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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times from October 31, 2011 until November 8, 2011. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers' dispersal barrier maintenance operations.

During the enforcement period, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced at various times between 7 a.m. on October 31, 2011 until 6 p.m. on November 8, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7188, e-mail address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930, on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at the following times:

(1) On October 31, 2011, from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m.

(2) On November 1–4, 2011, from 7 a.m. until 5 p.m.

(3) On November 7, 2011, from 7 a.m. until 5 p.m.

(4) On November 8, 2011, from 6 a.m. until 6 p.m.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the U.S. Army Corps of Engineers' dispersal barrier maintenance operations pose risks to life and property. The combination of vessel traffic and the maintenance operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and e-mail notifications.

Dated: September 30, 2011.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–27374 Filed 10–21–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times from November 10, 2011 until November 11, 2011. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers' simultaneous operation of dispersal barriers IIA and IIB.

During the enforcement period, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on November 10–11, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7188, e-mail address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930, on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at the following times:

(1) On November 10–11, 2011, from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the U.S. Army Corps of Engineers' dispersal barrier maintenance and simultaneous operations of Barriers IIA and IIB pose risks to life and property. The combination of vessel traffic and the maintenance operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: October 6, 2011.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–27373 Filed 10–21–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2011–0075]

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of 2009 final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 2009 passenger motor vehicles that occurred in calendar year (CY) 2009. The final 2009 theft data indicated a decrease in the vehicle theft rate experienced in CY/MY 2009. The final theft rate for MY 2009 passenger vehicles stolen in calendar year 2009 is 1.33 thefts per thousand vehicles, a decrease of 21.3 percent from the rate of 1.69 thefts per thousand in 2008. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

DATES: *Effective date:* October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for CY 2009, the most recent calendar year for which data are available.

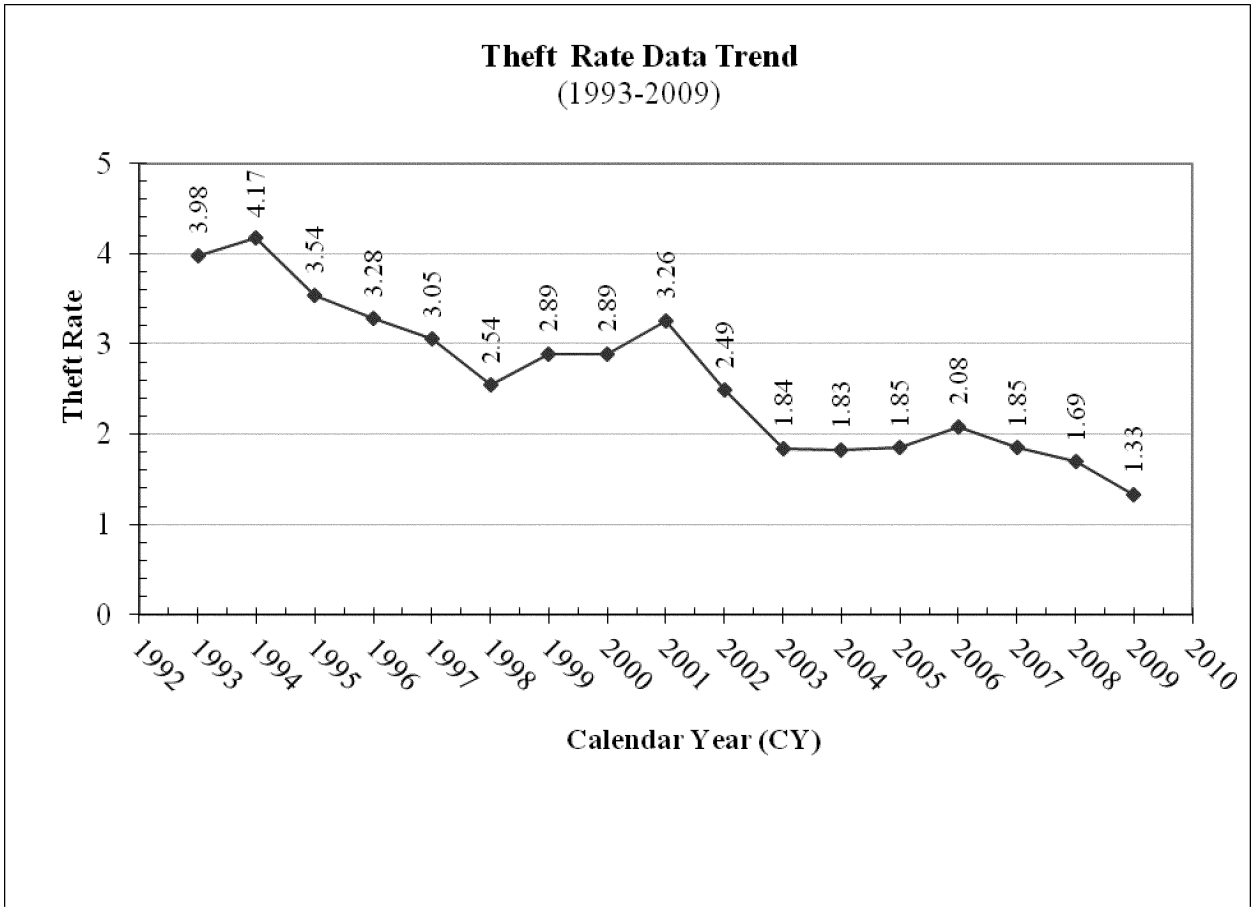
In calculating the 2009 theft rates, NHTSA followed the same procedures it used in calculating the MY 2008 theft rates. (For 2008 theft data calculations, see 76 FR 2598, January 14, 2011). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2009 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2009 vehicles of that line stolen during calendar year 2009 by the total number of vehicles in that line manufactured for MY 2009, as reported to the Environmental Protection Agency (EPA).

The final 2009 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2008. The final theft rate for MY 2009 passenger vehicles stolen in calendar year 2009 decreased to 1.33 thefts per thousand vehicles produced, a decrease of 21.3 percent from the rate of 1.69 thefts per thousand vehicles experienced by MY 2008 vehicles in CY 2008. A similar decreasing trend in vehicle thefts was reported in the Federal Bureau of Investigation's (FBI) 2009 Uniform Crime Report showing a 17% reduction in motor vehicle thefts (automobiles, trucks, buses and other vehicles) from 2008 to 2009.

For MY 2009 vehicles, out of a total of 239 vehicle lines, 11 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 11 vehicle lines with a theft rate higher than 3.5826, 11 are passenger car lines, none are multipurpose passenger vehicle lines, and none are light-duty truck lines.

NHTSA's data show that the MY 2009 theft rate reduction is consistent with the general decreasing trend of theft rates over the past 16 years as indicated by Figure 1. The agency attributes this theft rate reduction to the effectiveness of combined measures used by federal agencies, law enforcement, vehicle manufacturers and the insurance industry to help combat vehicle theft.



Theft rate per thousand vehicles produced

The agency believes that the theft rate reduction could be the result of several factors including the increased use of standard antitheft devices (i.e., immobilizers), vehicle parts marking, increased and improved prosecution efforts by law enforcement organizations and increased public awareness measures.

On Wednesday, June 22, 2011, NHTSA published the preliminary theft rates for CY 2009 passenger motor vehicles in the **Federal Register** (76 FR 36486). The agency tentatively ranked each of the MY 2009 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency used written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the June 2011 notice. The agency received written comments from Volkswagen Group of America, Inc. (VW) and Mercedes-Benz USA, LLC (Mercedes-Benz).

In its comments, VW informed the agency that the production volume for the Volkswagen Eos is incorrect. In response to this comment, the production volume for the Volkswagen Eos has been corrected and the final theft data has been revised accordingly. As a result of the correction, the Volkswagen Eos previously ranked No. 154 with a theft rate of 0.5230 is now ranked No. 155 with a theft rate of 0.5229.

In its comments, Mercedes-Benz informed the agency that the production volume for the Mercedes-Benz CL-Class was incorrect. The production volume for the Mercedes-Benz CL-Class has been corrected and the final theft data has been revised accordingly. As a result of this correction, the Mercedes-Benz CL-Class previously ranked No. 41 with a theft rate of 1.9589 is now ranked No. 10 with a theft rate of 3.9124.

Mercedes-Benz also informed the agency that its CLS-Class vehicle line was not listed in the agency's June 2011 publication of preliminary data. NHTSA is correcting the final theft data to include the thefts and production volume for the Mercedes-Benz CLS-Class. As a result of this correction, the Mercedes-Benz CLS-Class, previously not listed, is ranked No. 76 with a theft rate of 1.3065.

As a result of changes in the theft ranking, reanalysis of the theft rate data revealed that the number of vehicle lines reported with a theft rate higher than 3.5826 was incorrect. The publication of preliminary theft data for CY 2009 erroneously reported that there were 10 passenger cars, no multipurpose passenger vehicle lines and no light-duty truck lines with theft rates higher than 3.5826. NHTSA is correcting the final theft data to reflect that 11 passenger car lines, no multipurpose passenger vehicle lines, and no light truck lines had a theft rate higher than 3.5826.

The following list represents NHTSA's final calculation of theft rates for all 2009 passenger motor vehicle lines. This list is intended to inform the public of calendar year 2009 motor vehicle thefts of model year 2009 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2009 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2009

	Manufacturer	Make/model (line)	Thefts 2009	Production (Mfr's) 2009	2009 Theft rate (per 1,000 vehicles produced)
1	AUDI	AUDI S8	2	227	8.8106
2	FORD MOTOR CO	SHELBY GT	5	581	8.6059
3	BMW	M5	2	264	7.5758
4	CHRYSLER	DODGE CHARGER	432	66,856	6.4616
5	HONDA	S2000	2	357	5.6022
6	MITSUBISHI	GALANT	152	29,716	5.1151
7	CHRYSLER	300	143	31,287	4.5706
8	NISSAN	INFINITI M35/M45	27	6,243	4.3248
9	GENERAL MOTORS	CADILLAC STS	31	7,239	4.2824
10	MERCEDES-BENZ	CL-CLASS	5	1,278	3.9124
11	CHRYSLER	SEBRING CONVERTIBLE	18	4,827	3.7290
12	CHRYSLER	DODGE AVENGER	107	31,667	3.3789
13	CHRYSLER	SEBRING	65	19,588	3.3184
14	AUDI	AUDI A8	6	1,810	3.3149
15	VOLVO	V70	3	996	3.0120
16	GENERAL MOTORS	PONTIAC G5	60	20,623	2.9094
17	GENERAL MOTORS	PONTIAC G6	281	99,226	2.8319
18	CHRYSLER	DODGE CALIBER	125	44,554	2.8056
19	CHRYSLER	PT CRUISER	69	24,876	2.7738
20	GENERAL MOTORS	CHEVROLET IMPALA	499	183,769	2.7154
21	NISSAN	INFINITI FX35	35	13,375	2.6168
22	CHRYSLER	DODGE CHALLENGER	53	20,526	2.5821
23	NISSAN	PATHFINDER	13	5,076	2.5611
24	BMW	M6	1	397	2.5189
25	CHRYSLER	DODGE NITRO	26	10,539	2.4670
26	NISSAN	MAXIMA	141	58,278	2.4194
27	KIA	RONDO	42	17,573	2.3900
28	MAZDA	5	53	22,248	2.3822
29	GENERAL MOTORS	CHEVROLET MALIBU	413	176,813	2.3358
30	KIA	SPECTRA	135	60,296	2.2390
31	GENERAL MOTORS	CHEVROLET COBALT	312	141,588	2.2036
32	GENERAL MOTORS	SATURN AURA	78	35,472	2.1989
33	MERCEDES-BENZ	S-CLASS	22	10,189	2.1592
34	GENERAL MOTORS	CHEVROLET HHR	172	80,781	2.1292
35	TOYOTA	SCION TC	57	27,179	2.0972
36	JAGUAR LAND ROVER	XF	27	12,953	2.0845
37	MAZDA	3	99	47,569	2.0812
38	FORD MOTOR CO	LINCOLN TOWN CAR	24	11,596	2.0697
39	TOYOTA	AVALON	45	22,030	2.0427
40	NISSAN	350Z	1	503	1.9881
41	VOLVO	C70	8	4,027	1.9866
42	FORD MOTOR CO	MUSTANG	81	41,354	1.9587
43	GENERAL MOTORS	CADILLAC DTS	32	16,566	1.9317
44	MAZDA	6	76	39,504	1.9239
45	MITSUBISHI	ECLIPSE	24	12,760	1.8809
46	NISSAN	ALTIMA	410	228,101	1.7974
47	FORD MOTOR CO	MERCURY SABLE	11	6,146	1.7898
48	GENERAL MOTORS	CADILLAC CTS	91	50,926	1.7869
49	VOLVO	S60	12	6,837	1.7552
50	TOYOTA	CAMRY/SOLARA	781	447,882	1.7438
51	TOYOTA	COROLLA	632	363,515	1.7386
52	HYUNDAI	SONATA	270	159,775	1.6899
53	GENERAL MOTORS	CHEVROLET TRAILBLAZER	22	13,022	1.6894
54	TOYOTA	4RUNNER	13	7,803	1.6660
55	BMW	6	4	2,420	1.6529
56	GENERAL MOTORS	CHEVROLET AVEO	94	58,439	1.6085
57	NISSAN	SENTRA	104	65,096	1.5976
58	FORD MOTOR CO	FOCUS	235	148,244	1.5852
59	HYUNDAI	ACCENT	92	59,709	1.5408
60	NISSAN	VERSA	159	104,658	1.5192
61	MAZDA	B SERIES PICKUP	1	660	1.5152
62	CHRYSLER	DODGE JOURNEY	124	82,331	1.5061
63	KIA	RIO	61	41,036	1.4865
64	MERCEDES-BENZ	C-CLASS	86	57,872	1.4860
65	GENERAL MOTORS	CHEVROLET CORVETTE	23	15,647	1.4699
66	NISSAN	370Z	16	11,024	1.4514
67	NISSAN	XTERRA	19	13,106	1.4497
68	JAGUAR LAND ROVER	XKR	1	696	1.4368

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2009 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2009—Continued

	Manufacturer	Make/model (line)	Thefts 2009	Production (Mfr's) 2009	2009 Theft rate (per 1,000 vehicles produced)
69	FORD MOTOR CO	MERCURY GRAND MARQUIS	30	21,102	1.4217
70	GENERAL MOTORS	PONTIAC TORRENT	13	9,403	1.3825
71	FORD MOTOR CO	TAURUS	34	25,094	1.3549
72	CHRYSLER	JEEP COMPASS	14	10,346	1.3532
73	NISSAN	FRONTIER PICKUP	31	23,030	1.3461
74	VOLVO	S40	9	6,743	1.3347
75	AUDI	AUDI A3	5	3,761	1.3294
76	MERCEDES-BENZ	CLS-CLASS	5	3,827	1.3065
77	FORD MOTOR CO	EDGE	58	44,744	1.2963
78	GENERAL MOTORS	BUICK LACROSSE/ALLURE	24	18,532	1.2951
79	TOYOTA	YARIS	93	72,826	1.2770
80	GENERAL MOTORS	GMC ENVOY	7	5,661	1.2365
81	MASERATI	QUATTROPORTE	1	817	1.2240
82	KIA	OPTIMA	43	35,610	1.2075
83	NISSAN	GT–R	3	2,505	1.1976
84	GENERAL MOTORS	SATURN VUE	47	39,342	1.1947
85	TOYOTA	LEXUS LS	11	9,418	1.1680
86	CHRYSLER	JEEP LIBERTY	36	31,272	1.1512
87	GENERAL MOTORS	BUICK LUCERNE	36	31,751	1.1338
88	KIA	SEDONA VAN	21	18,684	1.1240
89	KIA	AMANTI	1	931	1.0741
90	TOYOTA	LEXUS IS	34	31,875	1.0667
91	TOYOTA	SCION XB	39	37,039	1.0529
92	FORD MOTOR CO	FLEX	44	42,100	1.0451
93	GENERAL MOTORS	PONTIAC VIBE	59	56,730	1.0400
94	MAZDA	RX–8	3	3,000	1.0000
95	VOLKSWAGEN	GOLF/RABBIT/GTI	19	19,005	0.9997
96	AUDI	AUDI R8	1	1,022	0.9785
97	KIA	SORENTO	12	12,435	0.9650
98	AUDI	AUDI S4/S5	3	3,112	0.9640
99	MITSUBISHI	LANCER	37	38,655	0.9572
100	TOYOTA	SIENNA VAN	61	63,797	0.9562
101	KIA	SPORTAGE	34	35,892	0.9473
102	HONDA	ACCORD	297	315,205	0.9422
103	GENERAL MOTORS	PONTIAC G8	24	25,556	0.9391
104	HONDA	ACURA TSX	35	37,306	0.9382
105	FORD MOTOR CO	FUSION	96	103,268	0.9296
106	TOYOTA	MATRIX	54	58,240	0.9272
107	SUZUKI	SX4	23	24,859	0.9252
108	GENERAL MOTORS	CHEVROLET EQUINOX	30	32,555	0.9215
109	MERCEDES-BENZ	E-CLASS	17	18,803	0.9041
110	MASERATI	GRANTURISMO	1	1,123	0.8905
111	NISSAN	MURANO	96	108,188	0.8873
112	CHRYSLER	JEEP WRANGLER	58	67,122	0.8641
113	VOLKSWAGEN	JETTA/GLI	97	112,506	0.8622
114	NISSAN	QUEST VAN	7	8,232	0.8503
115	FORD MOTOR CO	LINCOLN MKS	22	26,153	0.8412
116	NISSAN	INFINITI G37	42	50,524	0.8313
117	BMW	M3	3	3,642	0.8237
118	VOLVO	C30	3	3,693	0.8123
119	SUBARU	LEGACY	21	26,278	0.7991
120	SUBARU	IMPREZA	34	42,551	0.7990
121	HYUNDAI	ELANTRA	61	76,637	0.7960
122	MERCEDES-BENZ	SL-CLASS	6	7,559	0.7938
123	TOYOTA	TACOMA PICKUP	92	116,059	0.7927
124	HONDA	CIVIC	218	278,426	0.7830
125	HYUNDAI	GENESIS	15	19,504	0.7691
126	AUDI	AUDI Q5	5	6,531	0.7656
127	FORD MOTOR CO	ESCAPE	113	148,860	0.7591
128	MERCEDES-BENZ	SLK-CLASS	3	3,987	0.7524
129	HYUNDAI	SANTA FE	57	77,857	0.7321
130	MAZDA	CX–9	10	14,024	0.7131
131	GENERAL MOTORS	CHEVROLET COLORADO PICK-UP.	20	28,286	0.7071
132	CHRYSLER	JEEP PATRIOT	23	32,611	0.7053
133	HONDA	ACURA RDX	6	8,690	0.6904
134	FORD MOTOR CO	LINCOLN MKX	8	11,626	0.6881
135	PORSCHE	BOXSTER	1	1,460	0.6849

