foreign workers in the CNMI on or before the transition program effective date. *See* 48 U.S.C. 1806(d)(2). Instead, the CNRA establishes a transitional worker program for ''aliens seeking to enter the Commonwealth as a nonimmigrant worker.'' *See* 48 U.S.C. 1806(d). DHS believes that aliens seeking to enter the Commonwealth must include individuals that are not currently in the CNMI. Accordingly, DHS did not limit eligibility for CW–1 status to foreign workers already present in the CNMI because that would have placed strict limits on CNMI employers seeking to hire foreign workers. Similarly, DHS did not adopt either in the interim or final rule an opposite construction—that section 1806(d) means that only workers seeking to enter the CNMI from abroad, rather than any workers already present and working, may obtain transitional worker status—which is arguably a more supportable construction than the commenters' suggestions that the transitional program should include no workers coming from abroad. Such limits would run counter to congressional intent that DHS seek to minimize, to the greatest extent practicable, the potential adverse economic and fiscal effects of phasing-out the Commonwealth's system and to maximize the Commonwealth's potential for future economic and business growth by providing a mechanism for the continued use of alien workers. Therefore, the suggestions of the commenters on this subject were not adopted. This rule provides access to foreign workers abroad, as well as to those already present, to preserve the CNMI's ability to meet the demands of its economy. *See* new 8 CFR 214.2(w)(2).

(f) Reduction Plan Suggestions: Granting Lawful Permanent Residence

Eleven commenters suggested that DHS grant lawful permanent resident status, or some other immigration status, to guest workers. The commenters indicated that such a measure would stabilize the work force and help reduce the number of transitional workers to zero by the end of the transition period as required by the CNRA. One of these commenters suggested that DHS allow self-petitioning and make the CNMI-only classification a permanent status.

As previously mentioned, the CNRA does not authorize DHS to create a permanent CNMI classification. *See* 48 U.S.C. 1806(d). Lawful permanent resident status is available to a CW worker, though; thus, a CW worker may adjust to lawful permanent resident

[9] *See* Fitial letter.

status throughout the transition period, if eligible through an immigrant petition or application under the INA. *Id.* Since the commenters' suggestion cannot be adopted, no changes were made to the final rule as a result of these comments.

(g) Reduction Plan Suggestions: Assessing Labor Needs

Two commenters expressed concern about the need to assess the CNMI labor needs and use those needs to craft any reduction plan. One of these commenters suggested that DHS accurately assess the CNMI's total labor needs in order to avert a collapse of its economy. The commenter asserted that guest workers are most essential to the economy because other residents of the CNMI are reluctant to take the jobs that foreign workers will accept. The commenters also suggested that phasing out the transitional workers by 2014 may result in a chaotic situation for the CNMI's economy.

DHS understands that the CNMI economy has been based on a workforce made up mainly of workers from other countries. To address this concern, Congress included a provision in the CNRA that allows for an extension of the transitional worker classification for up to five years upon a finding that the CNMI's labor needs are not fulfilled with INA classifications or domestic sources. *See* 48 U.S.C. 1806(d)(5). Under the CNRA, the Secretary of the U.S. Department of Labor will ascertain the current and anticipated labor needs of the Commonwealth and determine whether an extension of the Transitional Worker Program is necessary to ensure an adequate number of workers are available for legitimate businesses in the CNMI. *Id.*

The second commenter stated that the rule ignores the current labor needs of the CNMI and creates uncertainty with respect to the availability of an adequate labor force. The commenter emphasized that it is extremely important to establish how DHS will phase out transitional workers because the reduced labor pool directly affects the CNMI's Gross Domestic Product. As previously mentioned, DHS did not provide a reduction in an attempt to provide the CNMI economy with the flexibility to grow or constrict its workforce according to market forces. Still, according to data on the number of foreign workers currently in the CNMI, the maximum number allowable under this rule appears to be quite adequate to meet the needs of CNMI businesses. Therefore, no changes to the final rule were made as a result of these comments.

(h) Reduction Plan Suggestions: No Reduction for the First Two Years

Two commenters suggested that the CNMI-issued permits and CNMI-approved employer contracts should be the foundation for the first two years of the transition period. These commenters further suggested no reduction in the number of foreign workers allowed legally in the CNMI should occur during those two years. The commenters suggested that the DHS rule state specifically that all CNMI-issued permits and contracts in force prior to the transition date on November 28, 2009, remain completely outside the Federal system until November 27, 2011, two years after the transition date.

DHS notes that the CNRA contains a grandfather provision, which grants work authorization to aliens in the CNMI with valid CNMI-issued work permits. See 48 U.S.C. 1806(e)(2). Work authorization is valid for the length of the work permit or until two years after the start of the transition period, whichever is shorter. *Id.* DHS does not agree with the commenter that all CNMI-issued permits and contracts in force prior to the transition period should be deemed completely outside the Federal system. It is true that to the extent workers have ''grandfathered'' work authorization (particularly those with ''umbrella permits''), their employers do not need to file CW nonimmigrant petitions on behalf of such workers to continue to employ them (so long as the grandfathered work authorization remains valid). However, the grandfather provision is itself a provision of Federal law (the CNRA). In response to concerns about permit allocation during the first two years of transition, however, DHS has (as described above) adjusted the rule to provide that a maximum annual number of 22,417 CW workers will be available in fiscal year 2011 (beginning October 1, 2010), and 22,416 in fiscal year 2012. See new 8 CFR 214.2(w)(1)(viii). This approach will help ensure that an adequate number of CW permits are available to CNMI employers during the time of necessary transition from grandfathered CNMI status to a Federal status before November 27, 2011, when umbrella permits will expire. Besides extending the 22,417 limitation from the first year of the transition period to fiscal year 2011 and reducing the maximum number of foreign workers by only one worker for fiscal year 2012, no changes are made to the final rule to address this comment.

(i) Reduction Plan Suggestions: No Reduction Pending U.S. DOL Determination on the Extension of the Transition Period

Two commenters suggested the rule include a plan under which DHS would collaborate with the U.S. Secretary of Labor to make the necessary assessment with respect to a five-year extension of the transition period no later than November 2011. The commenters also suggested that no reductions in the Commonwealth's workforce be made until the Secretary of Labor issues a determination on the extension.

Under the CNRA, only the Secretary of Labor has the authority to extend the transitional worker provisions of the transition period up to an additional five years. See 48 U.S.C. 1806(d)(5). DHS will continue to consult with U.S. DOL on all CNMI transition policies and issues; however, the requirements in the CNRA for extending the transition period are sufficient to address the issue. DHS does not believe that it is necessary, or appropriate, to include a deadline in this rule for U.S. DOL to make a determination on extending the transition period. Therefore, no changes are made as a result of these comments.

4. Petitioning Procedures

Fifty-six commenters expressed concern or offered suggestions regarding the rule's petitioning requirements.

(a) Grandfathering of CNMI Contract Workers

Eighteen commenters suggested that DHS issue an automatic conversion of all valid CNMI entry permit holders to transitional worker status. Some of these commenters opined that an automatic conversion into CW status, for one or two years, would help facilitate travel.

The commenters' suggestions to automatically convert valid CNMI entry permit holders into transitional worker status cannot be adopted. The CNRA requires DHS to recognize valid CNMI immigration status (and prohibits removal of such aliens for being present in the CNMI without admission or parole) until the expiration of such status up to a maximum of two years after the transition date. *See* 48 U.S.C. 1806(e)(1). The CNRA also requires that DHS recognize employment authorization until the expiration of such status up to a maximum of two years after the transition date. *See* 48 U.S.C. 1806(e)(2). Accordingly, DHS will recognize all CNMI permits within the stated timeframe.

DHS cannot automatically convert all permit holders to transitional worker status because the CNRA also requires

DHS to set conditions for admission under the transition program. *See* 48 U.S.C. 1806(d)(2). It directs that workers cannot be granted nonimmigrant classification or a visa under the transition program unless the permit requirements established have been met. *Id.* This provision does not authorize an automatic conversion of CNMI permits to transitional worker status. Consistent with other employment-based nonimmigrant classifications, DHS requires an employer to file a petition, Form I–129CW, for a CW–1 nonimmigrant worker in order to determine eligibility and set parameters for the program. *See* new 8 CFR 214.2(w)(5). This petitioning process is necessary to grant such status under the INA, as required by the CNRA. The CNRA requires the system for allocating ''permits to be issued to prospective employers * * *.'' *See* 48 U.S.C. 1806(d)(2). DHS believes that it would be inconsistent with this provision to grant CW status without an employer requesting it for a worker.

DHS will recognize permits as required by the CNRA. Otherwise, DHS will issue CW status in one-year increments in order to properly administer the allocation and annual reduction mandated by the CNRA. *See* new 8 CFR 214.2(w)(16). As discussed above, DHS cannot automatically convert CNMI permit holders to CW status. However, DHS has responded to the concerns of these commenters by providing in this final rule that lawfully present, work authorized aliens (including those with ''umbrella permits'') who are employed in the CNMI, and whose employers file petitions on or before the November 27, 2011 expiration date of CNMI permits seeking to continue to employ the aliens in CW–1 status via an application for a grant of status in the CNMI, will be authorized to continue in their employment after November 27, 2011. This authorized employment will continue until DHS makes a decision on the application. *See* new 8 CFR 274a.12(b)(23). This provision will prevent potential widespread loss of work authorization on November 27, 2011 by employees whose employers have filed CW petitions on their behalf before that date that are pending adjudication and the consequent potential disruptive effect on the CNMI economy.

DHS has made this accommodation in the final rule to address the unique circumstances in the CNMI, including the lack of familiarity in the CNMI with Federal immigration processes and statuses relative to other U.S. jurisdictions because Federal immigration law has only applied since November 28, 2009 and most aliens in the CNMI remain and work in the Commonwealth under umbrella permits or other authorization issued by the CNMI government before that date; the expiration of those permits on November 27, 2011; the adverse economic situation in the CNMI; and the legislative direction in the CNRA to seek to minimize adverse effects of the federalization of immigration authority.

Under new 8 CFR 274a.12(b)(23), the continuing work authorization will continue until DHS makes a decision on the application seeking CW status in the CNMI; that is, until either the application is granted and CW status provided to the alien worker, or until it is denied. Denial of an application for grant of CW status in the CNMI may not be appealed. *See* 8 CFR 214.2(w)(21).

This continuing work authorization provision applies only to aliens in the CNMI seeking CW–1 nonimmigrant status. It does not provide work authorization to any spouses or children seeking CW–2 nonimmigrant status, even if they are work authorized in the CNMI on or before November 27, 2011, as the CW–2 status sought does not itself provide any work authorization. If spouses or children wish to be work authorized in CW status, an employer must petition for them as a CW–1 principal. In that case the continuing work authorization would apply to them to the same extent as to other aliens applying for CW–1 status.

The continuing work authorization pending adjudication provided by this provision is not a grant of CW nonimmigrant or other lawful immigration status; CW status is only provided if and when a favorable decision is made on the application. The final rule does, however, make a conforming clarification to the definition of ''lawfully present in the CNMI''. *See* new 8 CFR 214.2(w)(1)(v)(A). Under new 8 CFR 214.2(w)(2)(iv), an alien in the CNMI must be lawfully present in the CNMI in order to be eligible for CW status. The final rule clarifies that in the case of aliens who are within their ''grandfathered'' period of stay before November 27, 2011, lawful presence is determined as of the date the application for CW status is filed (whether the application is the Form I–129CW application for CW–1 status for the principal, or the Form I–539 application for CW–2 status for a spouse or minor child). Therefore, the petition, and CW status for the alien may be granted after November 27, 2011. This accommodation does not alter the statutory expiration of the grandfather provision under 48 U.S.C. 1806(e)(1)(A). After November 27, 2011, aliens previously covered by the grandfather provision who are inadmissible under section 212(a)(6)(A) of the INA (8 U.S.C. 1182(a)(6)(A)) may be removed regardless of whether they are the beneficiary of a pending petition, and all other INA grounds of removal remain applicable.

(b) Petition Fees

Thirteen commenters suggested that DHS should automatically convert all valid CNMI permits to transitional worker status to avoid the economic impact caused by the duplication of fees. Two commenters suggested that DHS not charge employers any additional fees to obtain transitional worker status for their renewed contract workers. One commenter requested that DHS not impose fees for employers as they will retaliate against the employees for the fees. Two commenters stated that DHS has no authority to require aliens to pay for filling out a form, to pay for providing biometric data, or to pay any other fee of any kind. These commenters also said that the rule's increased fees will cause substantial harm to the foreign workers currently in the Commonwealth.

The CNRA requires DHS to establish, administer and enforce a CNMI transitional worker system under the INA. As discussed above, DHS does not interpret the CNRA simply to permit automatic conversion of CNMI statuses to transitional worker status without an individual employer petition and adjudication of the employer's and worker's eligibility. *See* 48 U.S.C. 1806(d)(3). DHS has general authority to recover the full costs of immigration services it provides by collecting fees. *See* INA sec. 286(m), 8 U.S.C. 1356(m). The CNRA specifically references this authority with respect to the CW program, adding that DHS should collect an annual supplemental fee of $150 per worker for CNMI educational purposes. *See* 48 U.S.C. 1806(a)(6). DHS understands that petition fees are a major concern for both employers and employees. Nevertheless, USCIS must collect fees to fund the services that it provides and the expenses incurred for processing CW petitions. Employers also expressed concern about the payment of additional fees to petition for their current workforce. While no changes have been made to the rule as a result of these comments, DHS notes that this rule allows employers to request a waiver of the petition fee and the biometrics fee if they cannot afford them. While fee waivers generally are not available in employment-based

cases, DHS has decided to treat the CNMI with more flexibility in this regard; thus, this rule authorizes waiver of the fee in cases where the need is demonstrated. *See* new 8 CFR 103.7(c)(3)(iii). There will continue to be no allowance for waiver of fees for other employment-based nonimmigrant petitions.

(c) Beneficiary Fees

One commenter expressed a concern regarding the guest worker's ability to pay the fees for a transitional worker petition. The commenter explained that the guest worker's earning capacity is based on the Commonwealth's minimum wage, which is far below the U.S. minimum wage, and this makes the petition fees unreasonable for the workers. DHS understands this concern and reminds guest workers that the petitioning employer will pay the applicable petition fees. The employee is only responsible for paying the biometrics fee both at the time of the initial grant of status, and as requested by USCIS for renewals or extensions of status. An employer may pay the biometrics fees and the CW–2 fees for their employees, but that is not required. The biometrics services fee will be collected to cover the costs of the background check and identify verification whether or not the previous biometrics are stored and reused or if the employee or derivative beneficiary must appear again at the Application Support Center (ASC) for their collection. Nevertheless, the biometrics fee may be waived upon proof of inability to pay on a case-by-case basis. *See* 8 CFR 103.7(c)(3)(i). DHS is also clarifying in the final rule that, consistent with USCIS policy on collection of biometrics, the biometric fee is not required for beneficiaries who are under the age of 14, or who have attained the age of 79. *See* new 8 CFR 214.2(w)(15).

As with the fee for petitions for nonimmigrant workers, the fee for the Application to Extend/Change Nonimmigrant Status is generally not eligible for a waiver. However, DHS has clarified in this final rule that it has authority to waive the Form I–539 fee based on inability to pay in the case of an alien seeking CW–2 derivative nonimmigrant status as the spouse or child in the CNMI of a CW–1 worker, as the interim final rule referred only to the Form I–129CW in its reference to fee waiver for aliens applying for CW–2 status. *See* new 8 CFR 103.7(c)(3)(iii). DHS has also revised the fee and fee waiver provisions to correct the form name for the Petition for a CNMI–Only Nonimmigrant Transitional Worker and conform technically to the format of 8 CFR 103.7, as reorganized in the DHS final rule, U.S. Citizenship and Immigration Services Fee Schedule, 75 FR 58962 (Sept. 24, 2010). Currently, the fee for a Form I–129CW employer petition for a CW worker is $325, plus the supplemental CNMI education funding fee of $150 per beneficiary per year. 8 CFR 103.7(b)(1)(i)(J).

(d) Petition Requirements

One commenter stated that petitioners should be required to pay petition fees and minimum wage for their employees. Another commenter stated that the rule imposes severe limitations on the ability to freely transfer jobs and hire from the existing labor pool.

DHS agrees with the commenter regarding payment of petition fees and wages. Consistent with other INA classifications, CNMI CW classification petitioners must pay petition fees unless eligible for and granted a fee waiver. *See* new 8 CFR 214.2(w)(5). As with all employment-based classifications, employers must abide by the local employment laws governing the State or Commonwealth. The interim final rule and this final rule provide that an employer is eligible to petition for a transitional worker, if among other requirements, it complies with Federal and Commonwealth requirements relating to employment, including but not limited to nondiscrimination, occupational safety, and minimum wage requirements. *See* 74 FR 55110; new 8 CFR 214.2(w)(4)(iv). In response to the comment regarding minimum wages, this final rule also requires the petitioning employer to attest that the employer is an eligible employer and will continue to comply with the requirements for an eligible employer until such time as the employer no longer employs the worker. *See* new 8 CFR 214.2(w)(6)(ii)(D). The final rule strengthens the terms of the attestation that the employer must sign with respect to its compliance with the required terms and conditions of employment and compliance with applicable laws. *See* new 8 CFR 214.2(w)(6)(ii).

DHS disagrees with the second commenter's assertion that this rule imposes severe limitations on the ability to freely transfer jobs. This final rule incorporates standard elements of the Federal immigration system, including the requirement that an employer petition for an employee. There is nothing to prevent that employee from transferring freely to another job upon filing of a petition for their services by a new employer. *See* new 8 CFR 214.2(w)(5) and (w)(7).

However, in light of this commenter's concern, DHS believes it is important to include additional flexibility for a CW–1 worker seeking to transfer to a new employer. The CNRA mandates that an alien ''shall be permitted to transfer between employers in the Commonwealth during the period of such alien's authorized stay therein, without permission of the employee's current or prior employer, within the alien's occupational category or another occupational category the Secretary of Homeland Security has found requires alien workers to supplement the resident workforce.'' *See* 48 U.S.C. 1806(d)(4). This final rule includes a mechanism, within the existing federal system, for a CW–1 to freely transfer employers as envisioned by the CNRA without approval from prior or current employer. *See* new 8 CFR 214.2(w)(7).

DHS is able to address the general concern regarding transfer of employment by clarifying that a foreign national with CW–1 status may work for a prospective new employer after the prospective new employer files a Form I–129CW petition on the employee's behalf. *See* new 8 CFR 214.2(w)(7). Such work may begin only if a nonfrivolous Form I–129CW for new employment was filed before the date of expiration of the CW–1's authorized period of stay and subsequent to the CW–1's lawful admission, and the CW–1 has not been employed without authorization in the United States since admission. *See* new 8 CFR 214.2(w)(7)(iii). If these conditions are met, then employment authorization shall continue for such alien until the new petition is adjudicated. *See* new 8 CFR 214.2(w)(7)(iv). However, if the new petition is denied, the work authorization will also cease. *Id.* This benefit of new employment upon filing of a petition (if all aforementioned requirements are met) is a benefit that relates only to this specific class of nonimmigrants in light of the unique provisions of and congressional intent expressed in the CNRA.