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2009 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2009—Continued

	Manufacturer	Make/model (line)	Thefts 2009	Production (Mfr's) 2009	2009 Theft rate (per 1,000 vehicles produced)
136	VOLVO	S80	5	7,409	0.6749
137	AUDI	AUDI TT	2	2,989	0.6691
138	NISSAN	INFINITI FX50	1	1,510	0.6623
139	TOYOTA	RAV4	79	119,381	0.6617
140	BMW	7	5	7,613	0.6568
141	TOYOTA	LEXUS RX	42	64,266	0.6535
142	NISSAN	ROGUE	47	73,877	0.6362
143	VOLKSWAGEN	TIGUAN	12	19,076	0.6291
144	PORSCHE	CAYMAN	1	1,591	0.6285
145	TOYOTA	FJ CRUISER	2	3,185	0.6279
146	MAZDA	CX–7	8	12,906	0.6199
147	SUZUKI	VITARA/GRAND VITARA	4	6,476	0.6177
148	AUDI	AUDI A4/A5	27	44,950	0.6007
149	HONDA	ACURA 3.2 TL	20	33,690	0.5936
150	TOYOTA	HIGHLANDER	33	57,166	0.5773
151	FORD MOTOR CO	TAURUS X	3	5,209	0.5759
152	TOYOTA	SCION XD	10	17,587	0.5686
153	MERCEDES-BENZ	SMART FORTWO	8	14,169	0.5646
154	TOYOTA	LEXUS GS	3	5,537	0.5418
155	VOLKSWAGEN	EOS	5	9,562	0.5229
156	BMW	3	44	84,350	0.5216
157	VOLKSWAGEN	PASSAT	16	31,310	0.5110
158	GENERAL MOTORS	SATURN SKY	2	4,078	0.4904
159	FORD MOTOR CO	LINCOLN MKZ	8	16,676	0.4797
160	AUDI	AUDI A6	2	4,193	0.4770
161	GENERAL MOTORS	PONTIAC SOLSTICE	2	4,202	0.4760
162	HONDA	PILOT	40	84,089	0.4757
163	GENERAL MOTORS	GMC CANYON PICKUP	4	8,614	0.4644
164	HONDA	ACURA MDX	16	34,540	0.4632
165	HYUNDAI	TUCSON	5	11,032	0.4532
166	VOLKSWAGEN	NEW BEETLE	8	18,284	0.4375
167	MAZDA	TRIBUTE	2	4,670	0.4283
168	BMW	5	9	21,963	0.4098
169	HONDA	ODYSSEY VAN	30	73,777	0.4066
170	BMW	1	4	10,189	0.3926
171	FORD MOTOR CO	RANGER PICKUP	19	49,466	0.3841
172	SUBARU	FORESTER	34	88,771	0.3830
173	PORSCHE	911	3	7,929	0.3784
174	FORD MOTOR CO	MERCURY MILAN	7	18,556	0.3772
175	HONDA	ACURA 3.5 RL	1	2,670	0.3745
176	BMW	X3	2	5,448	0.3671
177	HONDA	ELEMENT	4	11,114	0.3599
178	MITSUBISHI	OUTLANDER	4	11,904	0.3360
179	TOYOTA	PRIUS	27	82,659	0.3266
180	TOYOTA	LEXUS ES	13	42,833	0.3035
181	JAGUAR LAND ROVER	LAND ROVER LR2	1	3,443	0.2904
182	BMW	Z4/M	1	3,637	0.2750
183	TOYOTA	VENZA	15	58,897	0.2547
184	HONDA	FIT	21	83,765	0.2507
185	SUBARU	OUTBACK	9	36,410	0.2472
186	HONDA	CR–V	40	171,943	0.2326
187	FORD MOTOR CO	CROWN VICTORIA	8	36,101	0.2216
188	SAAB	9–3	1	4,593	0.2177
189	NISSAN	CUBE	6	28,243	0.2124
190	KIA	BORREGO	3	14714	0.2039
191	MERCEDES-BENZ	CLK-CLASS	3	15,654	0.1916
192	SUBARU	B9 TRIBECA	1	6,806	0.1469
193	BMW	MINI COOPER	6	51,935	0.1155
194	FORD MOTOR CO	MERCURY MARINER	2	25,682	0.0779
195	ASTON MARTIN	DB9	0	741	0.0000
196	ASTON MARTIN	VANTAGE	0	582	0.0000
197	AUDI	AUDI S6	0	100	0.0000
198	BENTLEY MOTORS	ARNAGE	0	86	0.0000
199	BENTLEY MOTORS	AZURE	0	66	0.0000
200	BENTLEY MOTORS	BROOKLANDS	0	94	0.0000
201	BENTLEY MOTORS	CONTINENTAL	0	930	0.0000
202	CHRYSLER	DODGE VIPER	0	575	0.0000
203	FERRARI	141	0	109	0.0000

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2009 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2009—Continued

	Manufacturer	Make/model (line)	Thefts 2009	Production (Mfr's) 2009	2009 Theft rate (per 1,000 vehicles produced)
204	FERRARI	430	0	605	0.0000
205	FERRARI	612 SCAGLIETTI	0	29	0.0000
206	FERRARI	CALIFORNIA	0	53	0.0000
207	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE.	0	714	0.0000
208	GENERAL MOTORS	CADILLAC LIMOUSINE	0	330	0.0000
209	GENERAL MOTORS	CADILLAC XLR	0	858	0.0000
210	GENERAL MOTORS	PONTIAC G3	0	6,237	0.0000
211	GENERAL MOTORS	SATURN ASTRA	0	851	0.0000
212	HYUNDAI	AZERA	0	5,062	0.0000
213	HYUNDAI	VERACRUZ	0	2,188	0.0000
214	JAGUAR LAND ROVER	VANDEN PLAS/SUPER V8	0	326	0.0000
215	JAGUAR LAND ROVER	XJ8/XJ8L	0	358	0.0000
216	JAGUAR LAND ROVER	XJR	0	11	0.0000
217	JAGUAR LAND ROVER	XK	0	903	0.0000
218	LAMBORGHINI	GALLARDO	0	281	0.0000
219	LAMBORGHINI	MURCIELAGO	0	110	0.0000
220	LOTUS	ELISE	0	120	0.0000
221	LOTUS	EXIGE	0	27	0.0000
222	MAZDA	MX–5 MIATA	0	4,293	0.0000
223	MERCEDES-BENZ	MAYBACH 57	0	27	0.0000
224	MERCEDES-BENZ	MAYBACH 62	0	18	0.0000
225	MERCEDES-BENZ	MAYBACH LANDAULET	0	2	0.0000
226	MERCEDES-BENZ	SLR-CLASS	0	69	0.0000
227	MITSUBISHI	ENDEAVOR	0	50	0.0000
228	NISSAN	INFINITI EX35	0	2,169	0.0000
229	ROLLS ROYCE	PHANTOM	0	409	0.0000
230	ROUSH PERFORMANCE	RPP MUSTANG	0	395	0.0000
231	SAAB	9–5	0	732	0.0000
232	SPYKER	C8	0	18	0.0000
233	SUZUKI	EQUATOR PICKUP	0	2,380	0.0000
234	SUZUKI	XL7	0	1,290	0.0000
235	TESLA	ROADSTER	0	900	0.0000
236	TOYOTA	LEXUS SC	0	511	0.0000
237	VOLVO	V50	0	1,913	0.0000
238	VOLVO	XC70	0	4,614	0.0000
239	VOLVO	XC90	0	6,806	0.0000

Issued on: October 18, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–27370 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 76, No. 205

Monday, October 24, 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 430

[Docket No. EERE–2009–BT–TP–0004]

RIN 1904–AB94

Energy Conservation Program for Consumer Products: Test Procedures for Residential Central Air Conditioners and Heat Pumps

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE or the Department) proposed amendments to the DOE test procedure for residential central air conditioners and heat pumps in a June 2010 notice of proposed rulemaking (June 2010 NOPR) and in an April 2011 supplemental notice of proposed rulemaking (April 2011 SNOPR). The amendments proposed in this subsequent SNOPR would change the off-mode laboratory test steps and calculation algorithm to determine off-mode power consumption for residential central air conditioners and heat pumps. DOE welcomes written comments from the public on any subject within the scope of this test procedure rulemaking for addressing the off-mode energy consumption of residential central air conditioners and heat pumps.

DATES: DOE will accept comments, data, and other information regarding this supplemental notice of proposed rulemaking (SNOPR) no later than November 23, 2011. See section 0, ''Public Participation,'' of this SNOPR for details.

ADDRESSES: Interested parties may submit comments, identified by docket number EERE–2009–BT–TP–0004 or Regulation Identifier Number (RIN) 1904–AB94, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: RCAC-HP-2009-TP-0004@ee.doe.gov.* Include the docket number EERE–2009–BT–TP–0004 and/or RIN 1904–AB94 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

Instructions: No telefacsimilies (faxes) will be accepted. All submissions must include the docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section 0, ''Public Participation,'' of this document.

Docket: The docket is available for review at *http://www.regulations.gov*, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/residential_cac_hp.html.* This web page will contain a link to the docket for this notice on the Web site *http://www.regulations.gov.* The *http://www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section 0, ''Public Participation,'' for information on how to submit comments through regulations.gov.

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

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I. Authority and Background

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including the single phrase residential central air conditioners and heat pumps with rated cooling capacities less than 65,000 British thermal units per hour (Btu/h) that are the focus of this notice.[1] (42 U.S.C. 6291(1)–(2), (21) and 6292(a)(3))

Under EPCA, the program consists of four activities: (1) Testing; (2) labeling; and (3) Federal energy conservation standards, and also (4) certification, compliance, and enforcement. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for representing the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s)) Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. Specifically, EPCA provides that an amended test procedure shall produce results which measure the energy efficiency, energy use or estimated annual operating cost of a covered product over an average or representative period of use, and shall not be unduly burdensome to conduct (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine the extent to which the proposed test procedure would change, if at all, the measured efficiency of a system which was tested under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)) The amendments proposed in today's SNOPR will not alter the measured efficiency, as represented in the regulating metrics of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) of residential central air conditioners and heat pumps. Thus, today's proposed test procedure changes can be adopted without amending the existing standards. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the President signed the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, which contains numerous amendments to EPCA. Section 310 of EISA 2007 established that the Department's test procedures for all covered products must account for standby mode and off-mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Today's SNOPR includes proposals relevant to these statutory provisions.

DOE's existing test procedures for residential central air conditioners and heat pumps adopted pursuant to these provisions appear under Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix M (''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps''). These procedures establish the currently permitted means for determining energy efficiency and annual energy consumption of these products.

B. Background

DOE's initial proposals for estimating off-mode energy consumption in the test procedure for residential central air conditioners and heat pumps were shared with the public in a notice of proposed rulemaking published in the **Federal Register** on June 2, 2010 (June 2010 NOPR; 75 FR 31224) and at a public meeting at DOE headquarters in Washington, DC on June 11, 2010. Subsequently, DOE published a supplemental notice of proposed rulemaking (SNOPR) on April 1, 2011 in response to comments received on the June 2010 NOPR, and due to the results of additional laboratory testing conducted by DOE. 76 FR 18105, 18127. DOE received additional comments in response to the April 2011 SNOPR. In today's SNOPR, DOE addresses only those comments not previously addressed in the April 2011 SNOPR that concern off-mode testing of central air conditioners and heat pumps. DOE will subsequently address the remainder of the unrelated comments in response to both the June 2010 NOPR and April 2011 SNOPR in the test procedure final rule.

In the June 2010 NOPR, DOE proposed new laboratory tests and calculation algorithms for determining the off-mode power and off-mode energy consumption of residential central air conditioners and heat pumps, which were subsequently modified in the April 2011 SNOPR. 75 FR 31238–39; 76 FR 18107–09. The off-mode rating reflects those extended times of the year during which a residential central air conditioner or heat pump sits idle. The energy consumed by these products during these extended times is not accounted for by the existing seasonal rating metrics of SEER and HSPF.

One of the extended off-mode intervals was designated the ''shoulder season'' in the June 2010 NOPR. 75 FR 31239. The shoulder season for central air conditioners is defined as the time between the cooling and heating seasons when the unit provides no cooling and when the unit is idle during the entire heating season. The shoulder season for residential heat pumps is defined as the time between the cooling and heating seasons when the unit provides neither heating nor cooling.

The off-mode testing and calculations proposed in the June 2010 NOPR would be used to determine the average power consumption of a residential central air conditioner or heat pump during the shoulder season (represented by the variable *P1*) and, for residential central air conditioners, the unit's average power consumption during the heating season (represented by the variable *P2*). 75 FR at 31238–39. The resulting average power values may then be multiplied by the number of hours assigned to the shoulder and heating seasons to obtain the corresponding off-mode energy values. In the June 2010 NOPR, DOE proposed an approach for assigning the number of hours to the shoulder and heating seasons, as specified in ASHRAE Standard 137–2009. *Id.* For any given location or for each of the six DOE generalized climate

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

regions,[2] the sum of the hours in the cooling, heating, and shoulder seasons equals 8,760 hours. See Figures 2 and 3 of 10 CFR part 430, subpart B, appendix M. As proposed in the June 2010 NOPR, annual operating cost calculations would represent operation of a residential central air conditioner or heat pump over a complete 8,760-hour year, not just the cooling season (in the case of a residential central air conditioner) or just the cooling and heating seasons (in the case of a heat pump). Id. at 31238–39.

DOE included off-mode testing and calculations among the issues revisited in the April 2011 SNOPR as a result of comments received from interested parties in response to the originally proposed off-mode tests and calculations, and as a result of information gained from testing conducted by DOE after the close of the public comment period for the June 2010 NOPR. 76 FR at 18107–09. Most of the proposed revisions introduced in the April 2011 SNOPR applied to the laboratory testing of units with compressor crankcase heaters. *Id.* Rather than attempting to formulate a single generic test that would apply to all units with a crankcase heater, DOE proposed multiple product-specific tests. The tests were structured to differentiate between residential central air conditioners and heat pumps, between fixed-output and self-regulating crankcase heaters, between thermostatically controlled and continuously on heater designs, and between local and global thermostatic control options. Id. at 18109.

As explained in the April 2011 SNOPR, ''local'' control refers to cases in which the heater is regulated based on a measured or inferred temperature of the compressor sump. Global control refers to cases in which the heater's operation is regulated based on a measured or inferred temperature that is not influenced by the crankcase heater. *Id.* The most common example of global control is a heater that is powered or unpowered based on the temperature measured by an outdoor air thermostat. *Id.*

Most of the proposed revisions to the off-mode calculations set forth in the April 2011 SNOPR specified which laboratory test to conduct based on system characteristics (*e.g.,* presence of crankcase heater controls). For example, separate off-mode calculations were provided for fixed-output heaters and self-regulating heaters. Id. at 18117–25. Additionally, calculations were proposed to account for use of local control, global control or a combination of local and global control. *Id.* Other calculation changes were proposed to better balance test burden and test rigor. Id. at 18107–08. Specifically, a method to extrapolate test data in lieu of actual testing was proposed for certain crankcase heater controls which would take the longest to physically test. *Id.*

Finally, in light of the need for an overall off-mode rating for residential central air conditioners, DOE introduced an algorithm for weighting the shoulder season off-mode rating, *P1,* with the heating season off-mode rating, *P2.* Id. at 18111. When *P1* and *P2* are weighted based on the national average values for the lengths of the shoulder and heating seasons, the overall off-mode rating is specifically designated by the variable $P_{W,OFF}$. *Id.* The amended off-mode energy conservation standards for central air conditioners are defined in terms of $P_{W,OFF}$ and are set forth in the recently published direct final rule (DFR) for amended energy conservation standards for these products. 76 FR 37408, 37411(June 27, 2011).

Stakeholders raised significant issues and suggested changes to the test procedure proposals set forth in the April 2011 SNOPR, as further described below. Based on these comments and additional laboratory testing conducted by DOE, DOE's position on these topics has evolved. Today's SNOPR shares DOE's current position on the test procedure for residential central air conditioners and heat pumps, and provides interested parties with an additional opportunity to comment on its proposed methodology.

II. Summary of the Proposal

Today's SNOPR revisits the test methods and calculations for off-mode power and energy consumption, which were originally proposed in the June 2010 NOPR and modified in the April 2011 SNOPR. DOE now proposes to revise the off-mode testing procedures and calculation algorithms set forth in the April 2011 SNOPR to shorten the duration and burden of the off-mode testing, while still adequately measuring the off-mode power consumption of the tested residential central air conditioner or heat pump. Specifically, DOE proposes that the applicable test and calculation combination will depend on whether the tested unit is equipped with a crankcase heater and whether or not the crankcase heater operation is controlled by the unit during the test. Furthermore, DOE proposes to alter the calculation for P_{WOFF} that is used to determine the overall off-mode rating for residential central air conditioners and heat pumps.

DOE proposes to make the off-mode test procedure additions in today's SNOPR effective 180 days after publication of the test procedure final rule in the **Federal Register**. By doing so, DOE would not require manufacturers to publish the new rating metrics by this time, but rather, would require that manufacturers use the amended test procedure as of this date only if they wish to make representations of the off-mode energy consumption of their central air conditioners and heat pumps. In addition, DOE proposes to require that the compliance date for these test procedure amendments correspond to the January 1, 2015 compliance date for the amended energy conservation standards for residential central air conditioners and heat pumps. 76 FR 39245.

III. Discussion

This section provides discussion of the revisions and additions to the test procedure that DOE proposes in this SNOPR, based in part on comments DOE received in response to the April 2011 SNOPR. Section 0 describes DOE's proposed changes to test methods and calculations for off-mode power and energy consumption. Additionally, DOE provides the specific proposed revisions to 10 CFR 430, subpart B, appendix M, ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps'' as part of this SNOPR.