DHS emphasizes that this provision for change of employer does not intend to authorize extended continued presence in the CNMI for the purpose of seeking employment after termination of CW–1 employment. In general, a CW–1 worker loses CW–1 status upon any violation of CW–1 status (including termination of the qualifying CW–1 employment), and a loss of CW status ends the period of authorized stay at that time. *See* new 8 CFR 214.2(w)(23). A CW petition cannot be filed for an alien in the CNMI who is not in lawful status, including a petition by a new employer, which must be filed before

the date of expiration of authorized period of stay. *See* new 8 CFR 214.2(w)(2)(iv) and (w)(7)(iii)(A). However, DHS believes that it is appropriate to provide a limited period of time after the termination of employment for workers to obtain new qualifying employment. Therefore, in response to the comments and the unique conditions in the CNMI, and consistent with the direction in the CNRA that DHS provide for transfer between employers (*see* 48 U.S.C. 1806(d)(4)), the final rule provides that when a status violation results solely from termination of CW–1 employment, the CW–1 status will expire 30 days after the date of termination, rather than on that date itself, as long as a new employer files a nonfrivolous petition within that 30-day period and the alien does not otherwise violate the terms and conditions of his or her status. *See* new 8 CFR 214.2(w)(7)(v) and (w)(23). Thus, the alien will still be lawfully present in the CNMI for the purpose of employer eligibility to file a CW–1 petition during that 30-day period, and the employee will be able to begin work pending petition adjudication as provided by new 8 CFR 214.2(w)(7). The employer will still need to comply with all petition requirements, including attesting that no qualified U.S. worker is available to fill the position. If the employer is not able to petition for the worker within the 30-day period after termination, the employer is not foreclosed from petitioning for that alien; however, the alien would need to leave the CNMI before a petition could be filed, and would be able to return to begin the employment only after petition approval and issuance of a CW–1 visa by a consulate. Additionally, if the CW worker cannot find an employer to petition on his or her behalf during the 30-day period after the worker's CW–1 employment was terminated, then the alien would be out of status as of the date the CW–1 employment was terminated.

By allowing employer petitions for change of employment at any time during the CW–1 alien's current employment, and providing a limited opportunity for an employer to petition for an alien in the CNMI after termination of employment, DHS believes that it is providing opportunities that will improve the ability of employers to respond to economic conditions in the CNMI and reduce unnecessary travel costs to obtain visas abroad and other burdens on workers, without enabling unemployed former CW–1 workers to remain long-term in the CNMI for the purpose of seeking new employment.

DHS has made a conforming change to the CW–1 employment authorization provision, since in a change of employer situation the CW–1 employment will not necessarily be ''only [for] the petitioner through whom the status was obtained.'' *See* new 8 CFR 274a.12(b)(23). The provision adds a cross-reference to the scope of employment as authorized by 8 CFR 214.2(w), in order also to cover changes of employer within the scope of the final rule. *Id.*

DHS disagrees with the commenter's assertion that this rule imposes severe limitations on the ability to hire from the existing labor pool. This rule provides the flexibility for employers to petition for employees from within the CNMI or from abroad. *See* new 8 CFR 214.2(w)(2)(i). It also retains the requirement that the employee in the CNMI be lawfully present. *See* new 8 CFR 214.2(w)(2)(iv). This provision should provide broad access to the existing labor pool in the CNMI and a preference to the current CNMI permit holders. Those provisions should serve to advance the goal of providing a smooth transition between the CNMI and federally-based statuses.

Two additional commenters stated that the employer attestation requirement will invite widespread abuse, will actually decrease the job opportunities available to U.S. workers, and will remove any means for enforcing workforce participation requirements designed to maximize those jobs for U.S. workers.

DHS disagrees with the commenters. DHS has effectively instituted similar attestations in other employment-based categories such as those for temporary agricultural workers (H–2A visas) and temporary nonagricultural workers (H–2B visas). We think the attestation issued with this rule will serve to effectively enforce the necessary requirements and prevent fraud and abuse within the immigration system. Coordinated efforts between agencies within and outside DHS ensure the protection of U.S. citizen and lawful permanent resident workers. Additionally, CNMI employers will be able to reasonably convert their foreign worker dominated workforce to a work force of U.S. citizens or lawful permanent residents by phasing out the use of the transitional worker classification by the end of the transition period. DHS will work with other Federal agencies to review the CNMI's workforce requirements and Federal law compliance. Therefore, this rule retains the provision on employer attestations from the interim final rule. In addition, DHS has strengthened the attestation requirements with respect to terms and conditions of employment. *See* new 8 CFR 214.2(w)(6)(ii).

One commenter supported the requirement that the petitioning employer pay the alien's reasonable cost of return transportation to the alien's last place of foreign residence if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission. The commenter added that this requirement was deleted from the CNMI Government's umbrella permit system.

Two other commenters stated that the repatriation clause was very limited and will place the burden on foreign workers to pay their own way back home. These commenters suggested that the Commonwealth's system is superior to that in the interim final rule. That system required the final employer of record to pay for a return ticket when the worker became unemployed for any reason. The CNMI also required the posting of a bond to help ensure that this obligation would be met.

While DHS understands these concerns, DHS does not believe it necessary to modify or make the repatriation provision in the final rule more stringent. The interim final rule required employers to pay the reasonable cost of return transportation of the alien to the alien's last place of foreign residence if the alien is dismissed from employment for any reason by the employer before the end of the authorized admission. *See* new 8 CFR 214.2(w)(11). If the complete terms of the contract are met, the employee may have to find his or her own transportation home. This requirement is consistent with other nonimmigrant visa categories. DHS believes that administration of a bond posting requirement would add unnecessary complexity and expense for CW petitioners. The requirement in this rule provides sufficient safeguards for a beneficiary's safe return home in case of early termination. Thus, no changes are made as a result of this comment.

(e) Employer as Petitioner

Four commenters expressed concern that the rule only empowers the employer to petition for guest workers. Two of these commenters stated that employees should be able to apply for their own status. They suggested that the petition requirement should only be imposed on individuals who have not resided in the CNMI for a minimum number of years. Another commenter stated that the employer's petition

requirement may help perpetuate an employer's abuse against a foreign worker. The commenter argued that an employee might not report abuse for fear that the employer will not file a petition for the employee. Another commenter requested clarification on the process for replacing a transitional worker once the worker leaves employment.

DHS has not adopted the commenters' suggestion that employees be allowed to self-petition. The purpose behind employment-based visa programs is to ensure an adequate number of qualified employees to effectively operate the businesses. Such programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. *See* 20 CFR part 655. Employment-based visas are not intended to allow individuals to petition for the opportunity to seek employment in the United States irrespective of an available employer. Thus, consistent with other employment-based nonimmigrant classifications, DHS will require employers to file a petition for all CW–1 workers. *See* new 8 CFR 214.2(w)(5). This requirement will allow DHS to conduct the review necessary to determine eligibility and that the parameters set for the program are followed. This final rule requires that employers submit evidence showing the legitimacy of their business, their recruitment practices, the terms and conditions of employment offered, and their compliance with Federal and Commonwealth law. *See* new 8 CFR 214.2(w)(6). DHS believes that these parameters are necessary to comply with congressional intent that the CW category ''promote the maximum use of, prevent adverse effect on wages and working conditions of, workers authorized to be employed in the United States * * *.'' *See* 48 U.S.C. 1806(d)(2). This employer-focused petitioning process will ensure that CW status follows U.S. immigration law as required by the CNRA. Therefore, this final rule requires employers to file a petition for all CW–1 nonimmigrant workers, both for initial status and renewal. *See* new 8 CFR 214.2(w)(5) and (w)(17).

There are various Federal laws enforced by the U.S. Departments of Justice and Labor, and other agencies that prohibit workplace discrimination and regulate issues such as wages, benefits, safety, and health care. Those protections also apply to foreign workers in the United States. U.S. citizens may report employer abuses to the appropriate state and Federal agencies for enforcement action. Thus, no changes have been made to the final rule as a result of these comments.

(f) Multiple Beneficiaries

One commenter stated that DHS should allow employers to petition for multiple beneficiaries regardless of occupational category, as long as the beneficiaries are already in the CNMI. The commenter stated that this process would help employers transfer all the CNMI permit holders to an INA status and, in turn, result in a more orderly transition and phasing-out of the CNMI's nonresident contract worker program. Another commenter also suggested a multiple beneficiary process.

DHS encourages all CNMI permit holders to convert to a Federal immigration status as soon as possible. That is the intent of the final rule's provisions allowing multiple beneficiaries on the same CW petition if the beneficiaries will be performing the same service, for the same period of time, and in the same location. *See* new 8 CFR 214.2(w)(9). Unfortunately, DHS can not adopt the commenter's suggestion to allow employers to petition for multiple beneficiaries regardless of occupational category. DHS can only streamline the petitioning process for multiple beneficiaries in such cases when the beneficiaries share the same occupational category, validity period, and location. Because of differing adjudication and evidentiary requirements, DHS can not efficiently adjudicate petitions for multiple beneficiaries on one form where these elements are not identical. Therefore, the final rule was not changed as a result of these comments.

(g) Multiple Employers

Two commenters stated that the rule's provision that allows employment by more than one employer is not a viable way to control subcontracting and may lead to large-scale fraud as previously experienced in the CNMI. DHS understands this concern regarding a foreign worker's ability to work for more than one employer. However, Congress clearly expressed its intent that the transition to the INA be eased as much as possible and included provision for the continued use of alien workers. *See* 48 U.S.C. 1806 note. As such, this final rule permits a beneficiary to work for more than one employer as long as each employer files a separate Form I–129CW petition with DHS. *See* new 8 CFR 214.2(w)(5). Biometrics and other security checks will be used to confirm identity and status in order to help prevent any fraud resulting from this provision. Therefore, no changes are necessary or made in the final rule as a result of this comment.

(h) Validity Period

Two commenters opposed the validity period of the CW classification provided in the interim rule. They stated that limiting workers to only ten days in the CNMI after their employment is completed is unrealistically short and unfair to those with pending disputes or skills that can be used in the CNMI. As a result of this limited validity period, nonimmigrant resident aliens can be deported even if they have a claim pending against an employer. The commenters further asserted that this result is contrary to opinions issued by the CNMI federal district court which require both an extension of stay in the Commonwealth to prosecute claims and temporary work opportunities while awaiting the completion of the case or claim.

The commenters did not cite specific cases, but DHS is aware of decisions from the CNMI courts relating to the removal of aliens with pending labor cases and of case law from the U.S. District Court for the Northern Mariana Islands relating to the employment privileges of aliens under former CNMI immigration law. *See, e.g., Office of Att'y Gen.* v. *Paran,* 1994 WL 725954 (N. Mar. I. 1994); *Office of Att'y Gen.* v. *Rivera,* 1993 WL 307651 (N. Mar. I. 1993); *cf. Tran* v. *CNMI,* 780 F. Supp. 709 (D.N.M.I. 1991) (no right of alien employment in CNMI under U.S. Constitution). DHS notes that case law applying former CNMI law to the removal of aliens is not applicable to Federal immigration law. Pending labor cases before CNMI authorities may involve claims for unpaid wages or other labor law issues, but no longer involve the authority to provide or revoke work authorization, as those are now matters of Federal immigration law.

Another DHS component, U.S. Immigration and Customs Enforcement (ICE), has the authority to institute removal proceedings for unauthorized aliens. DHS respects the importance of labor claims, and ICE may exercise its prosecutorial discretion as appropriate when considering the possible removal of aliens who are pursuing such claims. As with other employment-based statuses under U.S. immigration law, court actions and removal proceedings are independent of what regulations may provide regarding the validity of CW status. It is not necessary to spell out in regulations the effects of such claims on a nonimmigrant's status.

This final rule retains the substance of the interim final rule's provision stating

that the beneficiary may be admitted to the CNMI up to ten days before the validity period begins and may remain no later than ten days after the validity period ends. This validity period is consistent with other nonimmigrant categories (*see* 8 CFR 214.2(h)(13)(i)(A), pertaining to H nonimmigrants), and DHS believes it permits the necessary flexibility for travel and living arrangements to be made both before and after a period of authorized employment. However, further review of the provision in light of the comment has led to some technical reorganization in the final rule in order to state the relevant time periods more consistently and clearly. A petition is valid for admission to the CNMI in CW status during its validity period, and up to ten days before the start of the validity period. *See* new 8 CFR 214.2(w)(16). Admission to the CNMI and authorized employment in CW status is for the petition validity period, not to exceed one year. *See* new 8 CFR 214.2(w)(13). CW status expires ten days after the end of the petition's validity period. *See* new 8 CFR 214.2(w)(23).

(i) Filing Location

Two commenters suggested that transitional worker petitions be processed at the Saipan Application Support Center instead of the California Service Center. Petitions not typically requiring an interview as part of the adjudication process, including employment-based petitions such as CW petitions, are normally processed at USCIS Service Centers. USCIS has found this to be the most efficient and cost-effective approach. Due to the CNMI's geographic location, DHS has determined that CW petitions will be processed by the California Service Center (CSC) in Laguna Niguel, California. Such centralization ensures that one specialized unit processes all the CNMI filings in order to ensure more consistent adjudications. The comment has not been adopted.

(j) Paper-Based System

Two commenters criticized the rule's reliance on a paper-based system and categorized it as wasteful and time consuming. DHS agrees that direct, electronic or online interactions and information transmittal is the most efficient method to use when possible. DHS uses electronic procedures whenever that option is available. Nevertheless, for most filings, a combination of electronic and paper-based filing must still be utilized. DHS continues to strive for efficiency and the transformation of its systems; however, DHS is not able to accept this petition via electronic filing at this time. Nonetheless, this rule does not mandate a paper-based system and a transition to electronic submission could be effectuated when that becomes a viable option.

5. Obtaining CW Status

Three commenters offered suggestions or requested clarification on the process for conferring transitional worker status to individuals currently in the CNMI.

(a) Obtaining CW Status in the CNMI

Two commenters pointed out that the rule does not specifically indicate how CNMI permit holders will be able to obtain a Federal immigration status while in the CNMI. The commenters noted that these aliens have not been admitted by a U.S. immigration officer and thus are not technically eligible to change their status under current regulations. The commenters proposed an amendment to 8 CFR part 248 to provide DHS with the authority to change their CNMI status to Federal immigration status. They stated that this change would alleviate the need for all aliens to depart the CNMI in order to obtain the CW–1 status abroad through the consular process. One of the commenters also proposed an amendment to 8 CFR part 245 to provide DHS with the authority to adjust the CNMI status of such aliens to immigrant categories under the INA.

As noted, all aliens present in the CNMI on the transition date (other than U.S. lawful permanent residents) became present in the United States without admission or parole by operation of law. *See* 48 U.S.C. 1806(d)(1), (2). DHS acknowledges that the interim rule did not specifically state the DHS authority to grant a federally-based immigration status. The INA authorizes USCIS to change an alien's status from one nonimmigrant status to another, but there is no provision specifically providing for a grant of nonimmigrant status to an alien present in the United States who is not already in a nonimmigrant status. *See* INA sec. 248, 8 U.S.C. 1258. As the commenter points out, the primary impediment to direct grants of nonimmigrant status to aliens present in the CNMI is inadmissibility under section 212(a)(6)(A)(i) of the INA for presence in the United States without admission or parole. This ground of inadmissibility may be overcome, however, through exercise of waiver authority under section 212(d)(3)(A)(ii) of the INA. *See* INA sec. 212(d)(3)(A)(ii), 8 U.S.C. 1182(d)(3)(A)(ii).

The **SUPPLEMENTARY INFORMATION** to the interim rule discussed the fact that CW status could be granted directly to aliens present in the CNMI, unlike aliens abroad seeking that status who first must be issued an CW nonimmigrant visa by the Department of State at a consular post abroad and thereafter seek admission in CW status. *See* 74 FR 55099. The regulatory language, however, was not explicit about how that would be done consistent with the requirement that the alien be admissible to the United States. Thus, in order to give additional assurance and direction on this point to the affected public and to USCIS adjudicators, the final rule clarifies that a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the INA may be granted to an eligible alien seeking an initial grant of CW status from DHS while in the CNMI. *See* new 8 CFR 214.2(w)(24). Such aliens will necessarily lack a CW nonimmigrant visa issued by the Department of State, and are thus inadmissible under section 212(a)(7)(B)(i)(II) of the INA; they also by definition will (unless changing to CW status from another nonimmigrant status under the INA, or the recipient of a DHS grant of parole) be aliens present in the United States without admission or parole, and thus inadmissible under section 212(a)(6)(A) of the INA. Therefore, the rule allows for a waiver of those two grounds of inadmissibility for aliens with appropriate documentation.

This waiver provision is based upon the specific language in section 212(d)(3)(A)(ii) that in the case of an alien ''in possession of appropriate documents'' who is seeking admission as a nonimmigrant, most grounds of inadmissibility may be discretionarily waived. *See* INA sec. 212(d)(3)(A)(ii), 8 U.S.C. 1182(d)(3)(A)(ii). In the unique situation of the CNMI and considering the broad discretion provided to DHS in the CNRA to set the terms and conditions of the transitional worker program for aliens not otherwise eligible for admission under the INA, and the stated goal of the CNRA to mitigate potential adverse consequences of transition to the extent possible, DHS considers that the ''appropriate documentation'' requirement for the waiver may be met by aliens who possess documentation that they are lawfully present in the CNMI, as defined in new 8 CFR 214.2(w)(1)(v) (see further discussion below on lawful presence).

In the case of spouses and children present in the CNMI who are seeking a derivative grant of CW–2 nonimmigrant status based upon a principal CW–1 approved petition, to satisfy the ''appropriate documents'' requirement

for a section 212(d)(3)(A)(ii) waiver of inadmissibility under INA sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(II) as described in 8 CFR 214.2(w)(24), the applicant must also possess documentation that he or she is lawfully present in the CNMI. *See* new 8 CFR 214.2(w)(1)(v).

Therefore, the final rule clarifies that DHS may, without additional application or fee, grant a section 212(d)(3)(A)(ii) waiver to an alien approved for an initial grant of CW–1 transitional worker status or CW–2 dependent status in the CNMI and in possession of appropriate documents. *See* new 8 CFR 214.2(w)(24). It provides that appropriate documentation for purposes of granting this waiver to aliens in the CNMI includes a valid, unexpired passport and other documentary evidence that the alien is lawfully present as defined by the rule, such as a CNMI-issued ''umbrella permit'' or a DHS-issued Form I–94. *Id.* Evidence that the alien possesses this documentation may accompany the employer's petition that includes the employer's attestation as to the alien's lawful presence; may in the case of a derivative spouse or minor child accompany the Form I–539 application for derivative status; or may be provided in such other manner as USCIS may designate. *Id.* Based upon this waiver, an alien lawfully present in the CNMI will be eligible for a grant of CW–1 or CW–2 status in the CNMI without first obtaining a CW visa abroad, provided that the applicant is otherwise admissible and eligible for CW status.

DHS also has revised 8 CFR 214.2(w)(14) to describe more clearly how beneficiaries of approved employer petitions and their dependents (spouses and minor children) may obtain CW status. Principal beneficiaries and their dependents outside the CNMI will be instructed to apply for a visa. For principal beneficiaries within the CNMI, the petition itself (including the biometrics provided under new 8 CFR 214.2(w)(15)) also serves as the application for CW–1 status. Dependents present in the CNMI may apply for CW–2 dependent status on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW–2 status may not be approved until the CW–1 petition is approved. A spouse or child applying for CW–2 status on Form I–539 is eligible to apply for a waiver of the fee based upon inability to pay as provided by 8 CFR 103.7(c). *See* new 8 CFR 214.2 (w)(14). Currently, the fee for a Form I–539 is $290, and the biometrics fee is $85 (unless the alien is under the age of 14 or is at least 79 years of age). *See* 8 CFR 103.7(b)(1)(i)(C); 8 CFR 103.7(b)(1)(i)(X); new 8 CFR 214.2(w)(15).

The final rule also makes conforming changes to the description of eligible principal and derivative aliens with respect to inadmissibility, to confirm that the alien must not be inadmissible, except to the extent that any applicable ground of inadmissibility is overcome with the appropriate waiver. *See* new 8 CFR 214.2(w)(2)(v) and 214.2(w)(3)(iii).

(b) Biometric Fee for Obtaining Status

One commenter requested clarification on the biometric fee requirement and the availability of a fee waiver. Aliens present in the CNMI generally will not have previously supplied biometric information to the Federal government. As a result, the Federal government will not have conducted the necessary background checks required for most immigration benefits under the immigration laws of the United States. DHS will require applicants for CW status to provide biometrics. *See* new 8 CFR 214.2(w)(15). Without biometrics, a CW petition cannot be approved. This requirement will ensure that CW status is not granted to anyone who is inadmissible and not granted a waiver of such ground of inadmissibility. *See* INA sec. 212(a), 8 U.S.C. 1182(a). A fee waiver is available based upon a showing of inability to pay the Form I–129CW and/or biometrics fees. *See* 8 CFR 103.7(c)(3)(i); new 8 CFR 103.7(c)(3)(iii).

6. Lawful Presence and Travel

Seventy-nine commenters expressed concern about, or offered suggestions regarding, the rule's lawful presence and travel requirements.

(a) Lawful Presence

DHS received five comments regarding the rule's lawful presence requirement. One commenter suggested that transitional worker status should be afforded to all alien workers with legal CNMI status. Four commenters expressed concern regarding the requirement that an employer petition for a guest worker while she or he is in lawful CNMI status. Three of these commenters stated that this requirement will negatively impact guest workers with expiring or expired umbrella permits who do not have a sponsoring employer. In order to alleviate this problem, one commenter suggested that DHS allow all umbrella permit holders to self-petition when a sponsoring employer is not available. Another stated that the requirement does not take into account the need for new foreign workers necessary to support new projects.

DHS is aware of the interest of employers in the CNMI to bring in new hires. The interim rule accordingly provided that the CW classification would be available to aliens coming from abroad. *See* 74 FR at 55096; 74 FR at 55109 (new 8 CFR 214.2(w)(2)). Additionally, DHS is aware of the public's concern regarding the lawful presence requirement and how the requirement affects the ability to obtain new hires from within the CNMI. In the interim rule, DHS posited that requiring lawful presence was the most efficient means to begin the congressionally-mandated reduction in the number of transitional workers to zero by the end of the transition period. *Id.* Furthermore, DHS believed that allowing workers without lawful status in the CNMI to obtain CW–1 status would encourage noncompliance with CNMI immigration law before the transition program effective date by removing the incentive for workers with lawful status to maintain or reacquire such lawful status under CNMI law prior to the transition. *Id.*

The interim rule's intent to encourage legal compliance before the transition program effective date is now moot, as that date has passed. Nonetheless, DHS has decided to maintain a lawful presence requirement to remove the incentive for a person to enter the CNMI illegally or overstay his or her visa or status expiration date to seek employment in the CNMI through the CW program. *See* new 8 CFR 214.2(w)(2)(iv). The worker must either be lawfully present under the grandfather provision applicable until November 27, 2011, or have been admitted or paroled by DHS on or after the transition program effective date other than for a short visit for business or pleasure. *See* 48 U.S.C. 1806(e)(1), (2); new 8 CFR 214.2(w)(1)(v). This lawful presence requirement will smooth the transition between these statuses. The final rule removes language relating to lawful presence requirements for CW petitions filed before the transition program effective date since that date has already passed, updates the reference to lawful presence under 48 U.S.C. 1806(e) to reflect statutory codification of this CNRA provision, clarifies reference to visitors for business or pleasure to specifically include (as ineligible for CW status) aliens from the People's Republic of China or the Russian Federation paroled as visitors into the CNMI, and clarifies that the alien must still be within the period of admission or parole referred to in the definition. *See* new 8 CFR

214.2(w)(1)(v). However, as previously discussed in section 4(a) of Part IV of this Supplementary Information, DHS has revised the definition of ''lawful presence'' in this final rule to clarify that in the case of aliens lawfully present under the grandfather provision, lawful presence is determined as of the petition filing date. This accommodation ensures that applications for CW status filed before November 27, 2011 for aliens lawfully present in the CNMI may be adjudicated and granted after that date.

DHS is unable to adopt the commenter's suggestion that DHS allow all umbrella permit holders to self-petition when a sponsoring employer is not available. The CNRA requires that DHS establish a system for allocating ''permits to be issued to prospective employers * * *.'' *See* 48 U.S.C. 1806(d)(2). Allowing for a grant of CW status without a petitioning employer would be contrary to that provision. As such, DHS retains the requirement for an employer to file a petition for a CW–1 nonimmigrant worker. *See* new 8 CFR 214.2(w)(5). This petitioning process is necessary to grant such status under the INA, as required by the CNRA.

(b) Umbrella Permits

Six commenters out of 79 expressed concern regarding the umbrella permit issued by the CNMI government and its effect during the transition period. Five commenters expressed concern regarding the validity of the umbrella permit under U.S. immigration law. One commenter stated that the DHS recognition of the umbrella permit should be accompanied by provisions that address an employer's responsibility for a former foreign worker with an expired CNMI labor contract. Another commenter expressed concern that the rule did not contain a mechanism to ensure that U.S. workers are not displaced by the foreign worker pool created through the recognition by DHS of the CNMI umbrella permit. The commenter suggested that foreign workers with a valid CNMI work permit be allowed to remain in the CNMI until November 2011 without additional limitations, even if they are not employed. A sixth commenter suggested that DHS provide aliens with pending cases before the CNMI Department of Labor with work authorization.

DHS fully considered these comments regarding the validity of the umbrella permits, how they relate to unemployed workers, the protection of U.S. workers, and how they relate the objectives of the CNRA. DHS believes that the existence of umbrella permits does not frustrate implementation of the CNRA or other U.S. immigration laws in the CNMI or present problems with the implementation of the transitional worker program. As provided in the CNRA and this rule, work authorization is allowed with a valid CNMI immigration status until such status expires, or for two years after the transition date. *See* 48 U.S.C. 1806(e). DHS has decided that umbrella permits issued by the CNMI government are valid as evidence of authorized stay and work authorization. This decision should assuage the commenter's concerns as to their continued validity.

DHS cannot make amendments to the rule in response to commenters' suggested methods for dealing with individuals with work permits but no employment (due to, for example, an expired contract or a labor dispute). The transitional worker program provides the ''number, terms, and conditions of permits to be issued to prospective employers for each such nonimmigrant worker,'' and was not intended to protect residents with CNMI permits but no employment. *See* 48 U.S.C. 1806(d)(2). This rule does not prohibit someone currently with legal status (lawful presence) but no employment from receiving CW status if an employer petitions for him or her. Thus no change is necessary as a result of this suggestion.

As for the comment suggesting additional provisions to ensure that U.S. workers are not displaced by CNMI umbrella permit holders, no changes to the regulation have been made. The number of available U.S. workers relative to aliens will be considered when deciding on the level of transitional workers that may be required in each successive year of the transition period. Such consideration will address whether sufficient U.S. workers are available to meet the labor needs of the CNMI. USCIS has issued information that clarifies regulations and policies and their application in the CNMI.[10] That document provides additional information on the legal treatment of umbrella permits.

(c) Travel Restrictions

Fifteen out of 79 commenters stated that the inability of DHS to offer concrete options for guest workers has led to a fear of traveling abroad due to the uncertainty of re-entry into the CNMI. Five of these commenters expressed concern regarding the rule's visa requirement to re-enter the CNMI after travel abroad given what they characterized as the probability of visa denial by the U.S. Embassy. Some commenters suggested that DHS issue the transitional worker status without a travel restriction.

DHS is aware of the public's concern regarding the burden of obtaining a visa to re-enter the CNMI. The CNRA provides for the creation of a geographically limited nonimmigrant classification and expressly states that such classification ''shall not be valid for admission to the United States * * * except admission to the Commonwealth.'' *See* 48 U.S.C. 1806(d)(3). DHS must follow those statutory restrictions for the CW classification.

As previously noted, the transitional worker does not require a CW visa to legally remain and work in the CNMI. This final rule clarifies that such status may be granted to the beneficiary directly in the CNMI. *See* new 8 CFR 214.2(w)(14). The CNRA intended the transitional worker program to be a mechanism for transitioning the current alien workforce in the CNMI to an INA classification first, then, if not eligible for an INA-based classification, to a transitional worker under this rule until such classification could be attained. Although the CNRA states that the transitional worker program was intended for aliens seeking to enter the Commonwealth (48 U.S.C. 1806(d)), DHS does not interpret that language to require that transitional workers under this program only be outside the CNMI. The CNRA also provides that DHS will set the conditions for admission and authorize the issuance of nonimmigrant visas for aliens who will be permitted to engage in employment pursuant to the transition program. *See* 48 U.S.C. 1806(d)(3). To interpret those provisions together to require departure prior to the grant of status and return to the CNMI would be unreasonable in light of the intent of Congress in passing the CNRA to ''maximize the Commonwealth's potential for future economic and business growth'' in the CNMI. *See* 48 U.S.C. 1806 note. Therefore, as previously discussed, this final rule clarifies the authority and process by which applicants who are already within the CNMI may be determined to be admissible to the United States and granted CW status without requiring that they first depart the CNMI in order to obtain a visa. An alien in the CNMI who is eligible for a grant of CW status will not have to make a trip abroad

[10] *See* USCIS, Questions & Answers: Employment Authorization and Verification in the Commonwealth of the Northern Mariana Islands (CNMI) (Mar. 12, 2010), available at *http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3621788503457210VgnVCM100000082ca60aRCRD&vgnextchannel=14cb86c5b741f110VgnVCM1000004718190aRCRD.*

solely for the purpose of obtaining a visa. If DHS approves a CW petition for such alien, the CW worker will receive an approval notice with an attached Form I–94, Arrival-Departure Record, which serves as evidence of lawful immigration status.

While the I–94 is evidence of lawful immigration status, Federal regulations require that a nonimmigrant return the I–94 departure record to U.S. officials upon exiting the United States. *See* 8 CFR 231.2. Therefore, if the CW worker travels abroad, he or she will need to relinquish the I–94 upon departure. The CW worker will then possess only the USCIS Form I–797, Notice of Approval, as evidence of his or her CW status. The alien will need to present that document to a U.S. embassy abroad in order to obtain a CW visa. Upon return to the CNMI from foreign travel and an application for admission, he or she will receive a new Form I–94. As with most other aliens with INA-based nonimmigrant statuses, a CW–1 nonimmigrant will need a visa to be admitted to the CNMI upon return from foreign travel. *See* new 8 CFR 214.2(w)(22). DHS is maintaining the visa requirement for CW nonimmigrants who leave the CNMI and seek to return. A primary purpose of the CNRA is ''to ensure that effective border control procedures are implemented and observed, and that national security and homeland security issues are properly addressed.'' *See* CNRA sec. 701(a), 48 U.S.C.A. 1806 note. The visa issuance process is an important aspect of effective border control. Therefore, DHS does not consider it appropriate as a matter of travel security and immigration policy to waive visa-related grounds of inadmissibility for CW nonimmigrants who leave the CNMI and seek to return.

However, as discussed further below, DHS is providing in this final rule an exception to limitations on travel to Guam in CW status that will permit nationals of the Philippines to transit Guam when travelling to or from the Philippines. Those CW nonimmigrants may travel to the Philippines through Guam without violating their CW status. CW nonimmigrants still must obtain a visa to return from the Philippines through Guam to the CNMI, but may apply to CBP upon arrival in Guam for a discretionary exercise of parole authority to enable their onward travel and admission to the CNMI in CW status. DHS hopes that this will alleviate to some degree travel problems arising from the general limitation of CW status to the CNMI.

(d) Travel With CW Status

Eleven commenters stated that transitional worker status holders should be permitted to leave and re-enter the CNMI on CW status alone, without first obtaining U.S. visas in their countries of origin. DHS notes that there is a distinct difference between a visa and a status. All nonimmigrants [11] must have a visa, issued by DOS, in order to apply for admission to the United States. While CW status will be issued by DHS, such status only sets the parameters for the transitional worker's authorized stay within the Commonwealth. However, all nonimmigrants must have a visa, issued by the Department of State, in order to request permission to apply for admission to the United States. Therefore, a CW worker must obtain a visa before returning to the CNMI after foreign travel and no changes are made as a result of these comments.

Fourteen commenters suggested that an automatic CW–1 visa should accompany the issuance of CW–1 nonimmigrant status in order to give nonimmigrant workers and their dependents the freedom to exit and re-enter in the CNMI without unnecessary delay and uncertainty on re-admittance. DHS notes again that there is a distinct difference between a visa and a status. DOS issues a visa at a U.S. Embassy or consulate office abroad. A visa, placed in the alien's passport, allows an alien to travel to a port of entry and request permission to enter the United States. While having a visa does not guarantee entry to the United States, it does indicate that a consular officer has determined that the alien is eligible to seek entry for the specific purpose covered by that visa.

DHS is responsible for all admissions into the United States. If admissible, DHS admits an alien and grants his or her status in the United States. The specified status controls the period of stay and conditions of such stay. In most cases, DHS grants status at the port of entry. For CW workers, DHS may exercise its discretionary waiver authority to allow beneficiaries of a CW petition in the CNMI to seek a grant of transitional worker status without requiring that they depart the Commonwealth. *See* new 8 CFR 214.2(w)(14)(ii) and new 8 CFR 214.2(w)(24). The grant of such status is within DHS's purview. Visa issuance is handled by DOS. As such, an automatic CW–1 visa cannot accompany the issuance of CW–1 nonimmigrant status because DHS does not issue visas. Nor does DHS consider it appropriate as a matter of travel security and immigration policy to waive visa-based grounds of inadmissibility for those CW nonimmigrants who travel abroad. Thus no change is made as a result of these comments.

(e) Travel With the CNMI Permit

Eleven commenters suggested that DHS should allow travel and re-entry on current CNMI permits. The commenters stated that the grandfather provision [12] allows the CNMI foreign workers to work and stay in the CNMI as long as their permits are valid. The previous CNMI permit system allowed foreign workers to travel outside the CNMI and return on a valid CNMI entry permit. As such, the commenters argue that any recognition of the permit should include the ability to leave and re-enter the CNMI on the CNMI permit. In the alternative, the commenters request that DHS use parole or a visa waiver to allow travel on the CNMI permit. Although these comments are not directly relevant to the final rule, which pertains to the specific CW nonimmigrant status rather than to ''grandfathered'' aliens, DHS is able to respond to the comments by providing information about its current policies with respect to travel on CNMI permits.

Consistent with the CNRA, DHS is recognizing valid CNMI immigration status and work authorization until the expiration of such status up to a maximum of two years after the transition date. *See* 48 U.S.C. 1806(e). As previously discussed, additional regulations regarding treatment of the CNMI work permit with regard to exit and re-entry to the CNMI are outside the scope of the CW classification and this rule. The CNRA does not permit travel on the CNMI permit. *See* 48 U.S.C. 1806(d)(3). Nevertheless, to alleviate concern about the inability to travel on the CNMI permit, DHS may use its parole authority under the INA for significant public benefit and/or humanitarian grounds, to facilitate travel when necessary. *See* INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[11] Except those covered by visa waiver programs for temporary visitors for business or pleasure or specific statutory or regulatory provisions authorizing such travel.

[12] The CNRA contains two provisions (commonly referred to as the ''grandfather provisions'') related to the continuation of presence and work authorization in the CNMI after the transition effective date. The CNRA requires DHS to recognize valid CNMI immigration status (and prohibits removal of such aliens for being present in the CNMI without admission or parole) until the expiration of such status up to a maximum of two years after the transition date. 48 U.S.C. 1806(e)(1). The CNRA also requires that DHS recognize employment authorization until the expiration of such status up to a maximum of two years after the transition date. 48 U.S.C. 1806(e)(2).

DHS has established two separate parole procedures for CNMI permit holders to facilitate their travel to the rest of the United States or abroad. Under the parole procedure for domestic travel, CNMI permit holders must submit a written parole request (and documentation) to the USCIS Application Support Center (ASC) in Saipan, before departing the CNMI.[13] Approval of the parole request will allow bearers to travel within the United States and maintain the validity of their CNMI permits.

Under the parole procedures for foreign travel, CNMI permit holders must obtain advance parole before departing the CNMI, if they are not lawful permanent residents or do not have an appropriate U.S. visa.[14] Advance parole represents permission to seek admission into the United States, in this instance the CNMI, or be paroled into the CNMI after traveling outside the United States. Advance parole does not provide any status within the United States while traveling abroad and may be revoked at any time. However, advance parole in this context will allow individuals lawfully living and working in the CNMI during the period ending November 27, 2011, to continue to do so when they return from foreign travel, if paroled into the CNMI by CBP. Aliens may request advance parole by filing an Application for Travel Document (Form I–131) with fee to the Guam office in accordance with the form instructions. Aliens with urgent travel plans (within 72 hours) may make an InfoPass appointment at the Saipan ASC and submit Form I–131 with the necessary supporting documentation in person. Without a grant of advance parole or other travel documentation that is acceptable under U.S. immigration law, such aliens may not seek to be admitted into the CNMI. These parole procedures should alleviate some of the commenters' concerns about the inability of CNMI permit holders to travel.

(f) Work-Related Travel to Guam and the Rest of the United States

Three commenters stated that the rule's travel restriction prevents them from working in Guam or the U.S. mainland. One of these commenters stated that the rule had the unintended consequence of also prohibiting work-related travel to Guam or the U.S. mainland. This commenter suggested an automatic authorization of the beneficiary's work-related travel and ability to work in Guam or on the U.S. mainland.

While DHS understands this concern, the CNRA expressly limits the transitional worker visa to admission to the CNMI only. *See* 48 U.S.C. 1806(d)(3). The statute provides for the creation of a geographically-limited nonimmigrant classification and expressly states that such classification will not be valid for admission to or employment in the United States, except the Commonwealth. *Id.* This rule is limited to the CNMI by the CNRA and it cannot provide more than prescribed by that law. The purpose of CW classification is to allow CNMI employers to utilize foreign workers during the transition period. The transition period also enables employers to make long-range plans as to their staffing needs and their eligibility under other, unrestricted INA classifications. Employment of aliens in Guam is governed by the INA and is not affected by this rule.

(g) Travel to Guam and the Rest of the United States

Two commenters expressed concern that travel and re-entry on the CNMI permit is not allowed to and from Guam or the U.S. mainland. One commenter was specifically concerned about the inability to re-enter the CNMI on the permit or a B1/B2 visa after travel to Guam or the U.S. mainland. Another commenter requested clarification on whether DHS will allow long-term alien workers to travel freely to the U.S. mainland for further education, training, or medical purposes after the transition period.

While these comments appeared to be specifically directed at travel with the CNMI permits previously issued by the CNMI government and valid for CNMI work authorization until November 27, 2011, which is a subject this final rule does not address, DHS notes that CNMI permit holders may apply for travel documents using the procedures for obtaining parole approval as mentioned above. *See* 8 CFR 223.2. Parole will allow permit holders to travel within the United States and maintain the validity of their CNMI permits. CNMI permit holders may no longer use the Visa Waiver Program (VWP) or a B visa (tourist or business) for domestic travel. The ''B'' nonimmigrant status is intended solely for individuals residing outside the United States who are making a short visit to the United States for business or pleasure and not for the purpose of employment or study. As the CNMI is now within the United States for purposes of U.S. immigration law, B status is inappropriate for anyone residing, working, or studying in the CNMI, unless that person establishes that he or she has a foreign residence which he or she has no intention to abandon.

Even if the specific comments focused on current documentation rather than travel with the new CW nonimmigrant status, the concern also applies to that travel and DHS has considered it further in light of the interim final rule's general prohibition on travel in CW status elsewhere in the United States. DHS has responded in this final rule to concerns about inability to travel to Guam by providing a specific, limited exception to the general provision in the interim final rule (which is retained in the final rule) that a CW alien who travels, or attempts to travel to another part of the United States will put himself or herself out of status. *See* new 8 CFR 214.2(w)(22).

While some foreign workers, particularly those from Japan and South Korea, may board a direct flight from the CNMI to their countries of nationality, Philippine nationals, in particular, may not, based on current flight routes, easily travel to or return from their country of nationality without transiting through Guam. Their only other options are to travel through Japan or South Korea. Compared to the short commuter air flight between Saipan and Guam and the three and one-half hour nonstop flight from Guam to Manila, an itinerary from Saipan to Manila through Japan typically would require a three hour and forty-five minute flight from Saipan to Tokyo, connecting to a five-hour flight from Tokyo to Manila. Itineraries through Seoul, Korea are no shorter. Although airline pricing is of course not necessarily directly reflective of distance, and airline schedules and pricing are subject to frequent change, as a general matter DHS understands that foreclosing the option of travel between the CNMI and the Philippines through Guam in CW status is likely to add significant time and expense to this travel in many cases. Providing some accommodation for this need will help ameliorate potential negative effects of the CNRA, including (but not

[13] *See* USCIS, Update: USCIS Announces Parole Procedures for Travel within the U.S.A. (Dec. 16, 2009), *available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=6a71f4668d895210VgnVCM100000082ca60aRCRD&vgnextchannel=14cb86c5b741f110VgnVCM1000004718190aRCRD.*

[14] *See* USCIS, Update: USCIS Announces Advance Parole Procedures for the CNMI (Dec. 16, 2009), *available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=44c2f4668d895210VgnVCM100000082ca60aRCRD&vgnextchannel=14cb86c5b741f110VgnVCM1000004718190aRCRD.*

necessarily limited to) economic burden on CW workers and their families, and some possible reduced appeal of the CW program to employers and workers otherwise.