A. Testing Burden and Complexity

The majority of comments received following publication of the April 2011 SNOPR addressed the revised off-mode testing requirements. In a joint comment, Northwest Energy Efficiency Alliance (NEEA) and Northwest Power Coordinating Council (NPCC) stated that the lack of test data precludes an interested party from evaluating whether the proposed off-mode test method reasonably captures off-mode energy use. (NEEA and NPCC, No. 26 at pp. 2–3) [3] In another joint comment, the Appliance Standards Awareness Project (ASAP), the American Council for an

[2] Each of the regions, which is labeled with Roman numbers from I to VI, is representative of a certain climate zone in the United States and contains the typical season length for the area. Region IV is considered the average and is used for the calculation of ratings.

[3] In the following discussion, comments will be presented along with a notation in the form ''NEEA and NPCC, No. 26 at pp. 2–3,'' which identifies a written comment DOE received and included in the docket of this rulemaking. DOE numbers all comments based on when the comment was submitted in the rulemaking process. This particular notation refers to a comment by (1) By NEEA and NPCC, (2) in document number 26 in this docket, and (3) appearing on pages 2–3.

Energy-Efficient Economy (ACEEE), and the Natural Resources Defense Council (NRDC) encouraged DOE to capture crankcase heater energy consumption in the test procedure with minimal testing burden while providing a means to encourage innovative designs that minimize off-mode energy consumption. (ASAP, ACEEE, and NRDC, No. 27 at pp. 1–2) The California State Investor Owned Utilities (CAIOUs) supported DOE's proposal to account for different types of crankcase heaters and crankcase heater controls. (CAIOUs, No. 23 at p. 1)

Both the American Heating and Refrigeration Institute (AHRI) and Trane stated that the proposed off-mode test procedure is unnecessarily complex. (AHRI, No. 24 at p. 1; Trane, No. 21 at p. 1) AHRI further stated that it does not support DOE's proposed off-mode test procedure because the procedure is too expensive and will not achieve the desired result. (AHRI, No. 24 at p. 1) Trane submitted similar comments, noting that the off-mode proposal will significantly increase testing time, thus adding to the cumulative regulatory burden. (Trane, No. 21 at p. 1) In exploring an alternative to the off-mode test method proposed in the April 2011 SNOPR, AHRI questioned whether the same or similar results could be achieved with minimal testing and/or analysis. (AHRI, No. 24 at p. 1) AHRI went on to offer specific alternatives and modifications to DOE's proposed off-mode test method, including reducing the number of samples tested, using default values to reduce some of the test burden, and adding an alternative set of more component-based off-mode tests (see Section 0). (AHRI, No. 28 at pp. 2, 6–7, and 35–38)

DOE agrees with the joint comment from ASAP, ACEEE and NRDC, and notes that one of the key objectives considered by DOE in amending the test procedure for residential central air conditioners and heat pumps is obtaining a reasonable balance between test burden and off-mode ratings that sufficiently differentiate among products. In response to the comment by NEEA and NPCC regarding insufficient data, DOE conducted additional testing for this SNOPR, which is discussed in detail in section 0, and collected additional data from stakeholders. Based on consideration of comments by AHRI and Trane, as well as results of additional laboratory testing, DOE also concurs that the added complexity and burden resulting from proposed changes in the April 2011 SNOPR would outweigh the benefits of distinguishing among different types of off-mode systems to more specifically capture a unit's off-mode power consumption. Consequently, in today's notice, DOE is proposing additional revisions to the off-mode test procedure to reduce the burden and complexity of testing, while still achieving the intended purpose of accurately measuring off-mode power consumption. The methodology of this revised procedure is discussed in section 0.

B. Individual Component Testing

To reduce the testing burden and complexity, as discussed above, AHRI recommended a component-based testing approach and questioned the amount of testing that should be required to determine off-mode ratings accurately for a product family. (AHRI, No. 28 at pp. 3–50) Specifically, AHRI recommended adding text to the Code of Federal Regulations that would allow off-mode ratings to be obtained in one of two ways: (1) By testing a minimum of two units from each basic model group of a given product family; or (2) by bench testing a minimum of 10 samples of each component that contributes to off-mode energy use (*e.g.,* each type of crankcase heater, each type of controller, etc.) and then using the data obtained to conduct off-mode calculations. With respect to the first option, AHRI pointed out the need to define ''product family'' and offered the following proposed definition: ''any set of basic model groups that have the same (or less) power consumption devices, including but not limited to: control board, crankcase heater, timer(s), switches, etc.'' (AHRI, No. 28 at p. 4) According to AHRI's recommendation, two or more samples would be tested using the full system, off-mode tests specified in the April 2011 SNOPR. DOE believes that the purpose of the AHRI proposal is to identify a single off-mode rating for all central air conditioners or heat pumps of the same product family.

The second AHRI recommendation of testing a minimum of 10 samples of each relevant component would need to be done separately from the complete system testing conducted for determining the SEER and HSPF of a particular unit. AHRI notes that this approach reduces the ''overall testing burden by allowing non-psychometric room testing but yet increase[s] confidence in values by increasing sample size.'' (AHRI, No. 28 at p. 4) According to AHRI, its proposed ''short cut,'' or component-based testing approach, ''may be used for rating products only after the manufacturer verifies a single sample using the appropriate section 3.13 procedure [*i.e.,* the off-mode tests specified in the April 2011 SNOPR] and [that] the *P1* and *P2* values measured via section 3.13 and calculated per section 3.14 [*i.e.,* the AHRI component-based method] are within 10% of each other.'' (AHRI, No. 28 at p. 35) DOE views this approach as a variation of its alternative rating method (ARM) or alternative energy determination method (AEDM)[4] approach used for rating untested split system combinations for SEER and HSPF.

In response to AHRI's proposals, DOE is not considering changes to the definition of product family or, by extension, basic model, at this time. DOE recently clarified its definition of a basic model in its March 2011 certification, compliance, and enforcement final rule. 76 FR 12422 (March 7, 2011) Nonetheless, DOE agrees with AHRI's contention that a manufacturer will need a sample of sufficient size, which is not less than two units, to determine the certified rating for the off-mode energy consumption of a given product. With respect to AHRI's second recommendation of using ARMs to calculate off-mode energy consumption, DOE has an open rulemaking to address many issues associated with alternate methods of determining the efficiency of central air conditioners and heat pumps.[5] DOE plans to address the applicability of ARMs to the off-mode consumption measurement in that rulemaking. While DOE agrees that both of AHRI's recommendations provide potential mechanisms for obtaining off-mode ratings for a manufacturer's complete product line without requiring excessive testing time and does not seek to limit the use of ARMs or AEDMs, DOE believes that its own revised procedure is not unduly burdensome and that there is benefit to conducting off-mode tests in conjunction with the tests for SEER and HSPF. Consequently, DOE is proposing an off-mode test procedure, which is detailed in section 0, and comprises whole system testing, not testing or simulation of individual components.

[4] ARMs are computer simulations used to rate residential central air conditioners or heat pumps in lieu of actual testing to determine the rating. AEDMs accomplish the same purpose as ARMs, but are used for products other than residential central air conditioners and heat pumps and do not require DOE approval prior to use.

[5] See Docket Number EERE–2011–BP–TP–00024 at regulations.gov for more information on the AEDM and ARM rulemaking. A request for information was published in the **Federal Register** on April 18, 2011. 76 FR 21673 (April 18, 2011)

C. Length of Shoulder and Heating Seasons

DOE received several comments regarding DOE's approach proposed in the June 2010 NOPR and repeated in the April 2011 SNOPR for assigning the number of hours to the heating, cooling, and shoulder seasons based on cooling and heating load hour maps. See Figures 2 and 3 from 10 CFR part 430, subpart B, appendix M. NRDC asserted that the cooling load hour distribution is out of date and recommended that new estimates be determined by simulating a reference home built to the 2009 International Energy Conservation Code (IECC).[6] (NRDC, No. 22 at p. 2) CAIOUs recommended that DOE update the season hours using Typical Meteorological Year 3 (TMY3)[7] data from 1952 to 2005, which more accurately reflects current climate conditions. (CAIOUs, No. 23 at p. 2)

The commenters did not further elaborate on how DOE would transition from hourly simulation results to a broader definition of ''seasons;'' did not provide further detail on what specifically would constitute a reference home; and did not elaborate on how DOE should most appropriately use the results of these simulations. Stakeholders also did not provide results from either a previously completed analysis of a 2009 IECC residential building or a revised set of season hours based on TMY3 data that DOE could consider within the time frame of this rulemaking to substantiate stakeholder concerns that the current load distribution is out of date. Finally, there is no assurance that if such a simulation were to be conducted by DOE that the shoulder season hours calculated would meet stakeholder expectations. While DOE acknowledges that a review of the load hour maps is perhaps a useful exercise, DOE does not intend to conduct this analysis during this rulemaking because it believes that its proposed season lengths which are based on the DOE climate regions are adequate to determine typical performance of a tested system.

Neither AHRI nor Trane explicitly suggested a method for updating the lengths of seasons, but both disagreed with DOE's definition of shoulder season and opined that the number of hours assigned to the shoulder season was high and needed to be re-evaluated. (AHRI, No. 24 at pp. 1–2; Trane, No. 21 at p. 1) Further, Trane expressed concern that the off-mode hours reflected in the April 2011 SNOPR would be over-representative of several southern climates in particular. (Trane, No. 21 at p. 1) DOE agrees that the shoulder season will vary with climate, but notes that, under EPCA, DOE is not permitted to develop regional off-mode standards. (42 U.S.C. 6295(gg)(3)(B)) Consequently, DOE must develop a ''typical'' profile for allocating the hours in a year to each of the seasons considered.

However, DOE believes that stakeholder concerns regarding the relative length of seasons and consequent over-representation for certain areas have merit. Since EPCA does not allow for regional off-mode standards, DOE is instead proposing a calculation method that is independent of the climate region and bin hours and will instead equally weight the two different power measurements in calculating the off mode metric. This approach is discussed in further detail below.

D. Proposed Test Methods and Calculations for Off-Mode Power and Energy Consumption of Residential Central Air Conditioners and Heat Pumps

Interested parties also provided additional comments on specific elements of the off-mode test method proposed in the April 2011 SNOPR. Both NRDC and CAIOUs expressed their preference that manufacturers be required to report both the central air conditioner's shoulder season off-mode rating, *P1,* and its heating season off-mode rating, *P2,* rather than to report the proposed combined off-mode rating, $P_{w,off.}$ (NRDC, No. 22 at p. 3; CAIOUs, No. 23 at p. 1) AHRI proposed adding definitions for *T00,* the temperature at which the crankcase heater begins to cycle on, and *T100,* the temperature at which the crankcase heater must operate continuously, within the amended Appendix M. (AHRI, No. 28 at p. 10) Trane stated that definitions for *T00* and *T100* should not be expressed in terms of ambient temperature, but rather, in terms of crankcase temperature for those units that are thermostatically controlled. (Trane, No. 21 at p. 1) Because of revisions proposed in today's notice, DOE is no longer planning to use *T00* or *T100,* and therefore does not intend to add definitions for these terms in appendix M. With respect to NRDC's and CAIOUs' comments regarding certification requirements, DOE will consider those issues as part of the regional standards enforcement rulemaking, through which it will address all of the reporting requirements for central air conditioners and heat pumps. Pursuant to EPCA, DOE will begin this rulemaking within 90 days of issuing a final rule for residential central air conditioners and heat pumps. (42 U.S.C. 6295(o)(6)(G)(ii)(I))

Further, both Trane and AHRI questioned the need to consider crankcase heater operation during the shoulder season, which would be represented by the outdoor temperature bins of 57 °F, 62 °F, 67 °F, and 72 °F, according to DOE's proposal. (Trane, No. 21 at p. 1; AHRI, No. 24 at p. 2) AHRI commented that off-mode power consumption at 57 °F should be the only temperature set-point that matters. (AHRI, No. 24 at p. 2) Additionally, Trane and AHRI stated that DOE's proposed requirement for the crankcase heater power measurement to begin five minutes after the end of the compressor run-time will not measure crankcase heater power correctly for heaters that are thermostatically controlled or that use a time delay relay. (Trane, No. 21 at p. 1; AHRI, No. 24 at p. 2)

In response to comments by stakeholders, DOE conducted additional testing on 2 central air conditioners and 3 heat pumps, all of which were one compressor systems. This testing was done to according to the procedure which is proposed in today's notice and complements the prior testing which DOE already conducted. DOE also received off-mode data from AHRI for 80 heat pumps and 44 central air conditioners; 74 of these 124 systems were two-compressor systems. (AHRI, No. 30 at p.1) A summary of AHRI's data, which were produced using the procedure in the April 2011 SNOPR, is contained below in Table 0–1:

TABLE 0–1—AHRI OFF-MODE DATA

	Average P_{WOFF} (W)	Range (W)
Heat Pumps	69	32–103
Central Air Conditioners	122	45–136
Two Compressor Central Air Conditioners and Heat Pumps	120.1	103–136

[6] IECC standards are used to support the design and construction of energy efficient buildings. These standards vary by assigned climate zone, with the country divided into eight climate zones and three climate types (dry, marine, moist). A summary of these standards and map of the climate zones is available at *http://reca-codes.org/pages/iecc2009.html.*

[7] TMY3 refers to a data set of hourly values of solar radiation and meteorological elements for a 1-year period recorded in 1,029 locations. This data set is compiled by the National Renewable Energy Laboratory (NREL) and allows for the simulation of building systems, such as central air conditioners or heat pumps in various locations. See *http://rredc.nrel.gov/solar/old_data/nsrdb/1991–2005/tmy3/* for additional information.

While DOE appreciates AHRI's effort, DOE is concerned that it cannot determine the types of systems which were used to produce these results and that these results may not be representative of the entire market. No explanation was provided as to why the central air conditioner off-mode average is significantly higher than the heat pump off-mode average. In its submission, AHRI stated that ''systems with P_{WOFF} greater than 100 are very efficient (18–20 SEER) and have two compressors.'' This statement indicates that the average central air conditioner reflected in this data is a high efficiency system with two compressors; DOE does not believe that such systems represent the average central air conditioner in the marketplace. Further, the label on the data submitted by AHRI for the two-compressor systems indicates that the data are representative of both central air conditioners and heat pumps. However, the lower bound of the range is greater than the higher bound of the heat pump range, which suggests that the data only comprise central air conditioners. DOE acknowledges AHRI's concerns, but believes that its own data are more representative of the market and chose to base the analysis on this data.

Additionally, DOE disagrees with Trane and AHRI that crankcase heater operation may not need to be accounted for during the shoulder season. While a crankcase heater with controls may not turn on during the shoulder season, an uncontrolled crankcase heater would run constantly during the shoulder season. Therefore, DOE believes that it is important to consider crankcase heater operation during the shoulder season.

Previously, DOE considered testing at four different temperatures (57 °F, 62 °F, 67 °F, 72 °F), but believes that testing at four temperatures is unnecessary and does not provide sufficient benefit to justify the additional test burden. With four test temperatures, the intermediate points will be equal to either the higher test point or the lower test point, depending on when the crankcase heater turns on (because it is always either on or off). Based on this conclusion and the results of the additional testing, DOE agrees with stakeholder observations regarding test temperatures, and proposes to base the off-mode rating, $P_{W,OFF}$, for units with a cooling capacity of 36,000 Btu/h or less, on an average of wattages, *P1* and *P2,* which are recorded at two different outdoor ambient temperatures: 82 °F for *P1* and 57 °F for *P2.* For systems with crankcase heater controls, the higher temperature set point would measure the off-mode contribution from components other than the crankcase heater, while DOE believes that the lower test point is sufficiently low that the crankcase heater would be energized. However, for systems without a crankcase heater or with an uncontrolled crankcase heater, there would be no difference between measurements taken at the two different temperatures. Consequently, DOE proposes to only test these systems at 82 °F and use this measured value for both *P2* and *P1.*

$$P1 = P1_X - P_X.$$

Where,

$P1_X$ = the overall system power draw at 82 °F, W,

P_X = the power draw at 82 °F of components not associated with the residential central air conditioner or heat pump, W, and

$$P2 = P2_X - P_X.$$

Where,

$P2_X$ = the overall system power draw at 57 °F, W.

P1 and *P2* are then combined to calculate $P_{W,OFF}$:

$$P_{W,OFF} = \frac{P1 + P2}{2}.$$

To address concerns from AHRI and Trane with respect to time delay switches and the potential for inaccurate results due to a thermostat being placed on a warm compressor, DOE proposes to require the manufacturer to specify the presence of these components in the installation manuals, so that the off-mode tests for these systems may be run prior to the tests for SEER and HSPF. Running off-mode tests first would ensure that the time delay switch has not been activated and also that the thermostat will not be influenced by any heat from the compressor because the unit would not have yet been run. For units without these components and for units with time delay switches and for which there is no indication of their presence in their installation manual, the off-mode tests would be done after the steady state 'B' test.[8] DOE seeks comment on its equation for calculating a system's off-mode rating. (See Issue 1 in section 0, ''Issues on Which DOE Seeks Comment'').

[8] As specified in Appendix M of Subpart B to Part 430 of Title 10 in the Code of Federal Regulations, the 'B' test is a steady state test conducted at an outdoor ambient dry bulb inlet temperature of 82 °F and an indoor ambient dry bulb inlet temperature of 80 °F.

1. Provisions for Large Tonnage Systems

For its off-mode analysis, DOE analyzed units with a cooling capacity of three tons (36,000 Btu/h), which is the capacity most representative of units in the marketplace. However, DOE is concerned that larger capacity units have characteristics which could make it more difficult for them to achieve the same standard as those at the representative three-ton capacity. Specifically, DOE believes that larger units may require a larger crankcase heater to ensure safe compressor operation because four- and five-ton units typically have larger compressors as well as larger refrigerant volumes. These two characteristics could necessitate a crankcase heater with a higher power than 40 W crankcase heaters, which DOE observed in units at the representative capacity. Based on further research into system specification sheets and teardown data from the standards rulemaking for these products, DOE believes that larger capacity units require a larger crankcase heater and is now proposing a scaling factor for units at capacities greater than the representative capacity of 36,000 Btu/h. This scaling factor would be directly proportional to the cooling capacity and determined by the following equation:

$$F_{scale} = \frac{Q_C(95)}{36{,}000}.$$

Where,

$Q_c(95)$ = the total cooling capacity at the A or A_2 Test condition. This scaling factor would then be applied to the two power measurements, *P1* and *P2,* to determine $P_{W,OFF}$ as follows:

$$P_{W,OFF} = \frac{(P1 + P2)/2}{F_{scale}}.$$

However, in its analysis DOE also found that units smaller than the representative capacity still required the same components and crankcase heater as units at the representative capacity. DOE does not want to unduly create a market constraint on the manufacture and purchase of smaller central air conditioning systems that otherwise would be right-sized for smaller or more efficient homes by setting an exceedingly stringent off-mode standard. Consequently, DOE is not proposing to apply a scaling factor to units which have a cooling capacity that is less than that of the representative capacity. DOE seeks comment on both the necessity of a scaling factor for large tonnage units, and its approach of making this factor directly proportional to capacity. (See Issue 2 in section 0,

''Issues on Which DOE Seeks Comment'').

2. Special Requirements for Multi-Compressor Systems

DOE is also aware that certain high efficiency residential central air conditioners and heat pumps utilize a two compressor design to provide varying levels of cooling. With different capacity compressors operating at close to full load, the two-compressor unit is able to operate more efficiently and achieve a higher efficiency rating than would be possible with a single compressor. Because there are two compressors in these units, it is likely that the system would have two crankcase heaters (one for each compressor), which would result in higher off-mode power consumption because of the significant effect that crankcase heaters have on a system's off-mode power consumption. However, DOE's analysis for the June 2010 NOPR and the April 2011 SNOPR did not account for this type of unit, and DOE does not want to prevent these high efficiency products from being developed or being made available to the consumer. Therefore, in today's notice, DOE is proposing a method for normalizing the crankcase heater power consumption on a per compressor basis for multi-compressor systems with controlled crankcase heaters using the following equation:

$$P2 = \frac{P2_X - P1_X}{number\ of\ compressors} + P1,$$

Where,

$P1_x$ = overall system measured power draw at 82 °F, W;

$P2_x$ = overall system measured power draw at 57 °F, W.

This equation isolates and averages the power draw associated with the crankcase heaters because, as mentioned previously, DOE believes that units with controlled crankcase heaters would have the crankcase heater off at the *P1* temperature of 82 °F and on at the *P2* temperature of 57 °F. This belief is based on manufacturer interviews during the standards rulemaking, as well as on testing done following the April 2011 SNOPR.

For systems with uncontrolled crankcase heaters, DOE recognizes that there is a need to isolate the crankcase heater power in order to normalize it on a per compressor basis. Multi-compressor systems with controls are likely to have crankcase heaters off during the *P1* test and on during the P2 test, which allows for the first term in the equation above to determine the crankcase heater power. However, in these cases, the *P1* test would yield incorrect results because the power consumption of the components not associated with the residential central air conditioner or heat pump would have to be divided by the number of compressors, while the number of controls does not scale with the number of compressors. Therefore, DOE proposes to require a slightly different approach to determine the off mode power consumption of these systems. In such cases, DOE proposes that, first, the crankcase heater should be disconnected and then the overall system power draw with the disconnected crankcase heater should be recorded as $P1_D$. Next, the average power draw on a per compressor basis should be calculated by dividing the difference between the overall system power draws ($P1_X$ and $P1_D$). Then this difference should be combined with the previously recorded $P1_D$:

$$P1 = \frac{P1_X - P1_D}{number\ of\ compressors} + P1_D,$$

Where,

$P1_D$ = the measured power draw with the crankcase heater disconnected, W.

DOE seeks comment on the use of this equation to calculate an average power draw and for determining the off-mode rating for multiple compressor units. (See Issue 3 in section 0, ''Issues on Which DOE Seeks Comment.'')

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule 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 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, so that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed today's proposed rule, which would amend the test procedure for residential central air conditioners and heat pumps, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE tentatively concludes and certifies that the proposed rule, if adopted, would not result in a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below.

For the purpose of the regulatory flexibility analysis for this rule, the DOE adopts the Small Business Administration (SBA) definition of a small entity within this industry as a manufacturing enterprise with 750 employees or fewer. DOE used the small business size standards published on January 31, 1996, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3280, 3286, as amended at 67 FR 3041, 3045 (Jan. 23, 2002) and at 69 FR 29192, 29203 (May 21, 2004); see also 65 FR 30836, 30850

(May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000). The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

Residential central air conditioner and heat pump equipment manufacturing is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' 70 FR 12395 (March 11, 2005). DOE reviewed AHRI's listing of residential central air conditioner and heat pump product manufacturer members and surveyed the industry to develop a list of domestic manufacturers. As a result of this review, DOE identified 22 manufacturers of residential central air conditioners and heat pumps, of which 15 would be considered small manufacturers with a total of approximately 3 percent of the market sales. DOE seeks comment on its estimate of the number of small entities that may be impacted by the proposed test procedure. (See Issue 4 in section 0, ''Issues on Which DOE Seeks Comment'').

Potential impacts of the proposed test procedure on all manufacturers, including small businesses, come from impacts associated with the cost of proposed additional testing. DOE estimates the incremental cost of the proposed additional tests described in 10 CFR part 430, subpart B, appendix M (proposed section 3.13) to be an increase of $1,000 to $1,500 per unit tested. This estimate is based on private testing services quoted on behalf of DOE in the last two years for residential central air conditioners and heat pumps. Typical costs for running the cooling tests appear to be approximately $5,000. DOE estimated that the additional activities required by the revised test procedure would introduce a 20 to 30 percent increase in testing time, resulting in the additional cost.

Because the incremental cost of running the extra tests is the same for all manufacturers, DOE believes that all manufacturers would incur comparable costs for testing of individual basic models as a result of the proposed test procedure. DOE expects that small manufacturers will incur less testing expense compared with larger manufacturers as a result of the proposed testing requirements because they have fewer basic models and thus require proportionally less testing when compared with large manufacturers that have many basic models. DOE recognizes, however, that smaller manufacturers may have less capital available over which to spread the increased costs of testing.

DOE compared the cost of the testing to the total value added by the manufacturers to determine whether the impact of the proposed test procedure amendments is significant. The value added represents the net economic value that a business creates when it takes manufacturing inputs (*e.g.,* materials) and turns them into manufacturing outputs (*e.g.,* manufactured goods). Specifically, as defined by the U.S. Census, the value added statistic is calculated as the total value of shipments (products manufactured plus receipts for services rendered) minus the cost of materials, supplies, containers, fuel, purchased electricity, and contract work expenses.

DOE analyzed the impact on the smallest manufacturers of residential central air conditioners and heat pumps because these manufacturers would likely be the most vulnerable to cost increases. DOE calculated the additional testing expense as a percentage of the average value added statistic for the five individual firms in the 25 to 49 employee size category in NAICS 333415 as reported by the U.S. Census (U.S. Bureau of the Census, American Factfinder, 2002 Economic Census, Manufacturing, Industry Series, Industry Statistics by Employment Size, *http://factfinder.census.gov/servlet/EconSectorServlet?_lang=en&ds_name=EC0200A1&_SectorId=31&_ts=288639767147*). The average annual value for manufacturers in this size range from the census data was $1.26 million in 2001$, per the 2002 Economic Census, or approximately $1.52 million per year in 2009$ after adjusting for inflation using the implicit price deflator for gross domestic product (U.S. Department of Commerce Bureau of Economic Analysis, *http://www.bea.gov/national/nipaweb/SelectTable.asp*).

DOE also examined the average value added statistic provided by census for all manufacturers with fewer than 500 employees in this NAICS classification as the most representative value from the 2002 Economic Census data of the residential central air conditioner manufacturers with fewer than 750 employees that are considered small businesses by the SBA (15 manufacturers). The average annual value added statistic for all small manufacturers with fewer than 500 employees was $7.88 million (2009$).

Given this data, and assuming the high-end estimate of $1,500 for the additional testing costs, DOE concluded that the additional costs for testing of a single basic model product under the proposed requirements would be approximately 0.1 percent of annual value added for the 5 smallest firms, and approximately 0.02 percent of the average annual value added for all small residential central air conditioner or heat pump manufacturers (15 firms). DOE estimates that testing of basic models may not have to be updated more than once every 5 years, and therefore the average incremental burden of testing one basic model may be one fifth of these values when the cost is spread over several years.

DOE requires that only the highest sales volume split system combinations be laboratory tested. 10 CFR 430.24(m). The majority of residential central air conditioners and heat pumps offered by a manufacturer are typically split systems that are not required to be laboratory tested but can be certified using an alternative rating method that does not require DOE testing of these units. DOE reviewed the available data for five of the smallest manufacturers to estimate the incremental testing cost burden for those small firms that might experience the greatest relative burden from the revised test procedure. These manufacturers had an average of 10 models requiring testing (AHRI Directory of Certified Product Performance, *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*), while large manufacturers will have well over 100 such models. The additional testing cost for final certification for 10 models was estimated at $15,000. Meanwhile, these certifications would be expected to last the product life, estimated to be at least 5 years based on the time frame established in EPCA for DOE review of residential central air conditioner efficiency standards. This test burden is therefore estimated to be approximately 0.2 percent of the estimated 5-year value added for the smallest five manufacturers. DOE believes that these costs are not significant given other, much more significant costs that the small manufacturers of residential central air conditioners and heat pumps incur in the course of doing business. DOE seeks comment on its estimate of the impact of the proposed test procedure amendments on small entities and its conclusion that this impact is not significant. (See Issue 5 in section 0, ''Issues on Which DOE Seeks Comment'').

Accordingly, as stated above, DOE tentatively concludes and certifies that

this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an initial regulatory flexibility analysis (IRFA) for this rulemaking. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential central air conditioners and heat pumps must certify to DOE that their product complies with any applicable energy conservation standard. In certifying compliance, manufacturers must test their product according to the DOE test procedure for residential central air conditioners and heat pumps, including any amendments adopted for that test procedure. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential central air conditioners and heat pumps. 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act of 1995 (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes amendments to test procedures that may be used to implement future energy conservation standards for residential central air conditioners and heat pumps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in DOE's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subjects of today's proposed rule. States can petition DOE for a waiver of such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort so 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 United States Attorney General (Attorney General). Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments in the aggregate or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov.*) Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires

Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's 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 unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), that this proposed regulation, if promulgated as a final rule, would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, Office of Management and Budget, 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.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

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

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (15 U.S.C. 788). Section 32 essentially provides, in relevant part, that where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

Today's SNOPR does not incorporate testing methods contained in commercial standards.

V. Public Participation

A. Submission of Comments

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

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

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

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

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

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

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

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, are written in English, and are free of any defects or viruses.

Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

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

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

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

B. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments on the following issues:

1. The proposed equation for the calculation of a system's off-mode rating;

2. An appropriate scaling factor to account for larger units requiring a larger crankcase heater due to bigger compressors and larger refrigerant volume;

3. The proposed equation to adjust crankcase heater power draw for systems with multiple compressors;

4. The estimate of the number of small entities that may be impacted by the proposed test procedure;

5. The estimate of the impact of the proposed test procedure amendments on small entities and its conclusion that this impact is not significant.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this SNOPR.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on September 29, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

Appendix M [Amended]

2. Appendix M to subpart B of part 430 is amended as follows:

a. In section 1, Definitions, by revising sections 1.13 through 1.51:

b. In section 2, Testing Conditions, by adding paragraph d. in section 2.2.

c. In section 3,Testing Procedures, by:

i. Revising section 3.1;

ii. Adding sections 3.13 through 3.13.4.9.

d. In section 4, Calculations of Seasonal Performance Descriptors, by:

i. Adding sections 4.2.6 through 4.2.6.2.4;

ii. Revising section 4.3.1.

The additions and revisions read as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

* * * * *

1.13 Blower coil unit means a residential central air conditioner or heat pump where the indoor-side refrigerant-to-air heat exchanger coil is packaged in the same cabinet as the indoor blower. All single-packaged units are blower coil units; split-system units may be either blower coil units or coil-only units.

1.14 CFR means Code of Federal Regulations.

1.15 Coefficient of Performance (COP) means the ratio of the average rate of space heating delivered to the average rate of electrical energy consumed by the heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be tied to a single set of operating conditions. COP is a dimensionless quantity. When determined for a ducted unit tested without an indoor fan installed, COP must include the section 3.7, 3.8, and 3.9.1 default values for the heat output and power input of a fan motor.

1.16 Coil-only unit means a split-system residential central air conditioner or split-system heat pump where the indoor section includes a refrigerant-to-air heat exchanger coil but not a blower (fan). Coil-only units are designed to be installed and used in combination with a furnace or a modular blower.

1.17 Constant-air-volume-rate indoor fan means a fan that varies its operating speed to provide a fixed air-volume-rate from a ducted system.

1.18 Continuously recorded, when referring to a dry bulb measurement, means that the specified temperature must be sampled at regular intervals that are equal to or less than the maximum intervals specified in section 4.3 part ''a'' of ASHRAE Standard 41.1–86 (RA 01). If such dry bulb temperatures are used only for test room control, it means that one samples at regular intervals equal to or less than the maximum intervals specified in section 4.3 part ''b'' of the same ASHRAE Standard. Regarding wet bulb temperature, dew point temperature, or relative humidity measurements, continuously recorded means that the measurements must be made at regular intervals that are equal to or less than 1 minute.

1.19 Cooling load factor (CLF) means the ratio having as its numerator the total cooling delivered during a cyclic operating interval consisting of one ON period and one OFF period. The denominator is the total cooling that would be delivered, given the same ambient conditions, had the unit operated continuously at its steady-state space cooling capacity for the same total time (ON + OFF) interval.

1.20 Crankcase heater includes all devices and mechanisms for intentionally generating heat within and/or around the compressor sump volume to minimize the diluting of the compressor's refrigerant oil by condensed refrigerant.

1.21 Cyclic Test means a test where the unit's compressor is cycled on and off for

specific time intervals. A cyclic test provides half the information needed to calculate a degradation coefficient.

1.22 Damper box means a short section of duct having an air damper that meets the performance requirements of section 2.5.7.

1.23 Degradation coefficient (CD) means a parameter used in calculating the part load factor. The degradation coefficient for cooling is denoted by CDc. The degradation coefficient for heating is denoted by CDh .

1.24 Demand-defrost control system means a system that defrosts the heat pump outdoor coil only when measuring a predetermined degradation of performance. The heat pump's controls monitor one or more parameters that always vary with the amount of frost accumulated on the outdoor coil (e.g., coil to air differential temperature, coil differential air pressure, outdoor fan power or current, optical sensors, etc.) at least once for every ten minutes of compressor ON-time when space heating. One acceptable alternative to the criterion given in the prior sentence is a feedback system that measures the length of the defrost period and adjusts defrost frequency accordingly.[9] In all cases, when the frost parameter(s) reaches a predetermined value, the system initiates a defrost. In a demand-defrost control system, defrosts are terminated based on monitoring a parameter(s) that indicates that frost has been eliminated from the coil.

A demand-defrost control system, which otherwise meets the above requirements, may allow time-initiated defrosts if, and only if, such defrosts occur after 6 hours of compressor operating time.

1.25 Design heating requirement (DHR) predicts the space heating load of a residence when subjected to outdoor design conditions. Estimates for the minimum and maximum DHR are provided for six generalized U.S. climatic regions in section 4.2.

1.26 Dry-coil tests are cooling mode tests where the wet-bulb temperature of the air supplied to the indoor coil is maintained low enough that no condensate forms on this coil.

1.27 Ducted system means an air conditioner or heat pump that is designed to be permanently installed equipment and delivers conditioned air to the indoor space through a duct(s). The air conditioner or heat pump may be either a split system or a single-packaged unit.

1.28 Energy efficiency ratio (EER) means the ratio of the average rate of space cooling delivered to the average rate of electrical energy consumed by the air conditioner or heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be tied to a single set of operating conditions. EER is expressed in units of

$$\frac{\frac{Btu}{h}}{W}.$$

When determined for a ducted unit tested without an indoor fan installed, EER must include the section 3.3 and 3.5.1 default values for the heat output and power input of a fan motor.

1.29 Heating load factor (HLF) means the ratio having as its numerator the total heating delivered during a cyclic operating interval consisting of one ON period and one OFF period. The denominator is the total heating that would be delivered, given the same ambient conditions, if the unit operated continuously at its steady-state space heating capacity for the same total time (ON plus OFF) interval.

1.30 Heating seasonal performance factor (HSPF) means the total space heating required during the space heating season, expressed in Btu's, divided by the total electrical energy consumed by the heat pump system during the same season, expressed in watt-hours. The HSPF used to evaluate compliance with the Energy Conservation Standards (see 10 CFR 430.32(c), subpart C) is based on Region IV, the minimum standardized design heating requirement, and the sampling plan stated in 10 CFR 430.24(m), subpart B.

1.31 Heat pump having a heat comfort controller means equipment that regulates the operation of the electric resistance elements to assure that the air temperature leaving the indoor section does not fall below a specified temperature. This specified temperature is usually field adjustable. Heat pumps that actively regulate the rate of electric resistance heating when operating below the balance point (as the result of a second stage call from the thermostat) but do not operate to maintain a minimum delivery temperature are not considered as having a heat comfort controller.

1.32 Mini-split air conditioners and heat pumps means systems that have a single outdoor section and one or more indoor sections. The indoor sections cycle on and off in unison in response to a single indoor thermostat.

1.33 Multiple-split air conditioners and heat pumps means systems that have two or more indoor sections. The indoor sections operate independently and can be used to condition multiple zones in response to multiple indoor thermostats.

1.34 Non-ducted system means an air conditioner or heat pump that is designed to be permanently installed equipment and directly heats or cools air within the conditioned space using one or more indoor coils that are mounted on room walls and/or ceilings. The unit may be of a modular design that allows for combining multiple outdoor coils and compressors to create one overall system. Non-ducted systems covered by this test procedure are all split systems.

1.35 Part-load factor (PLF) means the ratio of the cyclic energy efficiency ratio (coefficient of performance) to the steady-state energy efficiency ratio (coefficient of performance). Evaluate both energy efficiency ratios (coefficients of performance) based on operation at the same ambient conditions.

1.36 Seasonal energy efficiency ratio (SEER) means the total heat removed from the conditioned space during the annual cooling season, expressed in Btu's, divided by the total electrical energy consumed by the air conditioner or heat pump during the same season, expressed in watt-hours. The SEER calculation in section 4.1 of this appendix and the sampling plan stated in 10 CFR 429.16, subpart B are used to evaluate compliance with the Energy Conservation Standards. (See 10 CFR 430.32(c), subpart C.)