Before the transition period, these foreign workers were able to apply for and be granted visitor visas to transit Guam or, in medical emergencies, received authorization to travel through Guam. The CNMI is now part of the United States under the INA and foreign workers residing in the CNMI can no longer use a nonimmigrant visitor visa to transit through Guam to a foreign destination, as the ''B'' category for nonimmigrant visitors for business or pleasure requires that the alien have a foreign residence.

After careful consideration, DHS has determined to exercise its authority under section 212(d)(7) and 214(a)(1) of the INA (8 U.S.C. 1182(d)(7) and 1184(a)(1)) to enable aliens who are CW status holders who are Philippine nationals to maintain their status and depart the CNMI en route to the Philippines, and return to the CNMI from the Philippines through Guam, as long as the travel is on a direct Guam transit itinerary, without violating that status while in Guam or the CNMI. *See* new 8 CFR 214.2(w)(22)(iii). Although such travel will not violate CW status, the availability of such travel is subject to all other grounds of inadmissibility and inspection at the port of entry. A direct Guam transit itinerary must be from the CNMI to Guam to a Philippine port or from a Philippine port to Guam to the CNMI and involve no more than an 8 hour scheduled flight stopover or connection between flights in Guam, without leaving the Guam airport. *Id.* Although such travel will be subject to all other requirements of admissibility at a port of entry, it will not violate the conditions of the CW status. *Id.*

If arriving from the Philippines, the alien may be paroled upon arrival in Guam if the immigration officer determines that such parole is appropriate, including examining whether the alien would be admissible to the CNMI. *Id.* Upon a determination by an immigration officer that a favorable exercise of discretionary parole authority is warranted, the CW nonimmigrant will be paroled into Guam and be required to remain at the Guam Airport while awaiting onward travel to the CNMI. *Id.* Prior to departure from Guam for the CNMI, an immigration officer may conduct a preinspection, pursuant to 8 CFR 235.5(a), to determine admissibility in CW status in the CNMI. Alternatively, the CW nonimmigrant will depart Guam and proceed for inspection upon arrival in the CNMI. To the extent that admission is appropriate, the alien will be admitted into the appropriate CW status as provided for by 8 CFR 235.5(a). It is important to note that the final rule's provision for direct transit through Guam for Filipinos in CW status does not waive visa requirements for admission in CW status upon returning from the Philippines. A CW nonimmigrant will not violate CW status by transiting Guam in these circumstances, but will need a visa to return to the CNMI (either directly or through Guam) to resume CW status. *Id.* DHS believes these changes address in significant part the commenters' suggestions to reduce the travel restrictions placed on CW workers.

DHS has limited the travel exception permitting CW aliens to transit through the Guam airport to nationals of the Philippines—in addition to the particular reasons of relative travel convenience discussed above—because focusing on Philippine nationals addresses what is by far the largest national group of foreign workers in the CNMI. As described in the DOI Report at 11 Table 1–B, the number of permits issued by the CNMI to alien workers in 2008 by nationality was: Philippines, 15,769; China, 4,569; South Korea, 729; Thailand, 574; Bangladesh, 333; and others, 598. While the pattern of CW application and issuance likely will not track this pattern exactly, DHS believes that a substantial majority of likely CW nonimmigrants also will be nationals of the Philippines. It also has been USCIS's experience to date during the transition period that the vast majority of applications for advance parole for travel purposes from aliens in the CNMI have come from Philippine nationals.

(h) Visa Waiver in Lieu of Visa Requirement

Eight commenters suggested that DHS issue a visa waiver in lieu of requiring a visa. Seven of these commenters suggested that DHS waive the visa requirement for guest workers in the same manner in which nationals of Russia and China were provided with a waiver. Another suggested that DHS issue a visa waiver for those with a valid reason for leaving and returning to the CNMI.

DHS does not exercise visa waiver authority to allow admission into the CNMI without a visa for nationals of the People's Republic of China (PRC) and the Russian Federation (Russia). Rather, DHS may, in its discretion on a case by case basis, exercise parole authority to allow eligible nationals of the PRC and Russia to enter the CNMI temporarily. *See* INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). This use of parole authority for short-term visitors is inapplicable to aliens seeking to be admitted in a nonimmigrant status, such as transitional worker status. As previously discussed, DHS has considered the potential applicability of waivers of nonimmigrant visa requirements and use of parole authority in this context, and the travel security and immigration policy issues surrounding the decision to provide any such waivers to aliens in CW status who choose to leave the CNMI and seek to return. DHS has decided that travel of CW workers must be monitored and controlled in a more systematic fashion than a program for short-term visitors. The visa issuance procedures required in this rule provide the necessary level of documentation and review to address such concerns. DHS has not made any changes to the final rule as a result of these comments.

(i) Re-Entry Permit or Parole in Lieu of Visa Requirement

Eight commenters suggested that DHS issue a re-entry permit or advance parole. Specifically, four commenters suggested that DHS allow CW status holders, who must depart for emergent reasons, to apply for a re-entry permit at the Saipan office. One suggested that DHS issue a visa waiver for any foreign worker who wishes to travel with a CNMI Entry Permit as long as they notify the Saipan office in advance about their travel. Another suggested that DHS should allow CW status holders to travel and re-enter the CNMI upon presentation of the CNMI Entry Permit, evidence of CW–1/CW–2 status, and evidence that they notified the USCIS Saipan office of their intention to leave and re-enter the CNMI. Another two commenters suggested that DHS use its parole authority to allow workers to enter and exit the Commonwealth during the term of the CW status.

A re-entry permit is not an appropriate means for CW status holders to request re-entry after a trip abroad. A re-entry permit is a travel document issued to lawful permanent residents and conditional residents to re-enter the U.S. after travel of one year or more abroad. *See* 8 CFR 223.1(a). With respect to parole, parole of aliens seeking to resume CW status is legally incompatible with CW status.[15] Aliens paroled into the United States are affirmatively authorized to remain in

[15] The INA provides DHS with discretion to parole an individual into the United States temporarily under certain conditions for urgent humanitarian reasons or significant public benefit on a case-by-case basis. INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

the United States, but do not have nonimmigrant status, and remain applicants for admission. In other words, if DHS paroled a CW alien into the CNMI, that alien would not be a CW alien. Such parole is not to be used to circumvent the visa issuance process. All CW nonimmigrants must have a CW visa to be readmitted in CW status. *See* new 8 CFR 214.2(w)(22). This visa will allow them to apply for admission to resume their CW status and the work authorization incident to that status. Such a visa requirement at the time of admission is consistent with current INA requirements. *See* INA sec. 212(a)(7)(B), 8 U.S.C. 1182(a)(7)(B). DHS has not made any changes to the final rule as a result of these comments.

(j) Change of Status in Lieu of Visa Requirement

Two commenters suggested that USCIS process a ''change of status'' in the CNMI in order to alleviate concerns regarding the rule's visa requirement. Commenters suggested that all CNMI guest workers who are in lawful status and lawfully authorized to work should be able to apply for a ''change of status'' using a Form that is similar to USCIS Form I–539.

DHS is aware of the public's concern regarding the burden of obtaining a visa to re-enter the CNMI. A transitional worker does not require a CW visa to legally remain and work in the CNMI. As previously discussed, this final rule clarifies that such status may be granted to the beneficiary in the CNMI. *See* new 8 CFR 214.2(w)(14)(ii) and new 8 CFR 214.2(w)(24). If DHS approves the CW petition and the grant of CW nonimmigrant status, the CW worker will receive an approval notice with an attached Form I–94, Arrival-Departure Record, which serves as evidence of lawful immigration status.

However, as with other nonimmigrant statuses under the Act, this in-country grant of status does not permit the status holder to reenter after foreign travel. Moreover, while the I–94 is evidence of lawful immigration status, Federal law requires that a nonimmigrant return the I–94 departure record to U.S. officials upon exiting the United States. Therefore, if the CW worker wants to travel abroad, he or she will not have evidence of the status and will need to obtain a CW visa at a U.S. Embassy or consulate abroad in order to apply for re-admission and receive a new I–94. As with other INA categories, a CW nonimmigrant will need a visa to be admitted to the CNMI upon return from foreign travel. *See* new 8 CFR 214.2(w)(22). The CNRA does not provide for return travel without such a visa. *See* 48 U.S.C. 1806(d)(3).

(k) Visa Issuance

Four commenters expressed concern regarding visa issuance abroad and offered suggestions regarding alternative procedures for such issuance. Specifically, two commenters suggested that DHS issue the visa in the United States through an agency to be set-up by DHS. Another suggested that a multiple entry CW visa should be made available within the CNMI to individuals who qualify for CW status. This commenter argued that it is contrary to stated intent of the CNRA for DHS to require CW–1 nonimmigrants to undergo the Federal visa process in a foreign country in order to return to the CNMI. Alternatively, the commenter suggested that an expedited process be established at foreign consular offices for transitional worker nonimmigrants to obtain multiple-entry visas. Another commenter requested clarification regarding whether a CW visa can be obtained within the CNMI and on the effect of such a visa refusal.

Visa issuance is a function of DOS. Thus any changes in visa issuance policies are beyond the scope of this DHS rule. However, DHS has been informed that DOS plans to issue multiple-entry CW visas, which should ease some of the commenters' concerns.

7. Reconsideration of Denied Petitions

Two commenters opposed the rule because it does not contain a fact dispute resolution mechanism. These commenters stated that while employers and employees may appeal denials as to the issuance of permits to the USCIS Administrative Appeals Office, the process is notoriously slow, bureaucratic, and expensive. The commenters also stated that appeals at higher levels are equally inaccessible for foreign workers of modest means. The commenters suggested that foreign workers have no way to pursue claims with respect to unpaid wages and overtime or other violations of the terms and conditions of employment other than bringing a contract action in court.

First, DHS notes that this rule includes an administrative appeal process which is consistent with other nonimmigrant classifications under the INA. The rule provides that the decision to grant or deny a petition for CW–1 status may be appealed to the USCIS Administrative Appeals Office, but denial of an application for change or extension of status filed under this section may not be appealed. *See* new 8 CFR 214.2(w)(21). The USCIS denial of a CW petition is not reviewable in removal proceedings before the Executive Office for Immigration Review. Consistent with Federal immigration law, this rule provides no appeal or conflict resolution procedure for the beneficiary of a visa petition, in this case, the alien worker. *See* 8 CFR 103.3(a)(1)(iii)(B), 8 CFR 1103.3(a)(1)(iii)(B). The CNRA requires DHS to ''establish, administer, and enforce a system for * * * permits to be issued to prospective employers'' not employees. *See* 48 U.S.C. 1806(d)(2). Thus the right to petition for a CW worker rests with employers in need of workers, and it is the employer who has standing to appeal the denial. Further, intended beneficiaries have no appeal rights. *See* 8 CFR 103.3(a)(1)(iii)(B) (affected party does not include the beneficiary of a visa petition). DHS believes that this appeal process adequately addresses the needs of the CW program, complies with the CNRA, and no alternative procedure is necessary. Thus no changes are made to the final rule as a result of these comments.

8. Change or Adjustment of Status

One commenter requested clarification on a CW holder's ability to change status into another INA classification such as an H classification. DHS notes that, during the transition period, CW workers will be able to change or adjust to another immigration status under the INA if eligible. *See* new 8 CFR 214.2(w)(18).

9. Period of Admission and Extension of Stay

Three commenters expressed concerns or offered suggestions regarding the period of admission and extension of stay for transitional workers. One commenter suggested that transitional worker status be valid for either one or two years.

CW status cannot be issued in two-year increments because the CNRA requires an annual reduction in the number of transitional workers. *See* 48 U.S.C. 1806(d)(2). DHS will issue CW status in one-year increments in order to properly administer the allocation and annual reduction mandated by the CNRA. *See* new 8 CFR 214.2(w)(16).

Two additional commenters stated that the rule allows employers to extend their contracts with foreign workers for the entire transition period. According to the commenters, this fact will exclude U.S. workers from jobs for five years. DHS disagrees with the commenters. While an employer may request extensions for foreign workers it currently employs, the employer must justify a continued need for the workers

and verify that the requirements of the regulations have been met. *See* new 8 CFR 214.2(w)(17). In addition, the reduction in the number of allocated worker permits as required under the CNRA will ensure that U.S. citizens and lawful permanent residents have access to job opportunities in the CNMI. No changes have been made to the final rule as a result of these comments.

10. Transition Period

Eleven commenters expressed concern or offered suggestions regarding the rule's transition period.

(a) During the Transition Period

Five commenters stated that there is a continued need for foreign workers to fill the jobs that the locals will not take. They contend that, as a result, the transitional worker classification will need to be in effect beyond the transition period. One of these commenters suggested that the transition period be extended beyond 2014 as long as employers are willing to renew the employment.

The CNRA authorizes DHS to create a nonimmigrant classification to ensure adequate employment in the Commonwealth during the transition period. *See* 48 U.S.C. 1806(d)(2). As such, the transitional worker classification is a temporary classification, available only during the transition period, to provide a foreign national worker with a lawful nonimmigrant status. *Id.* During the transition period, workers should seek to obtain skills, professional licenses, or educational degrees necessary to qualify for other employment-based status under the INA. The CNRA does not allow DHS to extend CW status beyond the transition period. *See* 48 U.S.C. 1806(d)(2). Thus, DHS is unable to adopt the suggestion to extend the transition period beyond 2014. The CW classification provision of the transition period may only be extended by the Secretary of the U.S. Department of Labor upon a determination that current and anticipated labor needs justify extending the transitional worker program to ensure adequate employment in the CNMI. *See* 48 U.S.C. 1806(d)(5). DHS has added additional language to the definition of ''transition period'' to further confirm that if the U.S. Secretary of Labor extends the transitional worker program, references to transition period in the final rule will include the length of any such extension. See new 8 CFR 214.2(w)(1)(xi).

(b) Post-Transition Period

Five commenters requested clarification on how transitional workers could transition out of CW status if ineligible for an INA-based status. One commenter suggested that transitional workers with U.S. citizen children should be provided additional immigration options when the transition period expires in order to ensure family unity. Another commenter suggested that DHS implement a post-transition mechanism to bring new replacement workers as market conditions change.

In order to position themselves to transition out of CW status if ineligible for another INA status, workers should use the transition period to satisfy requirements, such as any necessary professional licenses or educational degrees, in order to obtain other employment-based status under the INA. The CNRA does not provide for a mechanism to offer any other immigration relief once the transition period expires. *See* 48 U.S.C. 1806(d)(2)(5).

An additional commenter suggested that the transitional worker classification should terminate when the CNMI labor permit expires. This rule provides for transitional worker visas for foreign workers in the CNMI for the entire transition period. *See* new 8 CFR 214.2(w)(23). That period is not relevant to the expiration of CNMI labor permits. When the transition period ends, such workers need to obtain another INA status to legally remain in the CNMI or they will be subject to removal. *Id.* No changes have been made to the regulation as a result of these comments.

V. Other Changes

The final rule modifies the interim final rule's reference to appeals of denials of CW–1 petitions. *See* new 8 CFR 214.2(w)(21). Rather than refer solely to the ''USCIS Administrative Appeals Office'' (AAO), the provision now refers to the AAO ''or any successor body.'' This change is not substantive, but provides flexibility in case of a future USCIS administrative reorganization or the renaming of an office with respect to administrative appeals. DHS has found that overly specific references to particular officials or offices in regulations can lead either to unnecessary future conforming rulemakings, or obsolete regulations, if and when names and responsibilities are reorganized or otherwise modified.

VI. Regulatory Analyses

A. Executive Order 12866 and Executive Order 13563

This rulemaking is not considered ''economically significant'' under Executive Order 12866, as supplemented by Executive Order 13563, because it will not result in an annual effect on the economy of $100 million or more in any one year. However, because this rule raises novel policy issues, it is considered significant and has been reviewed by the Office of Management and Budget (OMB) under this Order. A summary of the economic impacts of this rule are presented below. For further details regarding this analysis, please refer to the complete Regulatory Assessment and Final Regulatory Flexibility Analysis that has been placed in the public docket for this rulemaking.

1. Public Comments Received on the Interim Final Rule That Address the Regulatory Assessment

DHS invited the public to comment on any potential economic impacts of this rule and the data and methodologies employed in conducting the Regulatory Assessment. We received approximately 25 comments on the Regulatory Assessment. These comments are addressed below.

One commenter stated that the interim final rule is deficient because DHS failed to conduct an economic impact analysis of the regulation as required by Executive Order 12866 and the Regulatory Flexibility Act of 1980.

DHS prepared a regulatory assessment in support of the interim final rule, titled ''Regulatory Assessment for the Interim Final Rule: Commonwealth of the Northern Mariana Islands (CNMI) Transitional Worker Classification,'' prepared by Industrial Economics, Incorporated, and dated May 22, 2009. The regulatory assessment was summarized in the preamble to the interim final rule and made available for public comment. Chapter 6 of that report provided all the information required for an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act of 1980 (RFA). The analysis has been updated based on new information received during the public comment period, and DHS has prepared a Final Regulatory Flexibility Analysis (FRFA) per the RFA. The complete updated report and FRFA are part of the administrative record for this final rule and can be found in the public docket for this rulemaking.

One commenter stated that by failing to define a specific plan for allocating

permits among employers and reducing the overall number of permits to zero by the end of the transition period, DHS imposes additional burdens and uncertainty on the CNMI. Current employers, and existing and new investors, have no guarantees with respect to how their businesses will be treated by Federal officials or whether certain industries will be favored over others.

DHS agrees that costs associated with regulatory uncertainty may occur. However, estimation of these costs in the Regulatory Assessment is not possible at this time. Several factors prevent any estimation of economy-wide impacts resulting from this rule, including: (1) The highly uncertain future demand for foreign workers given the demise of the garment industry, newly imposed minimum wage requirements, and challenges faced by the tourism industry and (2) the fact that economic data and models with which to estimate impacts to the broader economy are largely absent or difficult to develop given the general lack of CNMI economic and production data and the changing conditions of the CNMI economy. Furthermore, DHS believes that maintaining flexibility with respect to the allocation system allows the Department to respond more quickly to changing economic conditions and demand for labor in the CNMI.

One commenter stated that DHS cannot justify its refusal to estimate the broader economic impacts of the rule based on its refusal to develop a schedule for allocating and reducing the number of grants of CW status. By giving the Secretary discretion each year to set the number of available grants of status for the next year, the commenter stated that DHS can avoid forever any economic impact analysis.

While the absence of a defined schedule prohibits the assessment of economic impacts, it is not the only factor preventing such analysis. Decisions by the U.S. Department of Labor (U.S. DOL) regarding whether to extend the CW classification, when combined with decisions by DHS, could significantly affect the number of grants of CW status available during the transition period. The economic analysis cannot predict the timing or outcome of U.S. DOL's decisions. As stated previously, economic analysis is further hampered by significant uncertainty regarding future demand for foreign workers and economic data and models with which to estimate impacts to the broader economy are largely absent or difficult to develop given the general lack of CNMI economic and production data and the changing conditions of the CNMI economy.

One commenter stated that DHS did not make enough use of a report issued by the U.S. Government Accountability Office (GAO) titled, ''Commonwealth of the Northern Mariana Islands: Managing Potential Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data'' (GAO–08–791, August 2008). In this report, GAO illustrates the potential effects of changes in the availability of foreign labor on the gross domestic product (GDP) of the CNMI. Its model relies on a study published in 2005 that found, under certain assumptions, that a 10 percent reduction in the number of all workers might be expected to cause a 7 percent decline in GDP. The commenter stated that DHS refused to recognize this fundamental economic rule and made no more than a passing reference to GAO's study.