1.37 Single-packaged unit means any central air conditioner or heat pump that has all major assemblies enclosed in one cabinet.

1.38 Small-duct, high-velocity system means a system that contains a blower and indoor coil combination that is designed for, and produces, at least 1.2 inches (of water) of external static pressure when operated at the full-loadair volume rate of 220–350 cfm per rated ton of cooling. When applied in the field, small-duct products use high-velocity room outlets (i.e., generally greater than 1000 fpm) having less than 6.0 square inches of free area.

1.39 Split system means any air conditioner or heat pump that has one or more of the major assemblies separated from the others.

1.40 Standard Air means dry air having a mass density of 0.075 lb/ft^3.

1.41 Steady-state test means a test where the test conditions are regulated to remain as constant as possible while the unit operates continuously in the same mode.

1.42 Temperature bin means the 5 °F increments that are used to partition the outdoor dry-bulb temperature ranges of the cooling (≥ 65 °F) and heating (< 65 °F) seasons.

1.43 Test condition tolerance means the maximum permissible difference between the average value of the measured test parameter and the specified test condition.

1.44 Test operating tolerance means the maximum permissible range that a measurement may vary over the specified test interval. The difference between the maximum and minimum sampled values must be less than or equal to the specified test operating tolerance.

1.45 Time adaptive defrost control system is a demand-defrost control system (see definition 1.24) that measures the length of

[9] Systems that vary defrost intervals according to outdoor dry-bulb temperature are not demand defrost systems.

the prior defrost period(s) and uses that information to automatically determine when to initiate the next defrost cycle.

1.46 Time delay switch or relay means, with respect to off-mode testing, a device that controls the crankcase heater and prevents the crankcase heater from turning on until the unit has been off for a specified amount of time.

1.47 Time-temperature defrost control systems initiate or evaluate initiating a defrost cycle only when a predetermined cumulative compressor ON-time is obtained. This predetermined ON-time is generally a fixed value (e.g., 30, 45, 90 minutes) although it may vary based on the measured outdoor dry-bulb temperature. The ON-time counter accumulates if controller measurements (e.g., outdoor temperature, evaporator temperature) indicate that frost formation conditions are present, and it is reset/remains at zero at all other times. In one application of the control scheme, a defrost is initiated whenever the counter time equals the predetermined ON-time. The counter is reset when the defrost cycle is completed.

In a second application of the control scheme, one or more parameters are measured (e.g., air and/or refrigerant temperatures) at the predetermined, cumulative, compressor ON-time. A defrost is initiated only if the measured parameter(s) falls within a predetermined range. The ON-time counter is reset regardless of whether a defrost is initiated. If systems of this second type use cumulative ON-time intervals of 10 minutes or less, then the heat pump may qualify as having a demand defrost control system (see definition 1.24).

1.48 Triple-split system means an air conditioner or heat pump that is composed of three separate components: An outdoor fan coil section, an indoor fan coil section, and an indoor compressor section.

1.49 Two-capacity (or two-stage) compressor means an air conditioner or heat pump that has one of the following:

(1) A two-speed compressor,

(2) Two compressors where only one compressor ever operates at a time,

(3) Two compressors where one compressor (Compressor #1) operates at low loads and both compressors (Compressors #1 and #2) operate at high loads but Compressor #2 never operates alone, or

(4) A compressor that is capable of cylinder or scroll unloading.

For such systems, low capacity means:

(1) Operating at low compressor speed,

(2) Operating the lower capacity compressor,

(3) Operating Compressor #1, or

(4) Operating with the compressor unloaded (e.g., operating one piston of a two piston reciprocating compressor, using a fixed fractional volume of the full scroll, etc.).

For such systems, high capacity means:

(1) Operating at high compressor speed,

(2) Operating the higher capacity compressor,

(3) Operating Compressors #1 and #2, or

(4) Operating with the compressor loaded (e.g., operating both pistons of a two-piston reciprocating compressor, using the full volume of the scroll).

1.50 Two-capacity, northern heat pump means a heat pump that has a factory or field-selectable lock-out feature to prevent space cooling at high-capacity. Two-capacity heat pumps having this feature will typically have two sets of ratings, one with the feature disabled and one with the feature enabled. The indoor coil model number should reflect whether the ratings pertain to the lockout enabled option via the inclusion of an extra identifier, such as ''+LO.'' When testing as a two-capacity, northern heat pump, the lockout feature must remain enabled for all tests.

1.51 Wet-coil test means a test conducted at test conditions that typically cause water vapor to condense on the test unit evaporator coil.

2.2. * * *

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d. When testing coil-only residential central air conditioners and heat pumps, install a toroidal type transformer to power the low-voltage components of the coil-only system. The manufacturer shall designate any additional specification for this transformer. If the manufacturer does not so designate, use a transformer having the following features: a nominal V-amp rating that results in the transformer being loaded from 25 and 90 percent based on the highest power value expected and then confirmed during the off-mode test; designed to operate with a primary input of 230 V, single phase, 60 Hz; and that provides an output voltage that is within the allowed range for each low-voltage component. The power consumption of the lab-added low-voltage transformer, and the components connected to it, must be measured as part of the total system power consumption during the off-mode tests. This total system power for the coil-only unit, however, must then be reduced by the power consumed by the lab-added transformer when no load is connected to it.

* * * * *

3.1 General Requirements. a. If, during the testing process, an equipment set-up adjustment is made that would alter the performance of the unit when conducting an already completed test, then repeat all tests affected by the adjustment. For cyclic tests, instead of maintaining an air volume rate for each airflow nozzle, maintain the static pressure difference or velocity pressure during an ON period at the same pressure difference or velocity pressure as measured during the steady-state test conducted at the same test conditions.

b. Use the testing procedures in this section to collect the data used for calculating:

1. Performance metrics for residential central air conditioners and heat pumps during the cooling season;

2. Performance metrics for heat pumps during the heating season; and

3. Power consumption metric(s) for residential central air conditioners and heat pumps during the off-mode season(s). For residential central air conditioners, the off-mode seasons are the shoulder seasons that separate the cooling and heating seasons and the entire heating season. For residential heat pumps, the shoulder season is the only off-mode season.

* * * * *

3.13 Laboratory testing to determine off-mode average power ratings.

3.13.1 Determine if the residential central air conditioner or heat pump has a compressor crankcase heater (see definition 1.20). If so equipped, determine from the manufacturer if the compressor crankcase heater's on/off operation is regulated or is unregulated, with the heater operating continuously when the compressor is off. Also determine from the manufacturer if the crankcase heater is regulated with a time delay relay (see definition 1.46) or has thermostat sensor located on the compressor shell. Use Table 17 to determine the required test methods based on the presence of a crankcase heater and how it is controlled.

3.13.2 For residential central air conditioners or heat pumps not having a compressor crankcase heater or having a crankcase heating which is unregulated, conduct the following off-mode test.

3.13.2.1 Configure the controls of the residential central air conditioner or heat pump to mimic the operating mode as if connected to a building thermostat that is set to the OFF position. No requirements are placed on the ambient conditions within the indoor and outdoor test rooms. The room conditions are allowed to change for the duration of this particular test.

3.13.2.2 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval and designate it as *P1x.*

3.13.2.3 Coil-only system (see definition 1.16) power adjustment: Disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. Calculate the average power consumption rate for the integration interval and designate it as *Px.*

3.13.2.4 Blower-coil system (see definition 1.13) power adjustment: If tested and rated with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower over the integration interval and designate it as *Px.*

3.13.2.5 For both coil-only and blower-coil systems with a single compressor: To calculate *P1,* the off-mode power solely attributable to the residential central air conditioner or heat pump, subtract this average power consumption (*Px*) from the previously calculated overall system average power (*P1x*):

$$P1 = P1_X - P_X.$$

3.13.2.6 For both coil-only and blower-coil systems with multiple compressors: To calculate *P1,* the off-mode power solely attributable to the residential central air conditioner or heat pump at 82 °F, first disconnect the crankcase heater and then record the overall system power draw with the disconnected crankcase heater as $P1_D$. Next, calculate an average power draw on a per compressor basis by dividing the difference between the overall system power draws ($P1_X$ and $P1_D$). Then combine this difference with the previous recorded $P1_D$:

$$P1 = \frac{P1_X - P1_D}{number\ of\ compressors} + P1_D.$$

3.13.2.7 Round *P1* to the nearest integer wattage value and record this rounded value as both *P2* and *P1.* If the resulting *P2* and *P1* are each less than 1 watt, assign each of them the value of zero.

3.13.3 For residential central air conditioners or heat pumps having a compressor crankcase heater whose on/off operation is regulated, but according to the manufacturer does not have either a time delay switch (see definition 1.46) controlling the crankcase heater or a temperature sensor for the crankcase heater located on the compressor shell.

3.13.3.1 Configure the controls of the residential central air conditioner or heat pump to mimic the operating mode as if connected to a building thermostat that is set to the OFF position. Position a lab-added temperature sensor in the air between 2 and 6 inches from the crankcase heater temperature sensor. For this off-mode test and the one that follows at 57 °F, use this lab-added temperature sensor to measure the outdoor dry bulb temperature. Conduct these tests following the steady state 'B' test and maintain an indoor dry bulb temperature of between 75 °F and 85 °F during the off-mode tests.

3.13.3.2 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval and designate it as $P1_X$.

3.13.3.3 Coil-only system (see definition 1.16) power adjustment: Reduce the overall system off-mode power measurement, *P1x,* by the power supplied to components not part of the residential central air conditioner or heat pump. Disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. Calculate the average power consumption rate for the integration interval and designate it as P_X.

3.13.3.4 Blower-coil system (see definition 1.13) power adjustment: If tested and rated with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower over the integration interval and designate it as P_X.

3.13.3.5 For both coil-only and blower-coil systems with a single compressor: To calculate *P1,* the off-mode power solely attributable to the residential central air conditioner or heat pump at 82 °F, subtract this average power consumption (P_X) from the previously calculated overall system average power ($P1_X$) and round *P1* to the nearest integer wattage value:

$$P1 = P1_X - P_X.$$

3.13.3.6 Continue to maintain an indoor dry bulb temperature of between 75 °F and 85 °F, but decrease the outdoor temperature until the lab-added temperature sensor achieves an outdoor ambient dry bulb temperature of 57 °F, +/− 2 °F for at least 5 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. Calculate the average power consumption rate for the integration interval and designate it as *P2.*

3.13.3.7 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval and designate it as $P2_X$.

3.13.3.8 For both coil-only and blower-coil systems with a single compressor: To calculate *P2,* the off-mode power solely attributable to the residential central air conditioner or heat pump at 57 °F, subtract this average power consumption (P_X) from the previously calculated overall system average power ($P2_X$) and round *P2* to the nearest integer wattage value:

$$P2 = P2_X - P_X.$$

3.13.3.9 For both coil-only and blower-coil systems with multiple compressors: To calculate *P2,* the off-mode power solely attributable to the residential central air conditioner or heat pump at 57 °F, first calculate an average power draw on a per compressor basis by dividing the difference between the overall system power draws ($P1_X$ and $P2_X$). Then combine this value with the previously determined *P1,* and round *P2* to the nearest integer wattage value:

$$P2 = \frac{P2_X - P1_X}{number\ of\ compressors} + P1.$$

3.13.4 For residential central air conditioners or heat pumps having a compressor crankcase heater whose on/off operation is regulated and, according to the manufacturer, has either a time delay switch (see definition 1.46) controlling the crankcase heater or a temperature sensor for the crankcase heater located on the compressor shell.

3.13.4.1 Configure the controls of the residential central air conditioner or heat pump to mimic the operating mode as if connected to a building thermostat that is set to the OFF position. Position a lab-added temperature sensor in the air between 2 and 6 inches from the crankcase heater temperature sensor. For this off-mode test and the one that follows at 57 °F, use this lab-added temperature sensor to measure the outdoor dry bulb temperature. Conduct these tests before any other tests and maintain an indoor dry bulb temperature of between 75 °F and 85 °F during the off-mode tests.

3.13.4.2 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval and designate it as $P1_X$.

3.13.4.3 Coil-only system (see definition 1.16) power adjustment: Reduce the overall system off-mode power measurement, $P1_X$, by the power supplied to components not part of the residential central air conditioner or heat pump. Disconnect all low-voltage wiring from the low-voltage transformer and integrate the power consumption of the fully unloaded transformer over a 5-minute interval. Calculate the average power consumption rate for the integration interval and designate it as P_X.

3.13.4.4 Blower-coil system (see definition 1.13) power adjustment: If tested and rated with a specific furnace or specific modular blower, measure only the power supplied to the furnace or modular blower while idle (*e.g.,* disconnect the low-voltage wiring for the components housed in the residential central air conditioner parts of the system from the transformer) and integrate this power over a 5-minute interval. Calculate the average power consumption of the fully unloaded transformer, idle furnace, or idle modular blower over the integration interval and designate it as P_X.

3.13.4.5 For both coil-only and blower-coil systems: To calculate *P1,* the off-mode power solely attributable to the residential central air conditioner or heat pump at 82 °F, subtract this average power consumption (P_X) from the previously calculated overall system

average power ($P1_X$) round $P1$ to the nearest integer wattage value:

$$P1 = P1_X - P_X.$$

3.13.4.6 Continue to maintain an indoor dry bulb temperature of between 75 °F and 85 °F, but decrease the outdoor temperature until the lab-added temperature sensor achieves an outdoor ambient dry bulb temperature of 57 °F, +/−2 °F for at least 5 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. Calculate the average power consumption rate for the integration interval and designate it as $P2$.

3.13.4.7 After the controls have been configured, wait at least 2 minutes. Then integrate the power consumption of the residential central air conditioner or heat pump over a 5-minute interval. This integrated power consumption must include the power consumed by the low-voltage transformer and the low-voltage components connected to it. Calculate the average power consumption rate for the integration interval and designate it as $P2_X$.

3.13.4.8 For both coil-only and blower-coil systems with a single compressor: To calculate $P2$, the off-mode power solely attributable to the residential central air conditioner or heat pump at 57 °F, subtract this average power consumption (P_X) from the previously calculated overall system average power ($P2_X$) and round $P2$ to the nearest integer wattage value:

$$P2 = P2_X - P_X.$$

3.13.4.9 For both coil-only and blower-coil systems with multiple compressors: To calculate $P2$, the off-mode power solely attributable to the residential central air conditioner or heat pump at 57 °F, first calculate an average power draw on a per compressor basis by dividing the difference between the overall system power draws ($P1_X$ and $P2_X$). Then combine this with the previously determined $P1$, and round $P2$ to the nearest integer wattage value:

$$P2 = \frac{P2_X - P1_X}{number\ of\ compressors} + P1.$$

4. * * *

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4.2.6 Off-mode seasonal power and energy consumption calculations.

4.2.6.1.1 For residential central air conditioners and heat pumps with a cooling capacity of less than 36,000 Btu/h, determine a systems off-mode rating, $P_{W,OFF}$, by using the following equation:

$$P_{W,OFF} = \frac{P1 + P2}{2}.$$

4.2.6.1.2 For residential central air conditioners and heat pumps with a cooling capacity of greater than 36,000 Btu/h, calculate the capacity scaling factor according to:

$$F_{scale} = \frac{Q_C(95)}{36{,}000}.$$

Where,

$Q_c(95)$ = the total cooling capacity at the A or A_2 Test condition.

Then, average the off-mode power ratings and divide by the scaling factor to determine a system's off-mode rating:

$$P_{W,OFF} = \frac{(P1 + P2)/2}{F_{scale}}.$$

4.2.6.2.1 For the shoulder seasons. Calculate the off-mode energy consumption for the shoulder season, $E1$, using

$$E1 = P1 \cdot SSH$$

Where $P1$ is determined as specified in section 3.13 and the SSH are provided in Table 19 for the six generalized climatic regions along with the national average rating values.

TABLE 19—REPRESENTATIVE COOLING AND HEATING LOAD HOURS AND THE CORRESPONDING SET OF SEASONAL HOURS FOR EACH GENERALIZED CLIMATIC REGION

Climatic region	Cooling load hours CLH_R	Heating load hours HLH_R	Cooling season hours CSH_R	Heating season hours HSH_R	Shoulder season hours SSH_R
I	2400	750	6731	1826	203
II	1800	1250	5048	3148	564
III	1200	1750	3365	4453	942
IV	800	2250	2244	5643	873
Rating Values	1000	2080	2805	5216	739
V	400	2750	1122	6956	682
VI	200	2750	561	6258	1941

4.2.6.2.2 For the heating season—residential central air conditioners only. Calculate the off-mode energy consumption of a residential central air conditioner during the heating season, $E2$, using

$$E2 = P2 \cdot HSH$$

Where $P1$ is determined as specified in section 4.2.6.2 and the HSH are provided in Table 19 for the six generalized climatic regions along with the national average rating values.

4.2.6.2.3 For residential central air conditioners only. Calculate the annual off-mode energy consumption of a residential central air conditioner E_{TOTAL}, using

$$E_{TOTAL} = E1 + E2.$$

4.2.6.2.4 For residential heat pumps only, the annual off-mode energy consumption of a residential central air conditioner E_{TOTAL} equals $E1$.

* * * * *

4.3.1 Calculation of actual regional annual performance factors (APF_A) for a particular location and for each standardized design heating requirement.

$$APF_A = \frac{CLH_A \cdot \dot{Q}_c^k(95) + HLH_A \cdot DHR \cdot C}{\frac{CLH_A \cdot \dot{Q}_c^k(95)}{SEER} + \frac{HLH_A \cdot DHR \cdot C}{HSPF} + P1 \cdot SSH + P2 \cdot HSH}$$

Where,

CLH_A = the actual cooling hours for a particular location as determined using the map given in Figure 3, hr;

$\dot{Q}_c^k(95)$ = the space cooling capacity of the unit as determined from the A or A_2 Test, whichever applies, Btu/h;

HLH_A = the actual heating hours for a particular location as determined using the map given in Figure 2, hr;

DHR = the design heating requirement used in determining the HSPF; refer to section 4.2 and definition 1.22, Btu/h;

C = defined in section 4.2 following Equation 4.2–2, dimensionless;

SEER = the seasonal energy efficiency ratio calculated as specified in section 4.1, Btu/W·h;

HSPF = the heating seasonal performance factor calculated as specified in section 4.2 for the generalized climatic region that includes the particular location of interest (see Figure 2), Btu/W·h. The HSPF should correspond to the actual design heating requirement (DHR), if known. If it does not, it may correspond to one of the standardized design heating requirements referenced in section 4.2;

P1 = the off-mode power consumption taken at 82 °F, as determined in section 3.13, W, and

P2 = the off-mode power consumption taken at 57 °F, as determined in section 3.13, W.

Evaluate the *HSH* using

$$HSH = \frac{HLH \cdot (65 - T_{OD})}{\sum_{j=1}^{J}(65 - T_j) \cdot \frac{n_j}{N}}$$

Where T_{OD} and n_j/N are listed in Table 19 and depend on the location of interest relative to Figure 2. For the six generalized climatic regions, this equation simplifies to the following set of equations:

Region I $HSH = 2.4348 \times HLH$

Region II $HSH = 2.5182 \times HLH$

Region III $HSH = 2.5444 \times HLH$

Region IV $HSH = 2.5078 \times HLH$

Region V $HSH = 2.5295 \times HLH$

Region VI $HSH = 2.2757 \times HLH$

Evaluate the shoulder season hours using

$$SSH = 8760 - (CSH + HSH)$$

Where,

CSH = the cooling season hours calculated using $CSH = 2.8045 \times CLH$.

* * * * *

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BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2010–BT–TP–0023]

RIN 1904–AC26

Energy Conservation Program: Test Procedures for Microwave Ovens

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) has initiated a test procedure rulemaking to develop active mode testing methodologies for residential microwave ovens. DOE specifically is seeking information, data, and comments regarding representative and repeatable methods for measuring the energy use of microwave-only ovens and combination microwave ovens, including: Food loads representative of consumer use; the repeatability of energy use measurements using different food loads; and consumer usage data on the hours of operation in active mode, standby mode, and off mode for the development of an integrated energy use metric.

DATES: Written comments and information are requested on or before November 23, 2011.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2010–BT–TP–0023 and/or RIN 1904–AC26, by any of the following methods:

- *E-mail: MWO–2010–TP–0023@ee.doe.gov.* Include docket number EERE–2010–BT–TP–0023 and/or RIN 1904–AC26 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

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

In the Office of the General Counsel, contact Mr. Ari Altman, U.S. Department of Energy, 1000 Independence Ave., SW., Room 6B–159, Washington, DC 20585. *Telephone:* 202–287–6307; *E-mail: Ari.Altman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On July 22, 2010, DOE published in the **Federal Register** a final rule for the microwave oven test procedure rulemaking (July TP repeal final rule), in which it repealed the regulatory provisions for establishing the cooking efficiency test procedure for microwave ovens under the Energy Policy and Conservation Act (EPCA). 75 FR 42579. In the July TP repeal final rule, DOE determined that the existing microwave oven test procedure to measure the cooking efficiency did not produce representative and repeatable test results and was unaware of any test procedures that have been developed that address DOE's concerns with the microwave oven cooking efficiency test procedure. DOE was also unaware of any research or data on consumer usage indicating what a representative food load would be, or any data showing the repeatability of test results. 75 FR 42579, 42581.

On July 22, 2010, DOE also published in the **Federal Register** a notice of public meeting to initiate a separate rulemaking process to consider new provisions for measuring microwave oven energy efficiency in active (cooking) mode. 75 FR 42611. DOE held the public meeting on September 16, 2010 to discuss and receive comments on several issues related to active mode test procedures for microwave ovens to consider in developing a new test procedure. DOE received no data or comments at or after the September 16, 2010 public meeting suggesting potential methodologies for test procedures for microwave oven active mode.

In support of its test procedure rulemaking, DOE conducts in-depth technical analyses of publicly available test standards and other relevant

information. DOE continually seeks data and public input to improve its testing methodologies to more accurately reflect consumer use and to produce repeatable results. In general, DOE is requesting comment and supporting data regarding representative and repeatable methods for measuring the energy use of combination microwave ovens. Additionally, DOE seeks comment and information on the specific topics below.

Food Test Load Characteristics

DOE's previous active mode test procedure incorporated portions of the International Electrotechnical Commission (IEC) Standard 705–1998 and Amendment 2–1993, ''Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purpose.'' The test methods measured the amount of energy required to raise the temperature of 1 kilogram of water by 10 degrees Celsius (°C) under controlled conditions. The ratio of usable output power over input power described the energy factor (EF), a measure of the cooking efficiency.[1] In comments received in response to a separate test procedure notice of proposed rulemaking (NOPR) published in the **Federal Register** on October 17, 2008, which addressed provisions for measuring standby mode and off mode energy use for microwave ovens (73 FR 62134), interested parties commented that pure water has relatively low specific resistivity, and actual food items that might be cooked in a microwave oven would have more salts and thus absorb microwave energy more efficiently than pure water. Interested parties stated that, as a result, testing with a water load would likely result in lower efficiency measurements than would be expected from using actual food products.

DOE also notes that IEC is currently revising its test standard for microwave ovens, IEC Standard 60705, ''Household microwave ovens—Methods for measuring performance,'' but that this test procedure continues to use a water load for testing. DOE is also unaware of any industry or international test standards that address the active mode cooking function of combination microwave ovens (*i.e.,* microwave ovens that incorporate convection features or possibly other means of cooking) and what food loads would be appropriate for testing the combination cooking function.

DOE is therefore interested in stakeholder feedback on what food loads are most commonly cooked by consumers and should be used for measuring the energy efficiency of microwave oven cooking, as well as the methodology for testing such food loads. In particular, DOE is requesting inputs on the following:

- Consumer usage data on the characteristics of food loads cooked by consumers in both microwave-only and combination cooking modes. Please provide specific details on which food loads are cooked with the microwave-only cooking function and which are cooked with the combination cooking function;
- The percentage of cooking cycles consumers use the microwave-only and combination cooking modes;
- Specific details on the food loads, including, but not limited to, weights, composition, frequency of cooking, and initial and final temperatures, as well as the racks or plates used to hold the food load;
- Food loads used by manufacturers to evaluate both efficiency and cooking performance;
- Testing methodology for measuring the cooking efficiency using different food loads (Please provide specific details on suggested testing methodologies, including, but not limited to, the number and placement of temperature probes, required temperature increases, and any procedures for preparing the load prior to heating); and
- Appropriate metrics to use for measuring energy use or efficiency in both microwave-only ovens and combination microwave ovens.

Food Load Repeatability

As discussed previously, interested parties commented in response to the October 2008 test procedure NOPR that the previous DOE microwave oven test procedure did not produce repeatable results. DOE is not aware of any data on the repeatability of various food loads. DOE notes that consumer product review organizations evaluate performance of microwave ovens by testing loads such as: Potatoes, mashed potatoes, whole chicken, cake, and other real-world food loads. DOE also notes that one consumer product review organization in the UK uses a solidifying gel, TX–151, to simulate a food load (in this case lasagna).[2] DOE specifically requests comment on:

- Repeatability of various loads that may be used for measuring the energy efficiency of microwave oven active mode cooking. When providing data, please provide detailed description of the characteristics of the cooking load under test;
- Whether there are any artificial loads that accurately simulate real food loads and the repeatability of test results using those loads;
- Methodologies for improving the repeatability of testing using various food loads, for example, using multiple thermocouples to determine an average temperature;
- The number of identical tests that should be conducted for various food loads (with results averaged) in order to produce accurate and repeatable results; and
- Any testing burdens associated with testing various food loads.

Consumer Usage Data on Hours of Operation in Active Mode, Standby Mode, and Off Mode Operation

EPCA requires that the energy consumption in standby mode and off mode be integrated into the energy descriptor (which would include active mode) for a covered product unless the current test procedures already fully accounts for such consumption. If integration is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure, if the latter is technically feasible. (42 U.S.C. 6295(gg)(2)(A)) DOE conducted a separate test procedure rulemaking and published an interim final rule amending its test procedures for microwave ovens to provide for the measurement of standby mode and off mode power use by microwave ovens. 76 FR 12825 (Mar. 9, 2011). In the interim final rule, DOE determined that the absence of active mode provisions results in a *de facto* separate energy use descriptor for microwave oven standby mode and off mode energy use. If DOE adopts amendments to the microwave oven test procedure to include provisions for measuring active mode energy use, it will consider adopting a single metric that integrates active mode, standby mode, and off mode energy use.

DOE is therefore interested in stakeholder feedback on developing such an integrated energy use metric. In particular, DOE is requesting inputs on the following:

- Consumer usage data on the number of hours microwave ovens are operated in active mode, standby mode, and off mode; and
- What metric should be used to describe the integrated energy use (*i.e.,* annual energy use, EF, or cooking efficiency);

[1] The previous DOE microwave oven test procedure also provided for the calculation of several other measures of energy consumption, including cooking efficiency and annual energy consumption.

[2] For more information, visit *http://www.which.co.uk/home-and-garden/kitchen/guides/how-we-test-microwaves/.*

Public Participation

DOE invites all interested parties to submit in writing by November 23, 2011, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of a revised test procedure for measuring the active mode energy consumption of residential microwaves (both microwave-only and combination microwave types).

After the close of the comment period, DOE will begin collecting data, conducting relevant analyses, and reviewing the public comments. These actions will be taken to aid in the development of a test procedure NOPR for residential microwaves.

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on October 18, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27406 Filed 10–21–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number: EERE–2011–BT–STD–0006]

RIN 1904–AC43

Energy Conservation Program: Framework Document for General Service Fluorescent Lamps and Incandescent Reflector Lamps

AGENCY: U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of extension of public comment period.

SUMMARY: On September 14, 2011, DOE published a notice of public meeting and availability of the framework document on general service fluorescent lamps and incandescent reflector lamps energy conservation standards in the **Federal Register**. This notice announces that the period for submitting comments on the framework document is extended to November 28, 2011.

DATES: DOE will accept comments, data, and information regarding the framework document received no later than November 28, 2011.

ADDRESSES: Any comments submitted must identify the framework document on general service fluorescent lamps and incandescent reflector lamps energy conservation standards, and provide docket number EERE–2011–BT–STD–0006 and/or RIN number 1904–AC43. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: GSFL-IRL_2011-STD-0006@ee.doe.gov*. Include docket number EERE–2011–BT–STD–0006 and/or RIN 1904–AC43 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. **Please note:** DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT:

Dr. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On September 14, 2011, DOE published a notice of public meeting and availability of the framework document in the **Federal Register** 76 FR 56678 (September 14, 2011) to make available and invite comments on the framework document for general service fluorescent lamps and incandescent reflector lamps energy conservation standards. The notice provided for the submission of comments by October 31, 2011, and comments were also accepted at a public meeting held on October 4, 2011. At this public meeting Lutron stated it had conferred with other stakeholders and they were in agreement that more time should be allowed to provide comments on the framework document. Lutron suggested that the comment period for the framework document be extended to coincide with the comment period for the notice of proposed rulemaking for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps test procedures ending November 28, 2011. DOE has determined that an extension of the public comment period is appropriate based on the foregoing reasons and is hereby extending the comment period. DOE will consider any comments received by November 28, 2011/midnight and deems any comments received between October 31, 2011/midnight and November 28, 2011/midnight to be timely submitted.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from

other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on October 18, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy, Efficiency Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27408 Filed 10–21–11; 8:45 am]

BILLING CODE 6450–01–P

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 a public meeting and extension of deadline for public comment.

SUMMARY: On September 7, 2011, DOE published its proposal to amend its regulations concerning unclassified assistance to foreign atomic energy activities. Today, DOE announces its intention to hold one informational Webinar on the proposed amendment to the regulations. Additionally, by this notice DOE is extending by 30 days the deadline for public comment.

DATES: The Webinar will take place on Wednesday, November 2, 2011 from 10 a.m. to 11:30 a.m. EST. Public comments are due not later than December 7, 2011.

ADDRESSES: U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

To participate in the Webinar, please register by sending an e-mail to *NISPublications@battelle.org*. Please include in the subject line of the e-mail ''DOE Webinar November 2''. In the body of the e-mail, please provide the registrant's name, affiliation, e-mail address, mailing address, and telephone number. Please submit your e-mail registration by noon EST on November 1, 2011. Registration will open at 9 a.m. EST on Friday, October 28, 2011.

You may submit written 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: Port810.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. Portal 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 the September 7, 2011, Notice of Proposed Rulemaking (76 FR 55278).

FOR FURTHER INFORMATION CONTACT: Richard Goorevich, National Nuclear Security Administration, U.S. Department of Energy, Office of Defense Nuclear Nonproliferation (NA–20), Office of Nonproliferation and International Security (NA–24), 1000 Independence Avenue, Washington, DC 20585. *Telephone:* (202) 586–0589. *E-mail: Richard.Goorevich@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: On September 7, 2011, DOE published its proposal to amend its regulation concerning unclassified assistance to foreign atomic energy activities (76 FR 55278). 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 pursuant to section 57 b.(2) of the Atomic Energy Act of 1954, as amended. The proposed revisions update and clarify several provisions in the current regulation, and identify information that 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.

Purpose of the Meeting: To provide an overview of proposed changes and to conduct Q&A session with industry with respect to the proposed rulemaking.

Tentative Agenda: The Webinar will be conducted on November 2, 2011, from 10 am to 11:30 am EST. All prospective registrants will be notified by the agency via e-mail with respect to Webinar logon information. Webinar materials will be transmitted to registrants via e-mail.

Public Participation: To participate in the Webinar, please register by sending an e-mail to *NISPublications@battelle.org*. Please include in the subject line of the e-mail ''DOE Webinar November 2''. In the body of the e-mail, please provide the registrant's name, affiliation, e-mail address, mailing address, and telephone number. Please submit your e-mail registration by noon EST on November 1, 2011. Registration will open at 9 a.m. EST on Friday, October 28, 2011. Registration is limited to 125 registrants.

Please note that comments on the proposed rulemaking will not be accepted during the Webinar. Instead, the public has an opportunity to comment formally on the proposed rulemaking as provided in the **Federal Register** on September 7, 2011 (76 FR 55278). By this notice, DOE is extending by 30 days the deadline for comments, with the final deadline for DOE receiving comments now being December 7, 2011. Participation in the Webinar is not a prerequisite for submission of written comments.

Registrants are responsible for ensuring their systems are compatible with Webinar software.

Issued in Washington, DC on October 18, 2011.

Anne Harrington,

Deputy Administrator for Defense Nuclear Nonproliferation, National Nuclear Security Administration, U.S. Department of Energy.

[FR Doc. 2011–27439 Filed 10–21–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133002–10]

RIN 1545–BJ79

Redetermination of the Consolidated Net Unrealized Built-In Gain and Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1502 of the Internal Revenue Code. The regulations will apply to corporations filing consolidated returns. The regulations will require a loss group or loss subgroup to redetermine its consolidated net unrealized built-in gain and loss in certain circumstances. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by January 23, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–133002–10), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133002–10), 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–133002–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid Glyer (202) 622–7930; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

To prevent loss trafficking, section 382 imposes a limitation (the section 382 limitation) on a loss corporation's ability to use net operating losses that arose prior to an ownership change. Section 382(b)(1). In addition, if a loss corporation has a net unrealized built-in loss (NUBIL) at the time of an ownership change, built-in losses will be subject to the section 382 limitation as if they were pre-change losses of the loss corporation if they are recognized during the five-year period following the ownership change (the recognition period). Section 382(h)(1)(B). If a corporation has a net unrealized built-in gain (NUBIG) at the time of its ownership change, recognized built-in gains will increase the section 382 limitation if they are recognized during the recognition period. Section 382(h)(1)(A). Rules for determining whether a loss corporation has a NUBIG or NUBIL are found in section 382(h)(3).

Sections 1.1502–90 through 1.1502–99 provide guidance for applying section 382 with respect to a consolidated loss group or loss subgroup. In this preamble, the term loss group refers to both loss groups and loss subgroups. See §§ 1.1502–91(c)(1) and 1.1502–91(d).

Section 1.1502–91(g) provides rules for determining whether a loss group has a NUBIG or NUBIL. Section 1.1502–91(g)(1) provides that the determination of whether a loss group has a consolidated NUBIG or NUBIL is based on the aggregate amount of the separately determined NUBIGs and NUBILs of each member included in the loss group. Under this rule, unrealized gain or loss with respect to the stock of a member of the loss group (an included subsidiary) is disregarded in determining the separately determined NUBIG or NUBIL.

Explanation of Provisions

The current regulations under § 1.1502–91(g) are premised upon the observation that unrecognized gain or loss on included subsidiary stock generally reflects the same economic gain or loss reflected in the subsidiary's assets and that the consolidated return regulations generally prevent the group from taking that duplicative gain or loss into account more than once. This is the case because, if the subsidiary first recognizes the duplicated gain or loss on its assets, § 1.1502–32 eliminates the duplicative gain or loss reflected in stock basis. Conversely, if a member first recognizes duplicated loss on the subsidiary stock, § 1.1502–36 eliminates the duplicative asset loss. Although the regulations do not specifically address the recognition of duplicated gain on subsidiary stock, taxpayers generally avoid duplicative gain recognition, for example, through actual and section 338 deemed asset sales and through stock elimination transactions, such as section 332 liquidations. Because duplicative gain and loss is expected to be taken into account only once, the determination of NUBIG and NUBIL would be distorted if it included such amounts more than once.

To illustrate, assume P, the common parent of a consolidated group, contributes $100 to S in exchange for S's sole share of stock. S uses the $100 to purchase a truck. The value of the truck then declines to $70. At this point, the stock has a basis of $100 and a value of $70, reflecting a $30 loss. In addition, the truck has a basis of $100 and value of $70, also reflecting a $30 loss. Thus, it would appear the group has $60 of loss available. However, if S sells the truck and the group absorbs the $30 loss, P will reduce its basis in the S stock by $30 under § 1.1502–32, and the duplicative stock loss will be eliminated. On the other hand, if P sells its S share before the loss on the truck is recognized and absorbed, the duplicated loss (on either the truck or the stock, as P chooses) will be eliminated by § 1.1502–36. As a result, the group takes into account a single $30 economic loss, and the inclusion of both the unrecognized stock loss and the unrecognized asset loss in the NUBIL determination would overstate the amount of loss actually available to the group.