DHS disagrees with the commenter. Both the May 2009 Regulatory Assessment and the Regulatory Assessment for this final rule provide a detailed summary and discussion of GAO's analysis (see Appendix A of both reports). In its report, GAO also states that its simulations of the impact of reduced workforce on GDP are intended to illustrate a range of potential impacts. The simulations do not account for other changes in the CNMI over the coming years, and, therefore, should not be considered predictive of future Gross Domestic Product (GDP). GAO stresses that, without knowing the future demand for foreign workers, the impact of joint DHS and U.S. DOL decisions regarding the size of the transitional workforce cannot be predicted.[16]

Two commenters noted that, in the development of the interim final rule, DHS failed to consider the report titled ''Economic Impact of Federal Laws on the Commonwealth of the Northern Mariana Islands.'' [17] Specifically, the commenters stated that this report provides the best possible prediction of future economic conditions in the CNMI as well as the economic impact of reducing the foreign worker population.

DHS has carefully reviewed this report, but is unable to use any information from the report in the Regulatory Assessment for this final rule (*see* Appendix B of the Regulatory Assessment for a detailed discussion of the report's data, methodology, and conclusions). The report appears to be oriented primarily towards members of Congress, who have the ability to amend minimum wage and immigration laws. However, several limitations of this report prevent us from incorporating the results into the Regulatory Assessment.

When preparing benefit-cost analyses of proposed regulations, Federal agencies must measure the impact of each regulatory alternative against a baseline, defined as ''the best assessment of the way the world would look absent the proposed action'' (*see* OMB Circular A–4, 2003, p. 15). In this case, the action under consideration is the replacement of the CNMI work permit system with a Federal system that includes the granting of CW status and the issuance of INA visas. The impacts of this action should be measured relative to a scenario that projects the likely demand for foreign workers, given the pre-existing demise of the garment industry, the struggles of the tourism industry (visitor arrivals have generally decreased since 2004 and are roughly 45 percent of their peak in 1996), and the imposition of the minimum wage. The baseline demand for foreign workers in the CNMI is impossible to predict given all the other factors affecting the island economy.

The GAO report (GAO–08–791, August 2008) highlights the importance of comparing the impacts of the regulation to an accurate baseline scenario. The report states ''* * * continuing declines in the garment industry, challenges to the tourism industry, and the scheduled increases in the minimum wage may reduce the demand for foreign workers, lessening any potential adverse impact of the legislation on the economy'' (pp. 24–25). For example, if the baseline demand for foreign workers does not exceed the number of available grants of CW status, the impact of the rule will be zero or negligible. If demand is higher than the number of available grants of CW status, cost would be positive, but the magnitude will depend on the size of the gap between worker demand and availability.

McPhee *et al.* (2008) do not provide new or improved information regarding the likely future demand for foreign workers. Rather, the two scenarios modeled by the authors should be

[16] *See* GAO, Commonwealth of the Northern Mariana Islands: Managing Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data, No. GAO–08–791 (August 2008) at pp. 36–40, available at *http://www.gao.gov/new.items/d08791.pdf.*

[17] *See* McPhee, Malcolm and Richard Conway, Economic Impact of Federal Laws on the Commonwealth of the Northern Mariana Islands, study funded by the U.S. Department of the Interior (October 2008) available at *http://www.doi.gov/oia/reports/reportsCNMI/EconomicImpact_Oct2008.pdf.*

viewed as demonstrating the sensitivity of the economy to the number of foreign workers employed without comment on likely future demand for these workers. In the scenario where CNMI employers have access to as many foreign workers as needed, the authors assume demand is driven by the doubling of the number of CNMI visitors by 2015. This increase in tourism is an assumption, rather than a prediction based on existing data.

The authors' alternative scenario designed to demonstrate the effect of Federal actions in the CNMI implicitly assumes that the only restriction on the future growth of the visitor industry is the amount of available foreign labor, without consideration of the other economic events influencing the growth of this sector. This scenario also combines the effects of Federal oversight of immigration and implementation of the Federal minimum wage, adding to the difficulty of isolating the effect of just this immigration rule.

As a result of these limitations, we cannot incorporate the results of McPhee *et al.* (2008) directly into our regulatory assessment. The assertion that the CNRA will preclude any meaningful recovery by the CNMI, as argued by the authors, is also difficult to confirm without better information about the feasibility of expansion of the tourist or other, new industries on the islands. Repealing the law, the solution recommended by McPhee *et al.,* is beyond the scope of DHS authority.

In the interim final rule and the supporting Regulatory Assessment, DHS argued that the economic models and data necessary to estimate the impacts of the rule are not available. Two commenters asserted that this statement is incorrect and reference McPhee *et al.* (2008) as providing the necessary information.

As noted previously, the results of McPhee *et al.* (2008) cannot be incorporated directly into the Regulatory Assessment for this final rule. The major limitations of the study are that it does not provide new information or data allowing for predictions of the likely future demand for foreign workers in the CNMI and it includes the potential impacts of events well outside the scope of this rulemaking (minimum wage increases). The potential for and magnitude of adverse impacts resulting from this final rule are highly sensitive to future demand for foreign workers. Furthermore, even if the use or development of other economic models were feasible, the problem of defining future baseline demand would not be resolved.

In addition, assuming that the likely baseline demand for foreign workers could be projected, this final rule presents unique challenges with regard to defining the types of costs that should be assessed and choosing the appropriate tools for the assessment. OMB's Circular A–4 directs Federal agencies to estimate the costs of a regulation to society in terms of the ''opportunity costs.'' Generally, opportunity costs are measured as changes in producer and consumer surpluses. In addition, best practices suggest that where the distributional effects are significant, they should also be discussed. Distributional effects might be measured in terms of changes in production (*e.g.,* GDP), expenditures, or employment. In the Regulatory Assessment for this final rule, we attempt to report both net costs to society as a whole, as well as the disproportionate effects on the CNMI economy and discuss limitations preventing us from quantifying such costs.

Where a regulation has the potential to affect a large number of sectors, computable general equilibrium models are employed to capture the interactions among markets, measured as changes in surpluses, GDP, or employment. No such computable general equilibrium model of the CNMI economy exists and the data used to construct such models are incomplete for the CNMI. For example, GAO (GAO–08–791, August 2008) was unable to identify recent estimates of CNMI's GDP for use in its simulations (p. 84). U.S. DOL notes, ''CNMI does not yet have in place macroeconomic data collection and accounting systems technology capable of generating information on total output and its components on a monthly or quarterly basis. As a result, there is no way to provide objective measures of productive capacity, capacity utilization, employment, wages or unemployment rates * * * Among the factors that make * * * data gathering and analysis work challenging is that the CNMI * * * is not included in the U.S. Census Bureau's American Community Survey (ACS) or other surveys that generate current detailed data on the 50 states and most areas of populations of 65,000 or more. Nor is the CNMI included in surveys that generate current data on industries, production and household income and expenditures.'' (U.S. DOL, Impact of Increased Minimum Wages on the Economies of American Samoa and the Commonwealth of the Northern Mariana Islands, prepared by the Office of the Assistant Secretary for Policy 35–36 (January 2008)).

In their report, McPhee *et al.* present numerous tables of data on employment, population, visitors, wages and salaries, personal income, GDP, business gross revenue, general fund revenue, bank loans, residential telephone lines, auto sales, and residential building permits for a variety of time periods and intervals depending on the data type. Additional tables of economic data are provided in Appendix A of the McPhee *et al.* report. The report text suggests that the authors compared the multiplier relationships derived from the 1995 input-output table to economic data collected from surveys or other sources to verify the stability of the multipliers through time. However, we are unclear about the methods and data used to conduct these checks, in part because none of the tables presented in the report include source information. We had difficulty discerning which presentations of historical information are based on actual data collected by government sources in the relevant year, versus information calculated or derived by the authors using population or general employment information and their 1995 input-output tables.

A separate letter from the co-author of the report to the CNMI government responds to concerns DHS expressed about the quality of the data used in the McPhee *et al.* report (this letter was included as Appendix B of the comment submitted by the CNMI Office of the Governor, ''Comments on the Interim Final Rule entitled 'Commonwealth of the Northern Mariana Islands Transitional Worker Classification,' '' DHS Docket No. USCIS–2008–0038–0091, November 17, 2009). This letter clarifies that ''most of the data used in the study are shown in Appendix A of the [McPhee *et al.*] report. To the extent possible, the information was drawn from published sources. For example, estimates of Gross Domestic Product and personal income came from the CNMI income and products accounts (Marc Rubin, ''Annual Nominal and Constant Dollar Estimates of Gross Domestic Product in the Commonwealth of the Northern Mariana Islands, 2000–2005,'' 2007). Other major sources of information included the population census (U.S. Bureau of the Census), the household survey (U.S. Bureau of the Census), the economic census (U.S. Bureau of the Census), economic indicators (CNMI Department of Commerce), W–2 returns and wages (CNMI Department of Finance), and government employment (CNMI Department of Finance)'' (p. 1).

Regarding employment data, the letter states, ''[t]here was no single publication that produced the required employment data. Consequently, I had to make employment estimates [for four categories—apparel, hotels, other industries, and government] by reconciling information from five different sources: the economic census, W–2 reports, the census of population and housing, the household, income, and expenditures survey, and various industry and government tabulations'' (p. 2). Other variables, such as population, are extrapolated for years where no data are available.

From this comment, it appears that certain conclusions in the report regarding the size and composition of the CNMI economy between 2004 and 2007 are based on estimates derived from the input-output model rather than retrospective data collected through surveys or other means. The authors state that their results for this period are roughly consistent with data published through the second quarter of 2008 by the CNMI Department of Commerce. Those data include W–2 returns, business gross revenue, general fund revenue, imports, bank loans, residential telephone lines, and auto sales. Thus, we conclude that this co-author of the McPhee *et al.* (2008) report encountered data limitations similar to those described by GAO and U.S. DOL and attempts to overcome them by combining limited available data with the multipliers developed in 1995. Given this conclusion, and in combination with the problem of forecasting baseline demand, and the problem with the study including impacts from events outside the scope of this rule (the increase in minimum wage), we did not attempt to recreate the model developed in McPhee *et al.*

One commenter stated that in its proposed regulation addressing foreign investor visas in the CNMI, DHS favorably cited a 1999 study by the Northern Marianas College that applies the same input-output model used as the basis for the work by McPhee *et al.* (2008).

Comments regarding other DHS rules, such as the Notice of Proposed Rulemaking for the E–2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands with Long-term Investor Status, are outside the scope of this rulemaking. However, it is important to note that the E–2 rule cited historical information provided in the Northern Marianas College study regarding the economic expansion that occurred between 1980 and 1995. We have no reason to believe that the historical information is inaccurate. Of concern for this final rule is whether the model, which relies on information collected in 1995, is descriptive of the future CNMI economy, and whether data exist for making predictions about the impact of the rule on the future economy. As noted in a previous response, McPhee *et al.* provide no new evidence regarding the probable future demand for foreign workers. Their analysis demonstrates the sensitivity of the CNMI economy to the size of its labor force, assuming certain 1995 conditions still stand, without consideration of other factors encouraging or discouraging economic growth and the need for foreign labor.

One commenter argued that several statements and tables in the section of the preamble of the interim final rule summarizing the results of the Regulatory Assessment were incorrect because DHS did not factor in the issuance of CNMI's umbrella permits. Specifically, (1) The size of the cap in 2009 is no longer relevant because foreign workers with umbrella permits will be able to stay in the CNMI without CW status until November 28, 2011, (2) efforts to bring out-of-status workers into compliance with CNMI law prior to November 28, 2009, are incorrectly described, and (3) businesses are unlikely to experience cost savings under the Federal program in 2009 and 2010 because most have already paid CNMI fees for 2-year CNMI-approved employment contracts.

DHS agrees and has revised the Regulatory Assessment to reflect that employers and employees will start applying for status in 2011 in anticipation of the expiration of their umbrella permits on November 27, 2011. The size of the cap in 2009 and assumed costs of efforts to achieve legal status for out-of-status workers prior to November 28, 2009, are no longer relevant to our economic analysis. The final part of this comment seems to reflect a misunderstanding of our comparison of each regulatory alternative to a baseline scenario, defined as the way the world would look absent the regulation. Absent the CNRA, CNMI employers would pay to renew CNMI work permits each year. In the Regulatory Assessment, DHS analyzes the economic impact of employers not having to obtain any new permits or status for workers in 2010 as a result of the umbrella permits and the costs of obtaining CW status in 2011 in anticipation of the expiration of the umbrella permits. Businesses would experience cost savings relative to the baseline in 2010 because no costs are incurred under the final rule. These cost savings are estimated to be $5.2 million. The costs of obtaining CW status or INA visas for in-status workers in 2011, net of fees that would have been paid to obtain CNMI work permits, is $3.2 million. Over the 2-year period, the net savings is $2.0 million. We note in the analysis, however, that to the extent employers took the unusual step of paying 2 years of CNMI work permit fees in 2009, some of these cost savings may not be realized. We think this circumstance is unlikely in most cases because reported revenues for the CNMI Department of Labor (CNMI DOL) in 2009 ($5.4 million) are less than we would have anticipated in that year ($5.6 million including domestic household workers) absent implementation of the CNRA.

Two commenters stated that the interim final rule and supporting Regulatory Assessment do not take into account more recent data regarding the number of foreign workers in the CNMI provided by the CNMI government to DHS in 2009. These data were provided by Governor Fitial as a follow-up to his July 18, 2008, letter.

Regrettably, DHS has no record of such follow-up information provided by Governor Fitial or the government of the CNMI. However, the final rule and Regulatory Assessment incorporated the results of a count of foreign workers in the CNMI conducted by the DOI in December 2009 (U.S. Department of the Interior, The Secretary of the Interior, A Report on the Alien Worker Population in the Commonwealth of the Northern Mariana Islands, Washington, DC, March 2010; referred to as the DOI 2010 Report to Congress).

One commenter stated that the CNMI Department of Commerce Report on the 2005 CNMI Household, Income, and Expenditures Survey (HIES) from April 2008, a source for some of the data for the economic analysis accompanying the final regulation, is incomplete and out-of-date. The commenter believed that DHS should rely instead on the 2002 and 2007 economic census of business reports.

DHS partially agrees. Our economic analysis relies on both the 2005 HIES and the U.S. Census Bureau's 2007 economic census of the CNMI (released in 2009), and we supplemented these sources with newer data provided in the DOI 2010 Report to Congress. We rely on the U.S. Census Bureau's report for the number and size distribution of business establishments on the CNMI. The DOI report provides the most current counts of in-status and out-of-status workers in the CNMI. The DOI report also provides information about each worker's occupation, but not in sufficient detail to identify workers

employed in private households or managerial or specialty occupations. This detail is necessary for determining the number of foreign workers eligible for CW status or visas currently available under the INA, and the 2005 HIES provides the most recent available data to make that determination. DHS notes that the economic consultants hired by the CNMI government (Malcolm D. McPhee & Associates and Dick Conway) also cite the 2005 HIES in their analysis completed in 2008.

One commenter stated that the DHS prediction that 2,090 foreign workers will be eligible for traditional INA visa classifications is incorrect. This comment stated that random samples analyzed by the CNMI DOL suggest only 300 workers will be eligible.

In the Regulatory Assessment for this final rule, DHS estimates that approximately 1,909 foreign workers will be eligible for traditional INA visas. This estimate is based on an extensive effort to ''crosswalk'' CNMI's work permit categories with comparable INA visa categories (the details of which can be found in Chapter 4 and Appendix C of the 2010 Regulatory Assessment, available in the docket for this rulemaking). The reduction from 2,090 to 1,909 results from the overall decrease in the foreign worker population documented in the DOI 2010 Report to Congress. DHS continues to use a higher estimate for three reasons.

First, the documented number of CNMI government employees, religious workers, and diplomatic and consular staff who will be eligible for an existing classification under the INA is 236 workers, close to the estimate provided by the commenter even before adding in eligible skilled and managerial workers in the private sector. Therefore, we believe the estimate of 300 is too low.

Second, a review of the worker occupations reported in the DOI count suggests that at least 1,540 workers may be eligible. This review is imprecise. While we are able to easily identify diplomats, doctors, dentists, pharmacists, or other highly specialized occupations, we cannot determine whether some individuals in other job categories hold eligible managerial positions (*e.g.,* 288 individuals report their occupations as ''supervisor''). Therefore, while our assessment of the DOI data gives us confidence that an estimate of 300 eligible individuals is too low, we continue to rely on our crosswalk and information from the 2005 HIES that specifically identifies the number of foreign workers employed in ''managerial and professional specialty'' positions.

Finally, the commenter did not provide any supporting data or documentation describing the CNMI DOL sampling procedure or methods for evaluating INA visa eligibility. Thus, we are unable to determine whether the sample is representative of the foreign worker population or their understanding of the criteria for eligibility is consistent with INA regulations.

One commenter stated that DHS has no statutory basis for making household or other workers ineligible for CW status. Furthermore, the commenter stated that the number of household workers estimated by DHS (950) is incorrect.

As previously mentioned, the CNRA authorizes DHS to set conditions for the admission of transitional workers. *See* 48 U.S.C. 1806(d)(3). The CNRA also mandates that such provisions must address the needs of legitimate businesses. *See* 48 U.S.C. 1806(d)(5)(A). As such, this rule does not include a blanket exclusion of any specific occupational category from the CW status. The rule only requires that beneficiaries be petitioned by a legitimate business which produces services or goods. DHS believes that the rule's provision regarding legitimate businesses is entirely lawful and appropriate.

The commenter provided no information correcting the estimate of 950 household workers, nor did the commenter explain if the figure is over- or understated. The DOI 2010 Report to Congress identifies the number of foreign workers employed as ''houseworkers'' (1,415 holding 706D, 706K, and 706P CNMI work permits); however, the report does not differentiate between workers employed by legitimate businesses, like hotels or maid service companies, and private households. Therefore, DHS relies on the best, publicly-available data provided by the CNMI DOL in its 2005 HIES.

Two commenters stated that our estimate of approximately 2,100 spouses and dependent children of foreign workers is too high because it includes other categories of non-working foreign residents (*e.g.,* immediate relatives of U.S. citizens, alien investors, alien business permit holders, alien retirees, alien students, and alien diplomats).

Unfortunately, the commenter did not provide better data. However, we were able to revise this estimate to 1,557 based on the number of respondents in the DOI 2010 Report to Congress who currently hold 706E permits.

The Regulatory Assessment for the interim final rule estimated compliance costs occurring between May 2008 and December 2009 as employers obtain CW work permits for out-of-status foreign workers. One commenter stated that no direct costs were incurred during this period because the rule had not gone into effect, and employers who are found to employ out-of-status workers are barred from employing foreign workers in the future.

The costs during that time period (May 2008 and December 2009) reflect actions DHS assumed the regulated community would take in anticipation of the rule. Specifically, we assumed employers would incur costs to obtain CNMI work permits for out-of-status workers to ensure those employees would be eligible for CW status after November 28, 2009. However, based on CNMI's issuance of umbrella permits and efforts to deport out-of-status workers prior to November 28, 2009, and the fact that employers have a disincentive to making the CNMI DOL aware of their out-of-status workers, DHS agrees with the commenter that this assumption is no longer valid. These costs have been removed from the Regulatory Assessment for this final rule.

One commenter stated that the number of out-of-status foreign workers is now 650, which is lower than the 1,000 estimated in the report.

The Regulatory Assessment for this final rule incorporates a newer estimate of 183 out-of-status foreign workers obtained from the DOI 2010 Report to Congress.

One commenter disagreed with the DHS statement that one benefit of the rule will be to protect foreign workers from abuses such as human trafficking and other illicit activity.

The CNRA's stated purposes include ensuring effective border control and addressing national security and homeland security concerns, as well as protecting workers from the potential for abuse and exploitation. Section 701(a) of the CNRA. There is evidence that directly-employed workers have been subject to widespread abuse and have been victims of human trafficking. *See, e.g.,* Senate Hearing 110–50, Conditions in the Commonwealth of the Northern Mariana Islands (Feb. 8, 2007) (testimony of Lauri Bennett Ogumoro and Sister Mary Stella Mangona). DHS believes that the CNRA transitional worker provisions were intended to address the needs of legitimate businesses and to combat such abuses. As such, this final rule limits eligibility to petition for a CW worker to a legitimate business that is an operating or commercial undertaking that produces services or goods for profit

and meets applicable legal requirements for doing business in the CNMI. DHS believes that this provision regarding legitimate businesses will combat such abuse by providing workers protection from such direct employment.

In the preamble to the interim final rule, DHS stated that it can more cost-effectively administer the immigration program while also providing improved security benefits. One commenter responded that this statement is untrue, arguing that the CNMI system provides better security because, unlike the United States, it collects exit information on a timely basis. The commenter also stated that the U.S. system is not more cost-effective because it does not consider the negative economic impacts of limiting access to foreign workers.

DHS disagrees with the commenter. This final rule contains provisions to ensure that the admission of nonimmigrants to the CNMI is consistent with existing Federal laws and practices that are intended to secure and control the borders of the United States and its territories. The DHS statement on cost-effectiveness refers only to a comparison of the fees paid to the CNMI government to permit foreign workers (old system) relative to fees paid to the U.S. government under the final rule (new system) for the same workers. Because employers may include more than one worker on a single petition, total present value fees paid by employers to the U.S. government under the preferred alternative are less than they would have paid to the CNMI government over the time period of this analysis.

One commenter stated that the current population of the CNMI is 52,000, rather than 66,000 as specified in the section examining economic impacts to small entities.

DHS appreciates this new information and has used it in the section examining economic impacts to small entities (*see* Final Regulatory Flexibility Analysis below). We note, however, that this new information does not change our conclusion that the CNMI does not meet the definition of a small government under the Regulatory Flexibility Act.

One commenter stated that the assertion in the section examining economic impacts to small entities that data on non-profit organizations do not exist is incorrect, arguing that the CNMI maintains information on the number of such organizations with employees.

Regrettably, the commenter did not provide a reference or citation for such information. DHS has clarified in the Final Regulatory Flexibility Analysis that our source for the business size data that we rely on for our estimate of the number of small businesses in the CNMI does not explicitly break out non-profit organizations.

One commenter stated that the DHS calculation of the incremental direct costs of the interim final rule is based on faulty assumptions and reaches flawed and useless conclusions. The commenter argued the following: first, assuming that the number of available grants of CW status will remain constant through the time frame for the analysis is incorrect because DHS is required to reduce the number annually. Second, the number of individuals requesting status in 2009 is incorrect because the number of foreign workers in the CNMI has declined since the development of the Regulatory Assessment. Third, assuming the number of jobs currently held by foreign workers represents the future demand for such workers is incorrect because the CNMI is currently in a serious economic depression (in past years, the number of foreign workers has been much higher). Finally, the assumption that there are 1,000 out-of-status workers is incorrect because the CNMI DOL estimates that the figure had fallen to 600 as of August 2008.

This comment refers to the DHS estimate of the incremental administrative costs of the rule. Incremental costs are the difference between the cost of obtaining a CNMI work permit under the former legal system and the cost of obtaining CW status or an INA visa after the regulation takes effect. Our assumption that the maximum number of grants of CW status is available was intended to estimate the maximum potential administrative costs resulting from the rule. As the analysis reveals, the final rule is anticipated to result in cost savings because employers may name more than one employee on a petition; conversely, separate petitions and fees were required for each employee under the CNMI system. Thus, assuming future growth in the number of foreign workers during the transition period up to the cap on grants of CW status would only increase the cost savings, or benefits, attributable to the final rule. DHS has updated the analysis to include revised estimates of the number of workers present in the CNMI at the start of the transition period based on data collected in December 2009 by the U.S. Department of the Interior on in-status and out-of-status workers.

One commenter stated that excluding the $150 fee per beneficiary to fund vocational education programs in the CNMI and the $1,000 American Competitiveness and Worker Improvement Act (ACWIA) training fee accompanying H–1B visas from the calculation of the net administrative cost to society is not appropriate and would not be endorsed by professional economists.

In its guidance to Federal agencies describing best practices for preparing economic analyses required by Executive Order 12866, OMB includes a section discussing the difference between costs and transfer payments. It states, ''Benefit and cost estimates should reflect real resource use. Transfer payments are monetary payments from one group to another that do not affect total resources available to society * * * *You should not include transfers in the estimates of the benefits and costs of a regulation* [emphasis added]. Instead, address them in a separate discussion of the regulation's distributional effects'' (OMB, Circular A–4, 2003, p. 38). Taxes and fees are the classic example of transfer payments, where revenues collected from citizens are redeployed to government programs providing benefits to the population. We have followed OMB's guidance precisely, providing estimates of real resource losses that omit the training fees, which take money from employers to fund public vocational programs. We do, however, include these training fees in our discussion of the distributional impacts of the final rule on individual CNMI employers in the Final Regulatory Flexibility Analysis.

2. Summary of the Regulatory Assessment

In this analysis, we consider the incremental costs and benefits to society, in both the CNMI and the United States, of the final rule. Given the requisite reduction in the number of potential grants of CW status (to zero) by the end of the transition period or by the end of any extensions to the program, the most significant economic impact of the rule may result from a decrease in available foreign labor. However, we cannot measure the social costs of this drawdown for several reasons. First, DHS has yet to develop a schedule for allocating and reducing the number of potential grants of CW status, and the likelihood that the U.S. Department of Labor will exercise its authority to extend the transition period beyond 2014 is unknown. The combined effect of these two decisions on the size of the transitional worker population during the transition period is significant, ranging from minimal reduction in this population to removal of nearly all such workers by the end of 2014. Furthermore, future demand for foreign workers in the CNMI is highly uncertain

given the demise of the garment industry, newly imposed minimum wage requirements, and challenges faced by the tourism industry. Finally, economic data and models with which to estimate impacts to the broader economy are largely absent or difficult to develop given the general lack of CNMI economic and production data and the changing conditions of the CNMI economy.

In this analysis, we calculate the incremental administrative costs (*i.e.,* direct compliance costs) resulting from changes in the fees imposed for the CW status grants and INA visas required by the final rule. Our analysis assumes essentially no reduction in the number of potential grants of CW status throughout the transition period and assumes the highest possible number of grants of CW status will be issued each year (*i.e.,* USCIS will issue as many CW status grants as needed to meet the estimated demand for foreign workers). Because of data limitations, we qualitatively discuss the incremental effect of these costs on overall production, expenditures, and government revenue in the CNMI. Our analysis focuses solely on economic impacts likely to be incurred while the rule is in effect. For this analysis, we assume this is the beginning of 2011 until the end of the transition period on December 31, 2014). We make five key assumptions:

(1) CNMI businesses will wait until 2011 to apply for grants of CW status or INA visas in anticipation of the expiration of permits issued by the CNMI DOL (known as ''umbrella'' permits). In 2009, the CNMI DOL issued umbrella permits to foreign workers, thus authorizing their continued presence and employment in the CNMI until November 27, 2011. DHS will recognize these permits as granting employment authorization to transitional workers during this period.

(2) The number of grants of CW status available during the transition period ending December 31, 2014, will remain essentially constant at 22,417 visas per year. We make this assumption because DHS and U.S. DOL have not yet: (1) Established a system and schedule for allocating and reducing the number of grants of CW status and (2) decided whether or not to extend the transition period beyond 2014.

(3) The starting cap of 22,417 grants of CW status is sufficient to accommodate the number of foreign workers likely to require such status in 2011. We estimate that approximately 13,216 in-status workers will be granted CW status in 2011. This number is based on the total number of foreign workers present in the CNMI as of December 31, 2009 (16,258), as reported by the DOI, after subtracting the number of foreign workers likely to be eligible for visa classifications under the INA (1,909), the number of foreign workers ineligible for a grant of CW status (950 private domestic household workers), and the estimated number of out-of-status workers (183). We assume that the 183 out-of-status workers are gainfully employed in the CNMI and will be replaced with new foreign workers who can legally obtain CW status. As a result, a total of 13,399 foreign workers are potentially eligible for CW status.

(4) The number of jobs currently held by foreign workers will not change during the transition period. We assume that the number of jobs currently held by foreign workers represents the future demand for foreign workers through 2014, or the number of jobs available for such workers. We make this assumption because the CNMI's economic conditions are changing, and we lack the data to predict the future state of the CNMI economy and its resulting impact on the labor market for foreign workers. We also do not know the rate at which resident workers would replace foreign workers.

(5) The current number of out-of-status foreign workers is 183, as estimated by DOI as of December 31, 2009.

Collectively, these assumptions result in a scenario where no shortage of labor is anticipated. Therefore, this analysis focuses on estimating the change in administrative costs associated with obtaining status for foreign workers from USCIS as opposed to from the CNMI government. We also qualitatively consider the effect of this difference in administrative cost on labor prices and related impacts to economy-wide production. The distributional impact on CNMI government revenues is also discussed.

These assumptions are uncertain. Depending on how DHS reduces the number of grants of CW status during the transition period, the rule could have negative impacts, perhaps significant, on the CNMI if the CNMI economy experiences a surge in the demand for the type of foreign labor that is ineligible for visa classifications under the INA and exceeds the CNMI status cap (22,417), or if the number of out-of-status foreign workers has been greatly underestimated by DOI. The absence of a defined system and schedule for reducing the CW status cap, combined with the general lack of CNMI economic and production data and changing conditions of the CNMI economy, preclude a quantitative analysis of alternative scenarios exploring these impacts in depth.

In our analysis, we first estimate the current and future baseline demand for foreign workers in the absence of the final rule. In this baseline analysis, we consider the prevailing economic conditions in the CNMI to estimate the future demand for foreign workers and the total number of foreign work permits that would be issued under CNMI labor law absent the final rule. Next, we characterize the number and type of CW status grants and nonimmigrant worker visas available under the INA that would be issued as a result of the final rule. We consider the number of affected businesses and foreign workers as well as the foreign workers' jobs and professional qualifications, eligibility based on employer or occupation, and current immigration status in the CNMI. We then estimate the component costs that CNMI employers would incur to apply for and obtain the requisite CNMI work permits (baseline regulatory environment) and CW status grants and INA visas for foreign workers (final rule). We combine this cost information with our estimates of the number of visas that would be issued to calculate the incremental administrative costs of the rule. Finally, we discuss qualitatively the potential impact of changes in labor costs on the CNMI economy and the distributive effect of the rule on the revenues of the CNMI government.

We estimate that 16,258 foreign workers and 1,176 businesses in the CNMI will be subject to the final rule. Based on the available data, we estimate that approximately 1,909 of these workers may qualify for a nonimmigrant work visa available under the INA, at least 950 private domestic household workers will not be eligible for CW status, and 183 out-of-status workers will be replaced with new foreign workers who can legally obtain CW status. This calculation leaves 13,399 foreign workers potentially eligible for CW status. In addition, we estimate that approximately 1,557 spouses and dependent children of foreign workers will apply for admission under a second CW status category.

In accordance with Executive Order 12866, we consider and evaluate the following four alternatives:

Alternative 1 (the chosen alternative): Aliens, if present in the CNMI, then lawfully present, may qualify for CW status. An employer petitioner can name more than one worker, or ''beneficiary,'' on a single Form I–129CW petition if the beneficiaries will be working in the same eligible occupational category, for

the same period of time, and in the same location. The CW status is valid for a period of 1 year.

Alternative 2: Same as Alternative 1, except an employer petitioner can name only one eligible beneficiary on each petition.

Alternative 3: Same as Alternative 1, except CW status is valid for a period of 2 years.

Alternative 4: Same as Alternative 1, except aliens lawfully present as well as aliens who are out of status in the CNMI as of the beginning of the transition period (November 28, 2009) may qualify for CW status.

We estimate the incremental costs on an annual basis over the same period of time as the transition period, beginning with the year 2011 (to simplify our cost analysis by estimating the incremental costs on a calendar basis) and ending with the year 2014, in the absence of any extension made by U.S. DOL.

The incremental costs represent the change in the cost of obtaining the necessary CW status and INA visas under the final rule from the baseline cost of obtaining foreign work permits under the CNMI system. We estimate that the baseline cost for issuing CNMI work permits to the 16,075 in-status foreign workers presently in the CNMI is about $5.6 million annually. Table 1 summarizes the results of the Regulatory Assessment. The negative values in Table 1 estimated for Alternatives 1, 3, and 4 indicate that society will experience a net *cost savings* as a result of implementing one of these alternatives instead of continuing the baseline condition (the CNMI permit system).

TABLE 1—SUMMARY OF THE INCREMENTAL ADMINISTRATIVE COSTS OF THE RULE, UNDISCOUNTED AND DISCOUNTED

[2010 $Ms]

Alternative	2011	2012	2013	2014	Total
Undiscounted:					
1	−$0.85	−$2.7	−$2.8	−$1.8	.....
2	3.8	1.9	1.9	2.8	.....
3	−0.85	−5.2	−2.8	−4.3	.....
4	−1.2	−2.7	−2.8	−1.8	.....
3% discount rate:					
1	−0.82	−2.6	−2.5	−1.6	−7.5
2	3.6	1.8	1.7	2.5	9.6
3	−0.82	−4.9	−2.5	−3.8	−12.0
4	−1.2	−2.6	−2.5	−1.6	−7.9
7% discount rate:					
1	−0.79	−2.4	−2.2	−1.4	−6.8
2	3.5	1.6	1.5	2.1	8.7
3	−0.79	−4.6	−2.2	−3.3	−10.9
4	−1.1	−2.4	−2.2	−1.4	−7.1

The total present value costs are projected to range from −$12 million to $9.6 million depending on the validity period of CW status (1 or 2 years), whether the estimated 183 out-of-status aliens present in the CNMI are eligible for CW status, and the discount rate applied. Savings achieved under Alternatives 1, 3, and 4 are attributable to the flexibility of allowing multiple beneficiaries to be included in a single Form I–129CW petition, which is in contrast to the CNMI permit system that required an application and fee paid for each employee. The additional costs of applying for and obtaining CW status for spouses and children and INA visas for certain qualified foreign workers do not outweigh the benefits of submitting a single petition for multiple beneficiaries seeking CW status. In comparison to the chosen alternative (Alternative 1), increasing the CW status validity period from 1 year to 2 years (Alternative 3) results in additional cost savings of about 60 percent. Allowing out-of-status workers eligibility for CW status (Alternative 4) would result in cost savings of 4 to 5 percent relative to Alternative 1 because CNMI employers will not have to pay to recruit new or replacement workers from overseas.

The total present value costs of Alternative 2 are projected to range from $8.7 million to $9.6 million depending on the discount rate applied. These costs are substantially higher than the costs estimated for the other three alternatives. The positive values represent a net cost to society, which are expected given that this alternative requires a petition for each beneficiary.

Because Table 1 presents *net impacts* to society, it does not include the statutory fee of $150 per beneficiary per year to fund vocational education programs in the CNMI. This fee is to be paid for each beneficiary seeking CW status. The costs also do not include the American Competitiveness and Worker Improvement Act (ACWIA) fee required for H–1B visa applicants. Although these fees represent a cost to businesses or employer petitioners in the CNMI, these fees are a transfer or redistribution of funds within the CNMI and U.S. economies and are not a component of the net impacts of the final rule to society. We note that from the perspective of the employers, when these fees are included, Alternatives 1 (chosen alternative), 3, and 4 continue to result in cost savings over the baseline.

Ideally, we would quantify and monetize the benefits of the regulation and compare them to the costs. The intended benefits of the rule include improvements in national and homeland security and protection of human rights. Implementation of the rule assures that the admission of nonimmigrants to the CNMI is consistent with existing Federal laws and practices intended to secure and control the borders of the United States and its territories. Additionally, the rule would help protect foreign workers in the CNMI from abuses such as human trafficking and other illicit activity.

Due to limitations in data and the difficulty associated with quantifying national and homeland security

improvements, we have described the intended benefits of the regulation qualitatively. Moreover, because three of the four alternatives analyzed, including the chosen alternative (Alternative 1), are projected to result in net cost savings to society, the rule may produce a net overall benefit to society.

Notwithstanding the potentially broader impacts of this regulation on the CNMI economy that would ensue if the availability of foreign labor is affected, the results of our analysis on the incremental societal costs of the associated visa fees indicate that Alternative 1 provides the most favorable combination of cost and stringency. While Alternative 2 might be considered more stringent because it requires a petition for each beneficiary, the costs are substantially higher than the other three alternatives. Alternative 3 is expected to achieve more cost savings than Alternative 1, but the 1-year status validity period under Alternative 1 facilitates USCIS's effective management of the number of potential grants of CW status issued at any given time and DHS's determination regarding the statutory reduction of the number of annual CW status grants to zero by the end of the transition period. Alternative 4 may provide less security because out-of-status workers would be eligible for CW status.

We qualitatively discuss the distributive effect of the final rule on the revenues of the CNMI government. Absent the rule, we estimate that the CNMI government would have collected approximately $5.6 million annually in fees associated with the issuance of permits for foreign workers. Because it will no longer be responsible for administering this permit program, the CNMI government staff resources devoted to this function, and funded by these permit fees, will be available for other government business. As recently as 2008, the CNMI government operated at a deficit; the government's total expenditures in that year of $329.3 million exceeded revenues by approximately $48.1 million. However, the CNMI government may collect revenue under CNMI Public Law No. 17–1, enacted in March 2010, which requires all foreign workers to apply to the CNMI DOL for an identification card and pay associated fees (specifics unknown as of the writing of this analysis). Given the current state of the economy and holding all other factors constant, the effect of removing the burden of CNMI's immigration functions on the government's fiscal condition is uncertain. CNMI government jobs associated with administering the current permit program may be lost, increasing unemployment within the CNMI citizen population.

B. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

Under the requirements of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, agencies must consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The types of entities subject to the rule's requirements include all businesses employing foreign workers in the CNMI. As an insular area, the CNMI government does not meet the RFA's definition of a small government, which includes only ''governments of *cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000''* (emphasis added). If the results of a ''screening analysis'' indicate that a rule may significantly impact a substantial number of small businesses, DHS is required to conduct an Initial Regulatory Flexibility Analysis (IRFA) to further assess these impacts. In this case, all information required for a screening analysis and an IRFA was provided in the ''Regulatory Assessment for the Interim Final Rule'' dated May 22, 2009. This document was summarized in the preamble of the interim final rule and was made available for public comment. Because DHS did not certify that this rule will not have a significant economic impact on a substantial number of small entities, it has prepared a Final Regulatory Flexibility Analysis (FRFA).

The RFA requires DHS to ''describe the impact *of the proposed rule* on small entities'' in an Initial Regulatory Flexibility Analysis. 5 U.S.C. 603(a) (emphasis added). The Act also states that a Final Regulatory Flexibility Analysis ''shall contain * * * a description of the projected reporting, recordkeeping and other compliance requirements *of the rule.*'' 5 U.S.C. 604(a)(4) (emphasis added). As DHS has explained, this final rule does not prescribe a schedule for allocating CW status throughout the transition period and the Secretary of the U.S. Department of Labor may choose to extend the transition period. Consequently, DHS has estimated the incremental administrative costs (*i.e., direct compliance costs*) resulting from changes in the fees imposed for the CW status grants and INA visas required by the final rule.

The results of this FRFA are summarized below.

1. A Succinct Statement of the Need for, and Objectives of, the Rule

On May 8, 2008, the President signed the CNRA into law. Congress' intent in enacting this legislation is ''to ensure that effective border control procedures are implemented and observed, and that national security and homeland security issues are properly addressed.'' Title VII, Subtitle A of the CNRA calls for the extension of U.S. immigration laws to the CNMI, with special provisions to allow for the orderly phasing-out of CNMI's nonresident contract worker program and the orderly phasing-in of Federal responsibilities over immigration in the CNMI.

The objective of the CNMI-only CW status program is to provide for an orderly transition from the existing CNMI foreign worker permit system to the U.S. immigration system. It is also intended to mitigate potential harm to the CNMI economy as employers adjust their hiring practices and foreign workers obtain nonimmigrant and immigrant visa classifications available under the INA. Please refer to previous sections of this preamble for further details.

2. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

One commenter to the interim final rule stated that DHS and USCIS did not conduct a regulatory impact analysis or a small business analysis and were thus not in compliance with the law; however, this commenter was mistaken. A regulatory assessment, which included a chapter on impact to small entities (with all the elements of an IRFA), was placed in the public docket with the interim final rule and was made available for public comment. DHS did not make changes to the rule based on any comments to the IRFA.

3. A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why no Such Estimate is Available

To measure the economic impact experienced by entities, we compare the per-business estimated costs of the

regulations to the annual revenues and annual payroll of affected businesses. We note that we were unable to find revenue information on small not-for-profit organizations located in the CNMI. Thus, the following analysis focuses on small businesses, which were included in the 2007 economic census of the CNMI.

We assume all businesses in the CNMI employ foreign workers, except those businesses with no paid employees. The data on businesses by size show that over 80 percent of businesses in the CNMI have between 1 and 19 employees. The 2007 economic census of the CNMI shows that businesses with 10 to 19 employees had average revenues of just over $1 million that year (smaller businesses had even lower average revenues). According to the SBA's ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' other than in crop production, businesses in the vast majority of industries are considered small if they have revenues less than $7 million or fewer than 50 employees. In many industries the threshold is higher. Thus, in its screening analysis, DHS concludes that a substantial number of small entities will be affected by this rule.

For the sake of brevity, we present the economic impacts to small entities for Alternative 1, the chosen alternative, here. For estimated impacts to small entities for all alternatives, please refer to the Regulatory Assessment and Final Regulatory Flexibility Analysis that is available in the docket for this rulemaking.

Businesses will experience costs beginning in 2011 to obtain visas issued under the INA for eligible workers, and they will obtain CW status for the remaining workers. We assume the INA-eligible workers will all qualify for H–1B visas. The H–1B visas will be renewed in 2014, while CW status will be renewed annually. Table 2 lists the annual administrative costs (*i.e.,* the costs of CW status and INA visas minus the costs of CNMI permits had the rule not come into effect) for businesses of complying with the rule under Alternative 1 (chosen alternative).

TABLE 2—DISTRIBUTION OF NET PERMIT AND VISA COSTS BY BUSINESS SIZE, ALTERNATIVE 1

[Undiscounted 2010 $Ms]

Business size	2011	2012	2013	2014
No paid employees	$0	$0	$0	$0
1 to 4 employees	0.27	0.02	0.02	0.18
5 to 9 employees	0.23	−0.15	−0.16	0.08
10 to 19 employees	0.40	−0.27	−0.29	0.14
20 or more employees	1.45	−0.94	−0.98	0.76
All businesses	2.3	−1.3	−1.4	1.2

Note: Net permit and visa costs include the CW status educational fee and H–1B visa ACWIA fee.

Businesses experience the highest net positive costs in 2011. Therefore, we compare these costs to the annual revenues and payrolls for businesses of each size category based on U.S. Census data for 2007 (released in 2009). Table 3 lists the number of businesses in each size category along with the average payroll and average revenue of businesses in those size categories in 2011 dollars.

TABLE 3—AVERAGE PAYROLL AND REVENUE OF BUSINESSES

Business size	Businesses	Average payroll ($M)	Average revenue ($M)
No paid employees	61	$0.02	$0.10
1 to 4 employees	476	0.03	0.17
5 to 9 employees	244	0.10	0.68
10 to 19 employees	210	0.18	1.1
20 or more employees	200	1.0	4.9
All businesses	1,191	0.24	1.2

Average payrolls range from $30,000 per business (one to four employees) to $1.0 million per business (20 or more employees). Average revenue also scales with the size of the business, from $100,000 for sole proprietorships to $4.9 million for businesses with 20 or more employees. Table 4 presents the per-business incremental costs for Alternative 4 and the ratio of these costs to the average payroll and revenue.

TABLE 4—ESTIMATED 2010 PERMIT AND VISA COSTS PER BUSINESS AS A PERCENTAGE OF PAYROLL AND REVENUE

[Alternative 1, Chosen Alternative]

Business size	Cost per business ($)	% Payroll	% Revenue
No paid employees	$0	0	0
1 to 4 employees	570	1.6	0.33
5 to 9 employees	929	0.9	0.14
10 to 19 employees	1,891	1.1	0.18
20 or more employees	7,243	0.7	0.15
All businesses	1,968	0.8	0.16

Under Alternative 1, the additional costs imposed by the rule in 2011 represent 0.33 percent or less of annual revenues. Compared to payroll, however, the impacts are about 5 to 6 times higher. Under Alternative 1, businesses of all sizes experience increased labor costs of about 1 percent on average, depending on their size. Considering that the payroll costs presented in Table 4 do not include benefits, the actual percentage increase in labor costs for 2011 is smaller than reported in the table.

The analysis to this point has focused on the impact of replacing the CNMI foreign worker visas with INA visas and CW status. In addition, the ineligibility of certain workers (*e.g.,* domestic household workers employed directly by private residents) may have a negative, although likely indirect effect. For the reasons described above in the section on Executive Order 12866, we are unable to quantify these potential effects.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The forms required by this rule are expected to be submitted on paper by employers. In our analysis, we assume employees in the job category ''Management of companies and enterprises'' will complete and file these forms, which require basic administrative and record-keeping skills. The skills required to complete Form I–129 and supplements (filed for other nonimmigrant workers), or the new Form I–129CW (filed for CNMI transitional workers), are essentially the same as the skills required to complete the necessary paperwork under the CNMI permit system. Additionally, the spouse or minor child of a CW–1 nonimmigrant who wishes to accompany or follow the alien as a CW–2 nonimmigrant will have to complete Form I–539, Application to Extend/Change Status. Professional skills are not required for the preparation of this form.

5. A Description of the Steps the Agency has Taken to Minimize the Significant Adverse Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Was Rejected

DHS did not identify any significant alternatives to the rule that specifically address small entities while also meeting the requirements of the CNRA. We evaluated four regulatory alternatives to consider changes in the admission and filing requirements, including those that minimize the incremental cost burden to CNMI employers and businesses, including small entities.

Alternative 1 (chosen alternative) provides the most favorable combination of cost and stringency. While Alternative 2 might be considered more stringent because it requires a petition for each beneficiary, the costs are substantially higher than the other three alternatives. Alternative 3 is expected to achieve more cost savings than Alternative 1, but the 1-year status validity period under Alternative 1 facilitates DHS's effective management of the number of potential grants of CW status issued at any given time and the statutory reduction on an annual basis to zero by the end of the transition period. Alternative 1 may provide more security because DHS would require lawful status in the CNMI as a prerequisite for CW eligibility.

In addition, we emphasize that it is the reduction in the number of available grants of CW status that will have a potentially substantial impact on small entities; however, the rule does not prescribe a schedule for allocating CW status throughout the transition period. DHS believes any methodology for allocating CW status will require flexibility to adjust to the prospering or declining needs of the CNMI economy. A methodology or formula set forth in a regulation does not provide such flexibility.

6. Conclusion

In summary, because the rule affects all businesses employing foreign workers, it likely affects a large number of small entities in every industry. Based on the analysis in the preceding sections, we do not believe the requirement that businesses obtain CW status or INA visas will have a substantial impact on a per-business basis because it will coincide with the end of the more expensive CNMI permit system. However, DHS did not certify this rule as not having a significant economic impact on a substantial number of small entities and has instead prepared a FRFA.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector if the rule will result in expenditures exceeding $100 million (adjusted for inflation) in any one year. We estimate that this rule will not result in 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. The CNRA will cause some changes for the CNMI government since they will no longer be implementing their own immigration, foreign worker, and border security program. However, the costs of administering that program will no longer be incurred by the CNMI government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. Please refer to the section above on Executive Order 12866 for further details on the potential economic impacts of this rule.

D. Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 Civil Justice Reform

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

F. Paperwork Reduction Act (PRA)

The Paperwork Reduction Act of 1995 requires all Departments to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a regulatory action. 44 U.S.C. 3501 *et seq.;* 5 CFR part 1320. The information collection requirements contained in this rule, Form I–129CW, Petition for CNMI-Only Nonimmigrant

Transitional Worker, and Form I–539, Application to Extend/Change Nonimmigrant Status, have been previously approved for use by OMB under the Paperwork Reduction Act (PRA). The OMB control numbers for these collections are 1615–0111 and 1615–0003, respectively.

The termination of the CNMI permit program will result in employers petitioning for status under the INA for those employees. Termination of the CNMI worker program will increase the number of respondents submitting Form I–129, Petition for a Nonimmigrant Worker, OMB Control Number 1615–0009, and Form I–539. This increase is already included in the OMB inventory and no further action is required. However, DHS will be making non-substantive changes to the instructions to the Form I–129CW. Accordingly, DHS submitted Form OMB 83–C, Correction Worksheet, to OMB to reflect these non-substantive changes.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

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

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103, 214, 274a, and 299, which was published in the **Federal Register** at 74 FR 55094 on October 27, 2009, is adopted as final with the following changes:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7 is amended by revising paragraphs (b)(1)(i)(J) and (c)(3)(iii) to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(J) Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I–129CW). * * *

* * * * *

(c) * * *

(3) * * *

(iii) A Petition for a CNMI-Only Nonimmigrant Transitional Worker, or an Application to Extend/Change Nonimmigrant Status only in the case of an alien applying for CW–2 nonimmigrant status,

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 4. Section 214.2 is amended by revising paragraph (w) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(w) *CNMI-Only Transitional Worker (CW–1).* (1) *Definitions.* The following definitions apply to petitions for and maintenance of CW status in the Commonwealth of the Northern Mariana Islands (the CNMI or the Commonwealth):

(i) *Direct Guam transit* means travel from the CNMI to the Philippines by an alien in CW status, or from the Philippines to the CNMI by an alien with a valid CW visa, on a direct itinerary involving a flight stopover or connection in Guam (and no other place) within 8 hours of arrival in Guam, without the alien leaving the Guam airport.

(ii) *Doing business* means the regular, systematic, and continuous provision of goods or services by an employer as defined in this paragraph and does not include the mere presence of an agent or office of the employer in the CNMI.

(iii) *Employer* means a person, firm, corporation, contractor, or other association, or organization which:

(A) Engages a person to work within the CNMI; and

(B) Has or will have an employer-employee relationship with the CW–1 nonimmigrant being petitioned for.

(iv) *Employer-employee relationship* means that the employer will hire, pay, fire, supervise, and control the work of the employee.

(v) *Lawfully present in the CNMI* means that the alien:

(A) At the time the application for CW status is filed, is an alien lawfully present in the CNMI under 48 U.S.C. 1806(e); or

(B) Was lawfully admitted or paroled into the CNMI under the immigration laws on or after the transition program effective date, other than an alien admitted or paroled as a visitor for business or pleasure (B–1 or B–2, under any visa-free travel provision or parole of certain visitors from Russia and the People's Republic of China), and remains in a lawful immigration status.

(vi) *Legitimate business* means a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit, or is a governmental, charitable or other validly recognized nonprofit entity. The business must meet applicable legal requirements for doing business in the CNMI. A business will not be considered legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or CNMI law. DHS will determine whether a business is legitimate.

(vii) *Minor child* means a child as defined in section 101(b)(1) of the Act who is under 18 years of age.

(viii) *Numerical limitation* means the maximum number of persons who may be granted CW–1 status in a given fiscal year or other period as determined by DHS, as follows:

(A) For fiscal year 2011, the numerical limitation is 22,417 per fiscal year.

(B) For fiscal year 2012, the numerical limitation is 22,416 per fiscal year.

(C) For each fiscal year beginning on October 1, 2012 until the end of the transition period, the numerical limitation will be a number less than 22,416 that is determined by DHS and published via Notice in the **Federal Register**. The numerical limitation for any fiscal year will be less than the number for the previous fiscal year, and will be a number reasonably calculated in DHS's discretion to reduce the number of CW–1 nonimmigrants to zero by the end of the transition period.

(D) DHS may adjust the numerical limitation for a fiscal year or other period in its discretion at any time via Notice in the **Federal Register**, as long as such adjustment is consistent with paragraph (w)(1)(viii)(C) of this section.

(E) If the numerical limitation is not reached for a specified fiscal year, unused numbers do not carry over to the next fiscal year.

(ix) *Occupational category* means those employment activities that DHS has determined require alien workers to supplement the resident workforce and includes:

(A) Professional, technical, or management occupations;

(B) Clerical and sales occupations;

(C) Service occupations;

(D) Agricultural, fisheries, forestry, and related occupations;

(E) Processing occupations;

(F) Machine trade occupations;

(G) Benchwork occupations;

(H) Structural work occupations; and

(I) Miscellaneous occupations.

(x) *Petition* means USCIS Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, a successor form, other form, or electronic equivalent, any supplemental information requested by USCIS, and additional evidence as may be prescribed or requested by USCIS.

(xi) *Transition period* means the period beginning on the transition program effective date and ending on December 31, 2014, unless the CNMI-only transitional worker program is extended by the Secretary of Labor, in which case the transition period will end for purposes of the CW transitional worker program on the date designated by the Secretary of Labor.

(xii) *United States worker* means a national of the United States, an alien lawfully admitted for permanent residence, or a national of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau who is eligible for nonimmigrant admission and is employment-authorized under the Compacts of Free Association between the United States and those nations.

(2) *Eligible aliens.* Subject to the numerical limitation, an alien may be classified as a CW–1 nonimmigrant if, during the transition period, the alien:

(i) Will enter or remain in the CNMI for the purpose of employment in the transition period in an occupational category that DHS has designated as requiring alien workers to supplement the resident workforce;

(ii) Is petitioned for by an employer;

(iii) Is not present in the United States, other than the CNMI;

(iv) If present in the CNMI, is lawfully present in the CNMI;

(v) Is not inadmissible to the United States as a nonimmigrant or has been granted a waiver of each applicable ground of inadmissibility; and

(vi) Is ineligible for status in a nonimmigrant worker classification under section 101(a)(15) of the Act.

(3) *Derivative beneficiaries—CW–2 nonimmigrant classification.* The spouse or minor child of a CW–1 nonimmigrant may accompany or follow the alien as a CW–2 nonimmigrant if the alien:

(i) Is not present in the United States, other than the CNMI;

(ii) If present in the CNMI, is lawfully present in the CNMI; and

(iii) Is not inadmissible to the United States as a nonimmigrant or has been granted a waiver of each applicable ground of inadmissibility.

(4) *Eligible employers.* To be eligible to petition for a CW–1 nonimmigrant worker, an employer must:

(i) Be engaged in legitimate business;

(ii) Consider all available United States workers for the position being filled by the CW–1 worker;

(iii) Offer terms and conditions of employment which are consistent with the nature of the petitioner's business and the nature of the occupation, activity, and industry in the CNMI; and

(iv) Comply with all Federal and Commonwealth requirements relating to employment, including but not limited to nondiscrimination, occupational safety, and minimum wage requirements.

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW–1 worker must file a petition with USCIS and pay the requisite petition fee plus the CNMI education fee of $150 per beneficiary per year. An employer filing a petition is eligible to apply for a waiver of the fee based upon inability to pay as provided by 8 CFR 103.7(c). If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

(6) *Appropriate documents.* Documentary evidence establishing eligibility for CW status is required. A petition must be accompanied by:

(i) Evidence demonstrating the petitioner meets the definition of eligible employer in this section;

(ii) An attestation by the petitioner certified as true and accurate by an appropriate official of the petitioner, of the following:

(A) No qualified United States worker is available to fill the position;

(B) The employer is doing business as defined in paragraph (w)(1)(ii) of this section;

(C) The employer is a legitimate business as defined in paragraph (w)(1)(vi) of this section;

(D) The employer is an eligible employer as described in paragraph (w)(4) of this section and will continue to comply with the requirements for an eligible employer until such time as the employer no longer employs the CW–1 nonimmigrant worker;

(E) The beneficiary meets the qualifications for the position;

(F) The beneficiary, if present in the CNMI, is lawfully present in the CNMI;

(G) The position is not temporary or seasonal employment, and the petitioner does not reasonably believe it to qualify for any other nonimmigrant worker classification; and

(H) The position falls within the list of occupational categories designated by DHS.

(iii) Evidence of licensure if an occupation requires a Commonwealth or local license for an individual to fully perform the duties of the occupation. Categories of valid licensure for CW–1 classification are:

(A) *Licensure.* An alien seeking CW–1 classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the CNMI and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and allowed for the occupation with a temporary license, USCIS may grant the petition at its discretion after considering the duties performed, the degree of supervision received, and any limitations placed on the alien by the employer and/or pursuant to the temporary license.

(C) *Duties without licensure.* If the CNMI allows an individual to fully practice the occupation that usually requires a license without a license under the supervision of licensed senior or supervisory personnel in that occupation, USCIS may grant CW–1 status at its discretion after considering the duties performed, the degree of supervision received, and any limitations placed on the alien if the facts demonstrate that the alien under supervision could fully perform the duties of the occupation.

(7) *Change of employers.* A change of employment to a new employer inconsistent with paragraphs (w)(7)(i) and (ii) of this section will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. A CW–1 nonimmigrant may change employers if:

(i) The prospective new employer files a petition to classify the alien as a

CW–1 worker in accordance with paragraph (w)(5) of this section, and

(ii) An extension of the alien's stay is requested if necessary for the validity period of the petition.

(iii) A CW–1 may work for a prospective new employer after the prospective new employer files a Form I–129CW petition on the employee's behalf if:

(A) The prospective employer has filed a nonfrivolous petition for new employment before the date of expiration of the CW–1's authorized period of stay; and

(B) Subsequent to his or her lawful admission, the CW–1 has not been employed without authorization in the United States.

(iv) Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(v) If a CW–1's employment has been terminated prior to the filing of a petition by a prospective new employer consistent with paragraphs (w)(7)(i) and (ii), the CW–1 will not be considered to be in violation of his or her CW–1 status during the 30-day period immediately following the date on which the CW–1's employment terminated if a nonfrivolous petition for new employment is filed consistent with this paragraph within that 30-day period and the CW–1 does not otherwise violate the terms and conditions of his or her status during that 30-day period.

(8) *Amended or new petition.* If there are any material changes in the terms and conditions of employment, the petitioner must file an amended or new petition to reflect the changes.

(9) *Multiple beneficiaries.* A petitioning employer may include more than one beneficiary in a CW–1 petition if the beneficiaries will be working in the same occupational category, for the same period of time, and in the same location.

(10) *Named beneficiaries.* The petition must include the name of the beneficiary and other required information, as indicated in the form instructions, at the time of filing. Unnamed beneficiaries will not be permitted.

(11) *Early termination.* The petitioning employer must pay the reasonable cost of return transportation of the alien to the alien's last place of foreign residence if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission.

(12) *Approval.* USCIS will consider all the evidence submitted and such other evidence required in the form instructions to adjudicate the petition. USCIS will notify the petitioner of the approval of the petition on Form I–797, Notice of Action, or in another form as USCIS may prescribe:

(i) The approval notice will include the classification and name of the beneficiary or beneficiaries and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part.

(ii) The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

(13) *Petition validity.* An approved petition will be valid for a period of up to one year.

(14) *How to apply for CW–1 or CW–2 status.* (i) Upon approval of the petition, a beneficiary, his or her eligible spouse, and or his or her minor child(ren) outside the CNMI will be informed in the approval notice of where they may apply for a visa authorizing admission in CW–1 or CW–2 status.

(ii) If the beneficiary is present in the CNMI, the petition also serves as the application for a grant of status as a CW–1.

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW–2 dependent status on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW–2 status may not be approved until approval of the CW–1 petition. A spouse or child applying for CW–2 status on Form I–539 is eligible to apply for a waiver of the fee based upon inability to pay as provided by 8 CFR 103.7(c).