However, if an unrecognized gain or loss on subsidiary stock exceeds the included subsidiary's gain or loss on its assets, disregarding this unduplicated gain or loss on the stock understates the amount that the group may take into account.

To illustrate, assume the same facts as in the previous example except that P originally purchased the S stock for $150 (S's basis in the truck is still $100). In this case, there is $80 of loss available to the group, the $30 loss that is duplicated (reflected in the bases of both the stock and the truck), as well as the $50 unduplicated stock loss. Disregarding P's loss in its S stock causes the group's NUBIL to be understated by $50. These proposed regulations are intended to prevent such understatement.

The current rule is administratively less burdensome to taxpayers and the government than a rule that would require taxpayers to identify and take into account all unduplicated gain and loss on stock of included subsidiaries when determining NUBIG and NUBIL. Nevertheless, the IRS and the Treasury Department believe that the purpose of section 382(h) would be better served by a rule that does not wholly disregard such gain and loss. A rule that takes into account unduplicated gain or loss on stock would avoid both the understating of loss available to the group (when there is unduplicated stock loss) and the overstating of loss trafficking potential (when there is unduplicated stock gain).

The IRS and the Treasury Department are concerned, however, that requiring all consolidated NUBIG and NUBIL determinations to include all unduplicated stock gains and losses would significantly increase the administrative burden on both taxpayers and the government.

Accordingly, the IRS and the Treasury Department propose to modify the current regulations to take into account the unduplicated gain or loss on stock of included subsidiaries, but only to the extent that such gain or loss is taken into account by the group during the recognition period. This will generally be the case only if, within the recognition period, such stock is sold to

a nonmember or becomes worthless, or a member takes an intercompany item into account with respect to such stock.

More specifically, the proposed regulations would revise § 1.1502–91(g) by adding a rule that would apply when any member of the consolidated group directly or indirectly (for example, through a partnership) takes any amount of gain or loss into account with respect to a share of stock of an included subsidiary (S), whether or not such amount is absorbed. When the rule applies, the loss group would be required to redetermine NUBIG or NUBIL to include any unduplicated built-in gain or loss with respect to the share. As used in these proposed regulations, the term unduplicated built-in stock gain or loss refers to the portion of the built-in stock gain or loss that was not originally reflected in the loss group's NUBIG or NUBIL as unrealized gain or loss on the assets of a lower-tier included subsidiary. The proposed regulations identify unduplicated built-in stock gain or loss by treating the separate NUBIG or NUBIL of each included subsidiary that is lower-tier to S as having been taken into account and absorbed immediately before the change date. These amounts are then deemed to tier-up to tentatively adjust the basis in the S shares under the principles of § 1.1502–32. The difference between the tentatively adjusted change-date basis in a share of S stock and the fair market value of the share (as of the change date) is the unduplicated gain or loss in the S share. However, if, immediately before the change date, a member of the loss group has a deferred gain or loss on S stock and that gain or loss is taken into account during the recognition period, the unduplicated portion of such gain or loss is determined as of the date of the transaction in which the deferred gain or loss was recognized, notwithstanding that such date would be prior to the change date.

The loss group then redetermines its NUBIG or NUBIL by including its unduplicated gain or loss on the S share (or shares) with respect to which an amount is taken into account. Under the proposed regulations, the redetermined NUBIG or NUBIL is given effect only immediately before the gain or loss on the stock is taken into account. It has no effect on the treatment of built-in gain or loss that is recognized and taken into account prior to the time that built-in stock gain or loss is taken into account. Thus, for example, the fact that a NUBIL group was redetermined to be a NUBIG group, or that a NUBIL that exceeded the 15 percent threshold amount in section 382(h)(3)(B) no longer exceeds such amount, has no effect on the tax treatment of amounts taken into account prior to the redetermination of NUBIG or NUBIL.

The proposed regulations also reorganize § 1.1502–91(g) and revise § 1.1502–91(h)(2) and (h)(4) without substantive change.

Effective/Applicability Date

These proposed regulations will apply to amounts taken into account with respect to a share of stock of an included subsidiary on or after the date that final regulations are published in the **Federal Register**, but only with respect to ownership changes occurring on or after October 24, 2011.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13565. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect members of consolidated groups which tend to be large corporations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a 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. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grid Glyer of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–91 also issued under 26 U.S.C. 1502.

Par. 2. Section 1.1502–91 is amended by:

1. Revising paragraph (g)(1).
2. Adding paragraphs (g)(7) and (g)(8).
3. Revising paragraph (h)(2) and the heading of paragraph (h)(4).
4. Adding paragraph (k).

The revisions and additions read as follows:

§ 1.1502–91 Application of section 382 with respect to a consolidated group.

* * * * *

(g) *Net unrealized built-in gain and loss*—(1) *In general.* The determination of whether a loss group or loss subgroup has a net unrealized built-in gain (NUBIG) or loss (NUBIL) under section 382(h)(3) is based on the aggregate amount of the separately determined NUBIGs or NUBILs (including items of built-in income and deduction described in section 382(h)(6)) of each member that is included in the loss group or loss subgroup, as the case may be, under paragraph (g)(2) of this section. The threshold requirement under section 382(h)(3)(B) applies on an aggregate basis.

(i) *Members included in group.* If a member is not included in the determination of whether a loss group or loss subgroup has a NUBIL under paragraph (g)(2)(ii) or (g)(2)(iv) of this section, that member is not included in the loss group or loss subgroup. See § 1.1502–94(c) (relating to built-in gain or loss of a new loss member) and § 1.1502–96(a) (relating to the end of separate tracking of certain losses).

(ii) *Determination of separate NUBIG or NUBIL.* For purposes of determining a member's separate NUBIG or NUBIL—

(A) Stock of a subsidiary that is a member of the loss group or loss subgroup (an included subsidiary) is disregarded, except as provided for in paragraph (g)(7) of this section. For this purpose, the term stock includes stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (f)(18)(iii);

(B) Intercompany obligations are disregarded; and

(C) Deferred amounts, such as amounts deferred under section 267 or § 1.1502–13, are built-in items unless they are deferred with respect to—

(*1*) An intercompany obligation; or

(*2*) A share of stock of an included subsidiary; however, if an amount deferred with respect to a share of such stock is taken into account at any time during the recognition period (whether or not any such loss amount is absorbed), NUBIG or NUBIL must be redetermined in accordance with paragraph (g)(7) of this section.

* * * * *

(7) *Redetermination of NUBIG or NUBIL of a loss group or loss subgroup to reflect unduplicated built-in gain or loss with respect to stock of an included subsidiary*—

(i) *In general.* This paragraph (g)(7) applies if, during the recognition period, any member of the consolidated group directly or indirectly takes into account any gain or loss with respect to a share of stock of an included subsidiary (S) that was held by another member of the loss group or loss subgroup immediately before the change date, regardless of whether any such loss is absorbed. If this paragraph (g)(7) applies, the loss group or loss subgroup must redetermine its NUBIG or NUBIL to include any unduplicated built-in gain or loss with respect to the S share in accordance with the provisions of paragraphs (g)(7)(ii) and (g)(7)(iii) of this section. The redetermination is given effect immediately before the time the gain or loss on stock of an included subsidiary is taken into account. The redetermined NUBIG or NUBIL does not affect the tax treatment of transactions taken into account prior to the event that causes a redetermination of NUBIG or NUBIL under this paragraph (g)(7). However, the redetermined NUBIG or NUBIL is effective for all purposes immediately before the gain or loss on stock of an included subsidiary is taken into account. Thus, for example, the redetermined NUBIG or NUBIL is used to determine whether the loss group or subgroup is a NUBIG or NUBIL group, as well as whether the group meets the threshold requirement of section 382(h)(3)(B), at the time of the redetermination.

(ii) *Computation of unduplicated built-in gain or loss with respect to shares of S stock that are subject to this paragraph (g)(7).* The loss group or loss subgroup computes its unduplicated built-in gain or loss with respect to each share of S stock that is subject to this paragraph (g)(7) by first treating the basis in the share as tentatively adjusted immediately before the change date or, in the case of an amount with respect to S stock that was deferred on the change date, as of the date of the transaction that gave rise to the amount, as though the following occurred immediately before the ownership change or the transaction that gave rise to the deferred amount—

(A) *Deemed recognition of built-in gain or loss of lower-tier included subsidiaries.* The separate NUBIG and NUBIL of S and all included subsidiaries that are lower-tier to S are treated as recognized, taken into account, and absorbed.

(B) *Tiering up of recognized amounts.* All amounts deemed recognized, taken into account, and absorbed under paragraph (g)(7)(ii)(A) of this section are then deemed to tier up under the principles of § 1.1502–32 to tentatively adjust the basis in all of the S shares that are subject to this paragraph (g)(7).

(C) *Unduplicated gain or loss with respect to S stock.* If the aggregate tentatively adjusted basis in the S shares subject to this paragraph (g)(7) exceeds the aggregate fair market value of those shares immediately before the change date or, in the case of a deferred amount, on the date of the transaction that gave rise to the item, the excess is the unduplicated loss with respect to those shares. Alternatively, if the aggregate fair market value of the S shares subject to this paragraph (g)(7) exceeds the aggregate tentatively adjusted basis in those shares on such date, the excess is the unduplicated gain with respect to those shares.

(iii) *Redetermination of the group's NUBIG or NUBIL.* The loss group or loss subgroup's redetermined NUBIG or NUBIL is the sum of—

(A) The loss group or loss subgroup's NUBIG or NUBIL as originally determined without regard to the stock of any included subsidiary;

(B) Any unduplicated gain or loss with respect to a share of stock of an included subsidiary that was previously included in the loss group or loss subgroup's NUBIG or NUBIL under this paragraph (g)(7); and

(C) The unduplicated gain or loss on shares of S stock computed under paragraph (g)(7)(ii) of this section.

(iv) *Anti-avoidance rule.* If any person acts with a principal purpose contrary to the purposes of this paragraph (g), to avoid the effect of the rules of this paragraph (g), or to apply the rules of this paragraph (g) to avoid the effect of any other provision of the consolidated return regulations, adjustments must be made as necessary to carry out the purposes of this paragraph (g).

(8) *Examples.* The following examples illustrate the application of the provisions of paragraph (g) of this section. Unless otherwise stated, P is the common parent of a consolidated group that is a loss group and all members of the P group are included subsidiaries with respect to the loss group. P can establish that its gains are recognized built-in gains; P cannot establish that its losses are not recognized built-in losses. In addition, the threshold requirement of section 382(h)(3)(B) is satisfied. All other relevant facts are set forth in the examples.

Example 1. Basic application of provision. (i) *Facts.* On January 1, Year 1, P owns the sole outstanding share of S stock (basis $210, value $160) and the sole outstanding share of M stock. S owns the sole outstanding share of S1 stock (basis $100, value $80) and Truck (basis $70, value $80). S1 owns three of the five outstanding shares of S2 common stock (basis $40, value $20 for each share; thus, basis $120, value $60 in the aggregate). S2 owns Truck 2 (basis $70, value $40) and Truck 3 (basis $30, value $40). M owns the fourth of the five outstanding shares of S2 stock. X, a nonmember of the P group, owns the fifth outstanding share of S2 stock. January 1, Year 1, is a change date for the P group.

(ii) *Determination of the separate NUBIG or NUBIL of each member of the P loss group.* (A) *S2's separate NUBIG or NUBIL.* S2's assets are Truck 2 (with a built-in loss of $30) and Truck 3 (with a built-in gain of $10); therefore, S2 has a NUBIL of $20.

(B) *S1's separate NUBIG or NUBIL.* S1's only assets are the shares of S2 stock, which are disregarded under paragraph (g)(1)(ii)(A) of this section; therefore, S1 has a NUBIG or NUBIL of zero.

(C) *S's separate NUBIG or NUBIL.* S's assets are Truck (with a built-in gain of $10) and the share of S1 stock (which is disregarded); therefore, S has a NUBIG of $10.

(D) *M's separate NUBIG or NUBIL.* M's only asset is the share of S2 stock, which is disregarded under paragraph (g)(1)(ii)(A) of this section; therefore, M has a NUBIG or NUBIL of zero.

(E) *P's separate NUBIG or NUBIL.* P's only assets are the shares of M and S stock, which are disregarded; therefore, P has a NUBIG or NUBIL of zero.

(iii) *Determination of the P group's NUBIG or NUBIL.* The P group has a NUBIL of $10, reflecting the sum of S2's $20 NUBIL and S's $10 NUBIG.

Example 2. Transfer of shares of stock of an included subsidiary during recognition period. (i) *Sale to nonmember.* (A) *Facts.* The facts are the same as in *Example 1.* In addition, in Year 4, S sells its share of S1 stock for $65 to an unrelated party. At the time of the sale, S's basis in the share had been reduced to $90 due to adjustments for depreciation on S2's assets that tiered up under § 1.1502–32. (No adjustments are made to S's basis in the S1 share under § 1.1502–36, including by reason of an election to

waive stock loss or reattribute losses.) As a result of the sale of the S1 share during the recognition period, the P group must redetermine its NUBIL under paragraph (g)(7) of this section.

(B) *Redetermination of the P group's NUBIG or NUBIL.* (*1*) *Unduplicated built-in gain or loss with respect to S1 share.* Under paragraph (g)(7)(ii)(A) of this section, the unduplicated built-in gain or loss with respect to the S1 share sold in Year 4 is computed by first treating the separate NUBIG or NUBIL of S1 and S2 (the only included subsidiary that is lower-tier to S1) as having been recognized, taken into account, and absorbed immediately before the change date. Under paragraph (g)(7)(ii)(B) of this section, those amounts are then treated as tiering up under the principles of § 1.1502–32 and tentatively adjusting S's basis in its S1 share, in order to identify the unduplicated gain or loss in the basis of the share under paragraph (g)(7)(ii)(C) of this section. S1 has no separate NUBIG or NUBIL to be treated as recognized, taken into account, and absorbed. S2 has a $20 separate NUBIL that is treated as recognized, taken into account, and absorbed and that is then treated as tiering up to adjust S's basis in the S1 share under the principles of § 1.1502–32. As a result, $12 of S2's $20 NUBIL would be treated as tiering up to S1 through the three S2 shares (of the total five outstanding) held by S1, and that $12 would then be treated as tiering up through S1 to tentatively adjust S's basis in the S1 share. S's tentatively reduced basis in the S1 share is therefore $100 − $12, or $88. Because the tentatively reduced basis of the share exceeds the value of the share by $8 ($88 − $80), S has an $8 unduplicated loss in its basis in its S1 stock.

(*2*) *Redetermined NUBIG or NUBIL of the P group.* Immediately before S takes into account the $25 loss on the sale of its share of S1 stock, the P group's NUBIL is redetermined to be $18, the sum of S2's NUBIL of $20, S1's NUBIL of $0, S's NUBIG of $10, P's NUBIG or NUBIL of $0, M's NUBIG or NUBIL of $0, and the $8 unduplicated loss in the S1 stock.

(C) *Effect of redetermination.* Of the $25 loss on the sale of the S1 share, $20 is recognized built-in loss, but the group only has an $18 NUBIL and so only $18 of the recognized built-in loss is subject to limitation under section 382.

(ii) *Nonrecognition transfer to member followed by sale to nonmember.* The facts are the same as in paragraph (i)(A) of this *Example 2,* except that, in Year 3, M1 joined the P group and S transferred its share of S1 stock to M1 in a transaction qualifying under section 351; as a result, it is M1, not S, that sells the S1 share to X in Year 4. The analysis and results are the same as in paragraphs (i)(B) and (i)(C) of this *Example 2* because this section applies when any member of the group recognizes gain or loss with respect to stock of an included subsidiary that was held by a member of the loss group immediately before the change date.

Example 3. Recognition of built-in loss prior to stock sale. (i) *Facts.* The facts are the same as in paragraph (i)(A) of *Example 2* except that, in addition, in Year 2, S2 sold Truck 2 and recognized the $30 built-in loss on Truck 2, and the P group absorbed the $30 loss. The loss is a recognized built-in loss under section 382(h)(2)(B) and thus subject to limitation to the extent of the originally determined $10 NUBIL.

(ii) *Redetermination of the P group's NUBIG or NUBIL.* (A) *Unduplicated built-in gain or loss with respect to the S1 share.* Because unduplicated stock gain or loss is computed immediately before the change date, the unduplicated stock loss is $8 for the reasons set forth in paragraph (i)(B)(*1*) of *Example 2.*

(B) *Redetermined NUBIG or NUBIL of the P group.* The computation of the P group's redetermined NUBIG or NUBIL is the same as in paragraph (i)(B)(*2*) of *Example 2,* except that the $30 of recognized built-in loss in Year 2 reduces the P group's $10 NUBIL (before NUBIL is redetermined under paragraph (g)(7) of this section) to zero. As a result, immediately before the sale of the S1 share, the P group's NUBIL is redetermined to be $8, which is the sum of zero and the $8 unduplicated loss in the S1 stock.

(iii) *Effect of redetermination.* Of the $25 loss on the sale of the S1 share, $20 is recognized built-in loss, but the group only has an $8 NUBIL and so only $8 of the recognized built-in loss is subject to limitation under section 382. The treatment of the loss recognized on the Year 2 sale of Truck 2 is not affected by the Year 4 redetermination.

Example 4. Sale of less than all shares of stock of an included subsidiary. (i) *Facts.* The facts are the same as in paragraph (i)(A) of *Example 2,* except that S1 has ten shares of stock outstanding, designated Share 1 through Share 10, all of which are owned by S. S's basis in Share 1 is $15.50, and S's basis in Share 2 is $4.50. In addition, instead of selling its one share of S1 stock, on January 1, Year 4, S sells Share 1 and Share 2 to an unrelated party for $16 (their aggregate fair market value).

(ii) *Redetermination of the P group's NUBIG or NUBIL.* (A) *Unduplicated built-in gain or loss with respect to S1 Share 1 and S1 Share 2.* The analysis is the same as in paragraph (i)(B)(*1*) of *Example 2* except that the unduplicated loss is $1.60, computed as the excess of $17.60 ($20 aggregate basis in the shares that are sold, tentatively reduced by $2.40, the shares' portion (2/10) of the $12 tentative adjustment that tiered-up from S2) over $16 (the shares' aggregate value).

(B) *Redetermined NUBIG or NUBIL of the P group.* The P group's redetermined NUBIL is $11.60, which is the sum of S2's NUBIL of $20, S1's NUBIL of $0, S's NUBIG of $10, P's NUBIG or NUBIL of $0, M's NUBIG or NUBIL of $0, and the unduplicated stock loss of $1.60.