(15) *Biometrics and other information.* The beneficiary of a CW–1 petition or the spouse or child applying for a grant or, extension of CW–2 status, or a change of status to CW–2 status, must submit biometric information as requested by USCIS. For a Form I–129CW petition where the beneficiary is present in the CNMI, the employer must submit the biometric service fee described in 8 CFR 103.7(b)(1) with the petition for each beneficiary for which CW–1 status is being requested or request a fee waiver for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. For a Form I–539 application where the applicant is present in the CNMI, the applicant must submit a biometric service fee for each CW–2 nonimmigrant on the application with the application or obtain a waiver of the biometric service fee described in 8 CFR 103.7(b)(1) for any biometric services provided, including but not limited to reuse of previously provided biometric information for background checks. A biometric service fee is not required for beneficiaries under the age of 14, or who are at least 79 years of age.

(16) *Period of admission.* (i) A CW–1 nonimmigrant will be admitted for the period of petition validity, plus up to 10 days before the validity period begins and 10 days after the validity period ends. The CW–1 nonimmigrant may not work except during the validity period of the petition. A CW–2 spouse will be admitted for the same period as the principal alien. A CW–2 minor child will be admitted for the same period as the principal alien, but such admission will not extend beyond the child's 18th birthday.

(ii) The temporary departure from the CNMI of the CW–1 nonimmigrant will not affect the derivative status of the CW–2 spouse and minor children, provided the familial relationship continues to exist and the principal remains eligible for admission as a CW–1 nonimmigrant.

(17) *Extension of petition validity and extension of stay.* (i) The petitioner may request an extension of an employee's CW–1 nonimmigrant status by filing a new petition.

(ii) A request for a petition extension may be filed only if the validity of the original petition has not expired.

(iii) Extensions of CW–1 status may be granted for a period of up to 1 year until the end of the transition period, subject to the numerical limitation.

(iv) To qualify for an extension of stay, the petitioner must demonstrate that the beneficiary or beneficiaries:

(A) Continuously maintained the terms and conditions of CW–1 status;

(B) Remains admissible to the United States; and

(C) Remains eligible for CW–1 classification.

(v) The derivative CW–2 nonimmigrant may file an application for extension of nonimmigrant stay on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW–2 status extension may not be approved until approval of the CW–1 extension petition.

(18) *Change or adjustment of status.* A CW–1 or CW–2 nonimmigrant can apply to change nonimmigrant status under section 248 of the Act or apply for adjustment of status under section 245 of the Act, if otherwise eligible. During the transition period, CW–1 or CW–2 nonimmigrants may be the beneficiary of a petition for or may apply for any nonimmigrant or immigrant visa

classification for which they may qualify.

(19) *Effect of filing an application for or approval of a permanent labor certification, preference petition, or filing of an application for adjustment of status on CW–1 or CW–2 classification.* An alien may be granted, be admitted in and maintain lawful CW–1 or CW–2 nonimmigrant status while, at the same time, lawfully seeking to become a lawful permanent resident of the United States, provided he or she intends to depart the CNMI voluntarily at the end of the period of authorized stay. The filing of an application for or approval of a permanent labor certification or an immigrant visa preference petition, the filing of an application for adjustment of status, or the lack of residence abroad will not be the basis for denying:

(i) A CW–1 petition filed on behalf of the alien;

(ii) A request to extend a CW–1 status pursuant to a petition previously filed on behalf of the alien;

(iii) An application for CW–2 classification filed by an alien;

(iv) A request to extend CW–2 status pursuant to the extension of a related CW–1 alien's extension; or

(v) An application for admission as a CW–1 or CW–2 nonimmigrant.

(20) *Rejection.* USCIS may reject an employer's petition for new or extended CW–1 status if the numerical limitation has been met. In that case, the petition and accompanying fee will be rejected and returned with the notice that numbers are unavailable for the CW nonimmigrant classification. The beneficiary's application for admission based upon an approved petition will not be rejected based upon the numerical limitation.

(21) *Denial.* The ultimate decision to grant or deny CW–1 or CW–2 classification or status is a discretionary determination, and the petition or the application may be denied for failure of the petitioner or the applicant to demonstrate eligibility or for other good cause. The denial of a petition to classify an alien as a CW–1 may be appealed to the USCIS Administrative Appeals Office or any successor body. The denial of a grant of CW–1 or CW–2 status within the CNMI, or of an application for change or extension of status filed under this section, may not be appealed.

(22) *Terms and conditions of CW Nonimmigrant status.* (i) *Geographical limitations.* CW–1 and CW–2 statuses are only applicable in the CNMI. Entry, employment and residence in the rest of the United States (including Guam) require the appropriate visa or visa waiver. Except as provided in paragraph (w)(22)(iii) of this section, an alien with CW–1 or CW–2 status who enters or attempts to enter, or travels or attempts to travel to any other part of the United States without an appropriate visa or visa waiver, or who violates conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States, will be deemed to have violated CW–1 or CW–2 status.

(ii) *Re-entry.* An alien with CW–1 or CW–2 status who travels abroad from the CNMI will require a CW–1 or CW–2 or other appropriate visa to be re-admitted to the CNMI.

(iii) *Direct Guam transit.*

(A) *Travel from the CNMI to the Philippines.* An alien with CW–1 or CW–2 status who is a national of the Philippines may travel to the Philippines via a direct Guam transit without being deemed to violate that status.

(B) *Travel from the Philippines to the CNMI.* An alien who is a national of the Philippines may travel to the CNMI via a direct Guam transit under the following conditions: If an immigration officer determines that the alien warrants a discretionary exercise of parole authority, the alien may be paroled into Guam via direct Guam transit to undergo preinspection outbound from Guam for admission to the CNMI pursuant to 8 CFR 235.5(a) or to proceed for inspection upon arrival in the CNMI. During any such preinspection, the alien will be admitted in CW–1 or CW–2 status if the immigration officer in Guam determines that the alien is admissible to the CNMI. A condition of the admission is that the alien must complete the direct Guam transit. DHS, in its discretion, may exempt such alien from the provisions of 8 CFR 235.5(a) relating to separation and boarding of passengers after inspection.

(iv) *Employment authorization.* An alien with CW–1 nonimmigrant status is only authorized employment in the CNMI for the petitioning employer. An alien with CW–2 status is not authorized to be employed.

(23) *Expiration of status.* CW–1 status expires when the alien violates his or her CW–1 status (or in the case of a CW–1 status violation caused solely by termination of the alien's employment, at the end of the 30 day period described in section 214.2(w)(7)(v)), 10 days after the end of the petition's validity period, or at the end of the transitional worker program, whichever is earlier. CW–2 nonimmigrant status expires when the status of the related CW–1 alien expires, on a CW–2 minor child's 18th birthday, when the alien violates his or her status, or at the end of the transitional worker program, whichever is earlier. No alien will be eligible for admission to the CNMI in CW–1 or CW–2 status, and no CW–1 or CW–2 visa will be valid for travel to the CNMI, after the transitional worker program ends.

(24) *Waivers of inadmissibility for applicants lawfully present in the CNMI.* An applicant for CW–1 or CW–2 nonimmigrant status, who is otherwise eligible for such status and otherwise admissible to the United States, and who possesses appropriate documents demonstrating that the applicant is lawfully present in the CNMI, may be granted a waiver of inadmissibility under section 212(d)(3)(A)(ii) of the Act, including the grounds of inadmissibility described in sections 212(a)(6)(A)(i) and 212(a)(7)(B)(i)(II) of the Act, as a matter of discretion for the purpose of granting the CW–1 or CW–2 nonimmigrant status. Such waiver may be granted without additional form or fee. Appropriate documents required for such a waiver include a valid unexpired passport and other documentary evidence demonstrating that the applicant is lawfully present in the CNMI, such as an ''umbrella permit'' or a DHS-issued Form I–94. Evidence that the applicant possesses appropriate documents may be provided by an employer to accompany a petition, by an eligible spouse or minor child to accompany the Form I–539 (or such alternative form as USCIS may designate), or in such other manner as USCIS may designate.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

■ 6. Section 274a.12 is amended by revising paragraph (b)(23) to read as follows:

§ 274a.12 Classes of alien authorized to accept employment.

* * * * *

(b) * * *

(23) A Commonwealth of the Northern Mariana Islands transitional worker (CW–1) pursuant to 8 CFR 214.2(w). An alien in this status may be employed only in the CNMI during the transition period, and only by the petitioner through whom the status was obtained, or as otherwise authorized by 8 CFR 214.2(w). An alien who is lawfully present in the CNMI (as defined by 8 CFR 214.2(w)(1)(v)) on or before November 27, 2011, is authorized

to be employed in the CNMI, and is so employed in the CNMI by an employer properly filing an application under 8 CFR 214.2(w)(14)(ii) on or before such date for a grant of CW–1 status to its employee in the CNMI for the purpose of the alien continuing the employment, is authorized to continue such employment on or after November 27, 2011, until a decision is made on the application; or

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2011–22622 Filed 9–6–11; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0255–201141; FRL–9459–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Kentucky; Ohio; Huntington-Ashland Nonattainment Area; Determinations of Attainment of the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio, fine particulate ($PM_{2.5}$) nonattainment Area (hereafter referred to as ''the Huntington-Ashland Area'' or ''Area'') has attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) and additionally, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. The Huntington-Ashland Area is comprised of Cabell and Wayne Counties in their entireties and a portion of Mason County (Graham Tax District) in West Virginia; Boyd County in its entirety and a portion of Lawrence County in Kentucky; and a portion of Adams, a portion of Gallia, Lawrence, and Scioto Counties in Ohio. These determinations of attainment are based upon quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on October 7, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0255. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: In Region 3, Ellen Wentworth, Office of Air Program Planning, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2023. Ms. Wentworth's telephone number is (215) 814–2034. Ms. Wentworth can also be reached via electronic mail at *wentworth.ellen@epa.gov.* In Region 4, Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.* In Region 5, John Summerhays, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. Mr. Summerhays' telephone number is (312) 886–6067. Mr. Summerhays can also be reached via electronic mail at *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is EPA's final action?
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is determining that the Huntington-Ashland Area (comprised of Cabell and Wayne Counties in their entireties and a portion of Mason County (Graham Tax District) in West Virginia; Boyd County in its entirety and a portion of Lawrence County in Kentucky; and a portion of Adams, a portion of Gallia, Lawrence, and Scioto Counties in Ohio) has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2007–2009 data as well as the 2008–2010 data. EPA is also determining, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Huntington-Ashland Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on May 11, 2011 (76 FR 27290). For summary purposes, and with regard to the data, the Lawrence County Hospital (LCH) site was demolished on February 12, 2008, and a new site in the Lawrence County, Ohio portion of the Huntington-Ashland Area, known as the Ironton DOT site, began operation on the same day. As a consequence of the shutdown of the LCH site, the site was not able to meet the data completeness requirements for 2007–2009 because it was not operating for the entire 2007–2009 monitoring period. In a statistical analysis performed by EPA's Office of Air Quality Planning and Standards, as described in the NPR, EPA determined that the upper end of the range of potential 2007–2009 design values for the LCH site did not exceed the NAAQS. The Ironton DOT site was a new site in 2008 and thus did not collect data for 2007 and part of the first quarter of 2008; however, the data are complete for the remainder of 2008 and 2009. Because this was a new monitor during the 2007–2009 period, these data are considered supplemental to the data provided from the other monitors in the Area. The annual design value for 2007–2009 for the Huntington-Ashland Area is 14.1 micrograms per cubic meter ($\mu g/m^3$), at the Huntington site (54–011–0006). The annual design value for 2008–2010 for the Huntington-Ashland Area is 13.1 $\mu g/m^3$, at the Huntington site (54–011–0006). These values are below the NAAQS. The comment period closed on June 10, 2011. No comments were received in response to the NPR.

II. What is the effect of this action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. Finalizing this action does not constitute a redesignation of the Huntington-Ashland Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS

under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

In addition, EPA is making a separate and independent determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010), thereby satisfying EPA's requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

III. What is EPA's final action?

EPA is determining that the Huntington-Ashland Area has data indicating it has attained the 1997 annual $PM_{2.5}$ NAAQS, and additionally, that the Area has attained the standard by its applicable attainment date (April 5, 2010). These determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the period 2007–2009 and continues to monitor attainment during the 2008–2010 period. The determination of attaining data action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

This action makes determinations of attainment based on air quality, and will result in the suspension of certain Federal requirements, and it will 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 1997 $PM_{2.5}$ clean NAAQS data determination for the Huntington-Ashland Area 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 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).)

For purposes of judicial review, the two determinations approved by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

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

Dated: July 21, 2011.

W.C. Early,

Acting Regional Administrator, Region 3.

Dated: August 18, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

Dated: July 28, 2011.

Susan Hedman,

Regional Administrator, Region 5.

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 S—Kentucky

■ 2. Section 52.929 is added to read as follows:

§ 52.929 Determination of attainment.

(a) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Huntington-Ashland, West Virginia-Kentucky-Ohio $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Huntington-Ashland $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

(b) [Reserved]

■ 3. Section 52.933 is amended by adding paragraph (d) to read as follows:

§ 52.933 Control Strategy: Sulfur oxides and particulate matter.

* * * * *

(d) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007–2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, nonattainment Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Subpart KK—Ohio

■ 4. Section 52.1880 is amended by adding paragraph (m) to read as follows:

§ 52.1880 Control Strategy: Particulate matter.

* * * * *

(m) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007–2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, nonattainment Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

■ 5. Section 52.1892 is added to read as follows:

§ 52.1892 Determination of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Huntington-Ashland, West Virginia-Kentucky-Ohio $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Huntington-Ashland $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart XX—West Virginia

■ 6. Section 52.2526 is amended by adding paragraph (c) to read as follows:

§ 52.2526 Control strategy: Particulate matter.

* * * * *

(c) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007–2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, nonattainment Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this Area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

■ 7. Section 52.2527 is added to read as follows:

§ 52.2527 Determination of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Huntington-Ashland, West Virginia-Kentucky-Ohio $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Huntington-Ashland $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–22653 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0414–201145; FRL–9459–5]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Kentucky and Indiana; Louisville; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the bi-state Louisville, Kentucky-Indiana, fine particulate ($PM_{2.5}$) nonattainment Area (hereafter referred to as ''the Louisville Area'') has attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by the applicable attainment date of April 5, 2010. The determination of attainment was previously finalized by EPA on March 9, 2011, and was based on quality-assured and certified monitoring data for the 2007–2009 monitoring period. The Louisville Area is comprised of Jefferson County in Kentucky, and Clark, Floyd and a portion of Jefferson Counties in Indiana. EPA is determining to find that the above-identified Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. EPA is finalizing this action because it is consistent with the Clean Air Act (CAA) and its implementing regulations.

DATES: *Effective Date:* This final rule is effective on October 7, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0414. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is EPA's final action?
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA is determining that the Louisville Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

On March 9, 2011, EPA published a final rulemaking to make a determination of attainment to suspend the requirements for the Louisville Area to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 12860. This final rulemaking also includes useful background information on the $PM_{2.5}$ NAAQS relevant to the Louisville Area. Today's action makes a determination that the Louisville Area attained the1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Today's action is simply focused on the date by which the Area had attaining data.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on June 15, 2011 (76 FR 34935). The comment period closed on July 15, 2011. No comments were received in response to the NPR.

II. What is the effect of this action?

Today's action is a determination that the Louisville Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, consistent with CAA section 179(c)(1). Finalizing this action does not constitute a redesignation of Louisville Area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this action does not involve approving maintenance plans for the Louisville Area as required under section 175A of the CAA, nor would it find that the Louisville Area has met all other requirements for redesignation. The designation status of the Louisville Area remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

III. What is EPA's final action?

EPA is determining, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Louisville Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. This action is being taken pursuant to section 179(c)(1) of the CAA and is consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

This action makes a determination of attainment based on air quality, and would 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 1997 $PM_{2.5}$ determination of attainment by applicable attainment date for the Louisville Area 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 2011. Filing a petition for reconsideration by the Administrator of these final rules do not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 18, 2011.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.774 is added to read as follows:

§ 52.774 Determination of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007–

2009, EPA determined that the Louisville, Kentucky-Indiana $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Louisville $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart S—Kentucky

■ 3. Section 52.929 is amended by adding paragraph (b) to read as follows:

§ 52.929 Determination of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Louisville, Kentucky-Indiana $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Louisville $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–22649 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 173 September 7, 2011

Part V

The President

Proclamation 8705—National Childhood Cancer Awareness Month, 2011
Proclamation 8706—National Prostate Cancer Awareness Month, 2011

Federal Register
Vol. 76, No. 173
Wednesday, September 7, 2011

Presidential Documents

Title 3—

The President

Proclamation 8705 of September 1, 2011

National Childhood Cancer Awareness Month, 2011

By the President of the United States of America

A Proclamation

Across America, thousands of courageous children fight pediatric cancer each year, facing life-threatening battles that would challenge men and women of any age. They are cared for by loving families, friends, and communities who band together to support children in times of great need. From raising money for research and hospital stays to offering compassionate assistance to families who have lost loved ones, Americans are working every day to combat childhood cancer.

Today, research advances have made pediatric cancer more treatable than ever before. The five-year survival rate for young patients has risen to 80 percent in the past half century, but serious challenges remain. Children who survive cancer frequently struggle with significant complications later in life and researchers are working to develop treatments specifically for pediatric cancer. We still know too little about the causes in young people, and cancer remains the leading cause of death by disease for children in America under the age of 15.

As we work to better understand and combat these destructive diseases, my Administration is working to lift some of the burden on families affected by them. Because of the Affordable Care Act, insurance companies can no longer deny insurance to children because of pre-existing conditions, meaning that children who are currently suffering from or have survived cancer must be covered. Insurance companies are also banned from rejecting insurance for children participating in clinical studies, in which the vast majority of children with cancer take part. And the Affordable Care Act prohibits insurance companies from imposing lifetime dollar limits on health benefits—freeing cancer patients and their families from worry of long-term treatment affordability. Meanwhile, the National Cancer Institute continues to conduct and fund research on the causes of these diseases, linking research on genetics and adult cancers to more effective treatments for children.

Too many children and their families have faced the harmful effects of cancer. In memory of the young lives taken from us far too soon, and in honor of the families who stood beside them, we continue to support researchers, doctors, and advocates working to improve treatments, find cures, and reach a tomorrow where all our children can lead full and healthy lives.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2011 as National Childhood Cancer Awareness Month. I also encourage all Americans to join me in reaffirming our commitment to fighting childhood cancer.

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

[FR Doc. 2011–23060
Filed 9–6–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8706 of September 1, 2011

National Prostate Cancer Awareness Month, 2011

By the President of the United States of America

A Proclamation

Prostate cancer is the second leading cause of cancer-related deaths among men in the United States. The weight of this illness is felt not only by the men living with and fighting prostate cancer, but also by their families, friends, and communities who rally to care for their loved ones. As we observe National Prostate Cancer Awareness Month, we renew our commitment to reducing the impact of prostate cancer on our country by raising awareness and supporting research that will lead to better ways to detect and treat this disease.

Although the exact causes of prostate cancer are not yet known, studies show certain factors—including age, race, and family history—may increase the likelihood of developing the disease. African Americans, in particular, are at a higher risk than men of other backgrounds. I encourage all men, especially those who are at an increased risk, to talk to their doctors about ways they can reduce their chances of developing prostate cancer.

My Administration will continue to promote prostate cancer research and treatment and raise awareness of this illness. The Centers for Disease Control and Prevention support critical research projects and education activities that bring a public health perspective to the issues of early detection and treatment. The Department of Defense and the National Cancer Institute continue to support research, investigate new cancer detection methods, and develop innovative imaging methods and other diagnostic techniques. The Affordable Care Act also expands coverage and gives Americans greater freedom and control over their health-care choices. Reforms in the law ban insurance companies from dropping individuals when they get sick or imposing lifetime dollar limits on health benefits. These changes free cancer patients to focus on getting better instead of worrying about whether they will be able to afford their treatment.

During National Prostate Cancer Awareness Month, we reaffirm our support for prostate cancer patients and survivors, and commend health-care providers, advocates, and researchers for their dedication and perseverance. Our combined efforts to increase awareness of prostate cancer and bolster research will help save lives, and our commitment to our fathers, brothers, and sons will contribute to a brighter tomorrow for future generations.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2011 as National Prostate Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, nonprofit organizations, and other groups to join in activities that will increase awareness and prevention of prostate cancer.

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

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