(C) *Effect of redetermination.* Of the $4 loss recognized on the Year 4 sale of Share 1 and Share 2, all $4 is recognized built-in loss. The group's redetermined NUBIL is $11.60, and thus all $4 of the $4 recognized built-in loss is subject to limitation under section 382.

Example 5. NUBIL redetermined to be NUBIG. (i) *Disposition of stock of included member.* (A) *Facts.* On January 1, Year 1, P owns the sole outstanding share of S stock (basis $10, value $100). S owns Truck 1 (basis $65, value $50) and Truck 2 (basis $45, value $50). January 1, Year 1, is a change date for the P group. In Year 3, P sells its S share for $100.

(B) *Determination of the P group's NUBIG or NUBIL on change date.* S's assets are Truck 1 (with a built-in loss of $15) and Truck 2 (with a built-in gain of $5); therefore S has a separate NUBIL of $10. P's sole asset is the share of S stock, which is disregarded; therefore, P has a separate NUBIG or NUBIL of zero. Accordingly, on the change date, the P group has a NUBIL of $10, reflecting the sum of S's $10 NUBIL and P's $0 NUBIG/NUBIL.

(C) *Redetermination of the P group's NUBIG or NUBIL on disposition of stock of included subsidiary.* (*1*) *Unduplicated built-in gain or loss with respect to the S share.* Under paragraph (g)(7)(ii)(A) of this section, the unduplicated built-in gain or loss with respect to the S share sold in Year 3 is computed by first treating S's $10 NUBIL as having been recognized, taken into account, and absorbed immediately before the ownership change. Then, under paragraph (g)(7)(ii)(B) of this section, S's $10 NUBIL is treated as tentatively adjusting P's basis in the S share under the principles of § 1.1502–32. Accordingly, P's tentatively reduced basis in the S share is $10 − $10, or $0. Further, the value of the S share was $100 immediately before the change date. The share's $100 value exceeds the $0 tentatively reduced basis in the share by $100, and thus P has a $100 unduplicated gain in its S stock.

(*2*) *Redetermined NUBIG or NUBIL of the P group.* Immediately before P takes into account the $90 gain on the sale of its share of S stock, the P group's $10 NUBIL is redetermined to be a $90 NUBIG, the sum of S's NUBIL of $10 and the unduplicated gain in the S stock of $100.

(D) *Effect of redetermination.* Of the $90 gain P recognized on the sale of the S share, all $90 is recognized built-in gain and therefore, under section 382(h)(2)(A), the group's section 382 limitation is increased by $90.

(ii) *Disposition of loss asset prior to disposition of stock of included subsidiary.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 5,* except that, in addition, in Year 2, S sells Truck 1 for $50, recognizing a $15 loss that is taken into account and absorbed. As a result of the $15 loss absorption, P's basis in the S share is reduced to an excess loss account of $5 in Year 2 and, thus, when P sells the S share in Year 3, P recognizes $105 gain on the sale ($100 sale proceeds + $5 excess loss account recapture).

(B) *Determination of the P group's NUBIG or NUBIL on change date.* For the reasons set forth in paragraph (i)(B) of this *Example 5,* the P group has a NUBIL of $10 on the change date. Accordingly, S's $15 loss on Truck 1 is a recognized built-in loss under section 382(h)(2)(B), and therefore subject to limitation to the extent of the $10 NUBIL.

(C) *Redetermination of the P group's NUBIG or NUBIL on disposition of stock of included subsidiary.* (*1*) *Unduplicated built-in gain or loss with respect to the S share.* For the reasons set forth in paragraph (i)(C)(*1*)

of this *Example 5,* the unduplicated built-in gain with respect to the S share is $100.

(*2*) *Redetermined NUBIG or NUBIL of the P group.* For the reasons set forth in paragraph (i)(C)(*2*) of this *Example 5,* the P group's NUBIG is redetermined to be $90. Immediately before P takes into account the $100 gain on the sale of its share of S stock, the P group's $10 NUBIL is redetermined to be a $90 NUBIG, the sum of S's NUBIL of $10 and P's NUBIG of $100.

(D) *Effect of redetermination.* Of the $105 gain P recognized on the sale of the S share, $90 is recognized built-in gain and therefore, under section 382(h)(2)(A), the group's section 382 limitation is increased by $90. The redetermination of P's original $10 NUBIL to a $100 NUBIG in Year 4 has no effect on the treatment of the Year 2 recognized built-in loss from the sale of Truck 1.

(h) * * *

(2) *Disposition of stock or an intercompany obligation of a member.* Built-in gain or loss recognized by a member on the disposition of stock (including stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (f)(18)(iii)) of another member is treated as a recognized gain or loss for purposes of section 382(h)(2) (unless disallowed) without regard to the extent to which such gain or loss was included in the determination of a net unrealized built-in gain or loss under paragraph (g) of this section. Built-in gain or loss recognized by a member with respect to an intercompany obligation is treated as recognized gain or loss only to the extent (if any) that the transaction gives rise to aggregate income or loss within the consolidated group.

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(4) *Successor assets.* * * *

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(k) *Effective/Applicability date.* Paragraphs (g)(1), (g)(7), (g)(8), (h)(2) and (h)(4) of this section apply to amounts taken into account with respect to a share of stock of an included subsidiary on or after the date that final regulations are published in the **Federal Register**, but only with respect to ownership changes occurring on or after October 24, 2011. For amounts taken into account with respect to a share of stock of an included subsidiary not described in the preceding sentence, see §§ 1.1502–91(g) and 1.1502–91(h) as contained in 26 CFR part 1 in effect on April 1, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–27445 Filed 10–21–11; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 20

International Mail: Proposed Product Rate and Fee Changes

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: In October 2011, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on January 22, 2012. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) that would accompany the new prices.

DATES: We must receive your comments on or before November 23, 2011.

ADDRESSES: Mail or deliver comments to the Manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza, SW., RM 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of ''International Mailing Services Price Change.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 202–268–2260, or Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: Proposed prices are or will be available under Docket Number R2012–3 on the Postal Regulatory Commission's Web site at *http://www.prc.gov*.

This proposed rule includes: Price changes for First-Class Mail International® and extra services.

First-Class Mail International

This proposed rule would increase prices for single-piece First-Class Mail International letters by approximately 6.6 percent, while the price for postcards is proposed to increase by approximately 7 percent.

International Extra Services

The Postal Service proposes to increase prices for market dominant extra services by approximately 2.2 percent, for the following:

- Certificate of Mailing
- Registered Mail™
- Return Receipt
- Restricted Delivery
- Customs Clearance and Delivery Fee
- International Reply Coupons
- International Business Reply Service

The prices and fees proposed in this notice, if adopted, would become effective concurrent with any domestic prices adopted as a result of the current proceedings before the Postal Regulatory Commission (Docket No. R2012–3). All regulatory changes necessary to implement this proposal are provided below.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is proposed to be amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM) as follows:

* * * * *

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

Individual Country Listings

* * * * *

First-Class Mail International (240)

[For each country that offers First-Class Mail International service, retain the country's Price Group designation (which appears in the ''First-Class Mail International'' heading), but remove the three price tables for letters, large envelopes (flats), and packages (small packets), and insert text to read as follows:]

For the prices and maximum weights for postcards, letters, large envelopes

(flats), packages (small packets), and postcards, see Notice 123, Price List.

* * * * *

[Remove the entry ''Postcards (241.22)'' and the price for postcards.]

* * * * *

Extra Services

Certificate of Mailing (*313*)

[For each country that offers certificate of mailing service, revise the fees to read as follows:]

	Fee
Individual Pieces:	
Individual article (PS Form 3817)	$1.15
Firm mailing books (PS Form 3877), per article listed (minimum 3)	0.44
Duplicate copy of PS Form 3817 or PS Form 3877 (per page)	1.15
Bulk Quantities:	
First 1,000 pieces (or fraction thereof)	6.70
Each additional 1,000 pieces (or fraction thereof)	0.80
Duplicate copy of PS Form 3606	1.15

* * * * *

International Business Reply Service (382)

[For each country that offers International Business Reply Service, revise the fees to read as follows:]

Fee: Envelopes up to 2 ounces $1.50; Cards $1.00

* * * * *

International Reply Coupons (381)

[For each country that offers international reply coupons, revise the fee to read as follows:]

Fee: $2.20

Registered Mail (330)

[For each country that offers international Registered Mail service, revise the fee to read as follows:]

Fee: $11.75

* * * * *

Restricted Delivery (350)

[For each country that offers international restricted delivery service, revise the fee to read as follows:]

Fee: $4.55

* * * * *

Return Receipt (340)

[For each country that offers international return receipt service, revise the fee to read as follows:]

Fee: $2.35

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–27360 Filed 10–21–11; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: In October 2011, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on January 22, 2012. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we would adopt to implement the changes coincident with the price adjustments.

DATES: We must receive comments on or before November 23, 2011.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza, SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of ''January 2012 Domestic Mailing Services Proposal.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278.

SUPPLEMENTARY INFORMATION: Proposed prices will be available under Docket Number(s) R2012–3 on the Postal Regulatory Commission's Web site at *http://www.prc.gov.*

The Postal Service's proposed rule includes: Several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology.

Proposed Change for Letters

Commercial First-Class Mail Letters

The pricing structure for presorted and automation First-Class Mail® letters is proposed to change so that the minimum postage charge would be for a 2-ounce letter instead of the current 1-ounce minimum postage charge.

We also remove standards for Reply Rides Free, because the program ends on December 31, 2011.

Commercial First-Class Mail and Standard Mail Letters

The Postal Service proposes to modify the process of submitting mailpieces to the Pricing and Classification Service Center (PCSC) for testing and to delete the provision that pieces with attached release cards be sent to Engineering.

Standard Mail Nonmachinable Letters

The USPS proposes to clarify that overflow Standard Mail® nonmachinable letters that mailers place into existing trays at another level would require matching documentation.

Proposed Changes for Flats

Automation Flats

The USPS proposes to clarify 301.3.0 to add that automation flats must meet the standards for all flats in 301.1.0 as well as the standards in 301.3.0.

Periodicals Flats

Currently, Periodicals flats are allowed on mixed area distribution center (MADC) pallets only when the flats are sacked. This proposed rule would allow bundles of Periodicals flats to be placed directly on MADC pallets and would assign a specific price for MADC pallets as well.

We propose to revise a price categorization under nonmachinable flats to insert the correct categorization of nonmachinable flats-nonbarcoded.

Detached Address Labels Used With Flats

The Postal Service proposes to add a new term to identify detached address labels (DALs) with advertising. Inclusion of advertising turns DALs into dual purpose pieces—optional addressing vehicles and marketing vehicles. A DAL with advertising on either side would be a type of DAL named as a detached marketing label (DML). Both DALs and DMLs could be used with saturation flats or with Standard Mail Marketing parcels.

Proposed Changes for Parcels

Machinable Parcels

To align the standards for machinable parcels with current mail processing equipment capability, the Postal Service proposes to change the dimensional criteria for all machinable parcels from the current 34 inches x 17 inches x 17 inches to 27 inches x 17 inches x 17

inches. We would additionally change the maximum weight of a machinable parcel from 35 pounds to 25 pounds for all parcels except those mailed as Parcel Select® or Parcel Return Service. We also propose to modify the processes by which parcels that do not fully meet the machinability standards are evaluated for machinability. In addition, the Postal Service proposes to clarify that parcels that meet the lightweight machinable parcel standards are definitively categorized as machinable parcels.

Standard Mail Parcels

Standard Mail regular parcels would be separated into two groups, Marketing parcels and parcels that will become Parcel Select Lightweight™ parcels. Nonprofit Standard Mail parcels would have separate standards for Nonprofit Marketing parcels and other Nonprofit parcels.

Marketing parcels are defined as containing information and/or product samples whose purposes are to encourage recipients to purchase a product or service, make a contribution, support a cause, form a belief or opinion, take an action, or provide information to recipients. These parcels would be required to bear an alternative addressing format (occupant or exceptional addressing, or simplified addressing when allowed for saturation mail), and would be presented for mailing in carrier route (basic, high-density, or saturation sortation) or presort separations. All Marketing parcels would have a maximum size of 12 inches by 9 inches by 2 inches thick. When DALs are used with Marketing parcels, the weight of the DALs is added to the parcels in determining postage as is currently the case, but there would be no separate charge for the DALs.

Not Flat-Machinables (NFMs)

In 2007, the USPS created a temporary NFM price category for Standard Mail items that could not meet revised automation flats standards. In the revised proposed rule **Federal Register** published on February 6, 2009 (74 FR 6250–6257), the Postal Service announced our intention to discontinue the NFM category in May 2010. In the March 25, 2010 *Postal Bulletin* (No. 22281), we announced that the NFM price category would be extended. We now propose to end the NFM category as of January 2012. Pieces that would have been mailed as NFMs should qualify as either Standard Mail Marketing parcels or Parcel Select Lightweight parcels.

Package Services Pieces

The Postal Service proposes to eliminate the provision to provide free local forwarding for Package Services pieces.

The USPS also proposes to discontinue the 3-cent barcode discount for all BPM, Media Mail®, and Library Mail parcels.

Special, Extra, and Other Services

Adult Signature

The Postal Service proposes to permit the use of a hard copy PS Form 3811, *Domestic Return Receipt,* with Adult Signature service when used with Express Mail® or Priority Mail®, including shipments made under the Prevent All Tobacco Cigarettes Trafficking (PACT) Act. A return receipt fee would be charged in addition to regular postage and the Adult Signature fee.

Customers eligible to mail cigarettes and smokeless tobacco under the business/regulatory purposes and consumer testing exceptions of the PACT Act are currently limited to shipping via Express Mail with Hold for Pickup service. This proposed rule will offer additional options: Express Mail with Adult Signature or Priority Mail with Adult Signature.

Confirm

The Postal Service proposes to discontinue Confirm service as a paid subscription service and to replace it with ''IMb™ Tracing,'' which will provide scan data similar to that provided through Confirm service, but with no paid subscription service required.

Waiver of Annual Mailing Fees for Full-Service Automation Mailings

The Postal Service proposes to revise certain requirements for mailers who present full-service (Intelligent Mail®) automation mailings. When mailers present only full-service automation mailings of First-Class Mail or Standard Mail letters and flats or BPM flats with 90 percent or more pieces qualifying for full-service automation prices, the Postal Service proposes to waive payment of the annual mailing fees for mailings presented under specific permits. As an additional allowance, when mailers present only qualifying full-service automation mailings with permit imprint indicia, those mailings will be able to be presented at any *PostalOne!*® acceptance office without payment of an additional permit imprint application fee or payment of an annual mailing fee at the other office(s).

Post Office Boxes

The Postal Service proposes to add a new 3-month prepaid payment option, only available via recurring automatic payments, for Post Office Box service.

Stamp Fulfillment Services

Currently, the Postal Service charges a standard fee for most Stamp Fulfillment Services orders; however Stamp Fulfillment Services shipping fees are not identified in the DMM nor listed in Notice 123-*Price List.* However, the fees are subject to regulation by the PRC.

The USPS proposes to add new DMM language to explain that there are fees associated with Stamp Fulfillment Services and to refer customers to Notice 123 for the prices. A single standard fee is charged for orders up to $50, and a higher fee for larger orders.

Stationery

Currently, the USPS does not offer postcard stationery sheets that easily fit on standard computer printers. We propose to offer four perforated postcards on an 8½ inches x 11 inches sheet that would allow customers to feed them readily into computer printers. Once separated, each card will be 4¼ inches x 5½ inches.

Additionally, the USPS does not currently offer personalized stamped postcards. This proposed rule will allow customers to purchase stamped postcards with pre-printed return addresses.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States*

Postal Service, Domestic Mail Manual (DMM), as follows:

* * * * *

100 Retail Mail

101 Physical Standards

* * * * *

3.0 Physical Standards for Parcels

[Renumber current 3.1 through 3.6 as new 3.2 through 3.7 and add new 3.1 as follows:]

3.1 Processing Categories

USPS categorizes parcels into one of three mail processing categories: machinable, irregular, or outside parcel. These categories are based on the physical dimensions of the piece, regardless of the placement (orientation) of the delivery address on the piece.

* * * * *

3.4 Machinable Parcels

[Revise the introductory text of renumbered 3.4 as follows:]

A machinable parcel is any piece that is not a letter or a flat and that is (see Exhibit 3.4):

* * * * *

[Revise item 3.4b as follows:]

b. Not more than 27 inches long, or 17 inches high, or 17 inches thick. Parcels cannot weigh more than 25 pounds, except Parcel Select and Parcel Return parcels which have a maximum weight of 35 pounds, except for those containing books or other printed matter (25 pound maximum).

Exhibit 3.4 Machinable Parcel Dimensions

[Revise the current length dimension in to read 27 inches and delete the sentences describing the minimum and maximum weights in Exhibit 3.4.]

* * * * *

170 Media Mail and Library Mail

173 Prices and Eligibility

1.0 Media Mail and Library Mail Prices

* * * * *

[Delete 1.4, Barcode Discount—Machinable Parcels, in its entirety.]

[Renumber current 1.5 and 1.6 as new 1.4 and 1.5.]

* * * * *

200 Commercial Letters and Cards

201 Physical Standards

* * * * *

2.0 Physical Standards for Nonmachinable Letters

* * * * *

2.3 Additional Criteria for Standard Mail Nonmachinable Letters

[Revise 2.3 to read as follows:]

The nonmachinable prices in 243.1.0 apply to Standard Mail letter-size pieces that have one or more of the nonmachinable characteristics in 2.1. Mailers must prepare all nonmachinable letters as described in 245.5.0.

* * * * *

3.0 Physical Standards for Machinable and Automation Letters and Cards

* * * * *

[Revise the titles of 3.4 and 3.4.1 as follows:]

3.4 Standards for Letter-Size Pieces Containing One Disc (CD or DVD)

3.4.1 Basic Standards for One Disc in a Letter-Size Mailpiece

[Revise the text of 3.4.1 as follows:]

A letter-size mailpiece containing one disc and meeting the general standards in 3.0 and the specific standards in 3.4.3 is considered automation-compatible. A mailpiece with one enclosed disc not meeting these standards must be tested and approved for automation-compatibility. For this purpose, mailers must submit 5 sample mailpieces and a written request to the local postmaster or business mail entry manager for submission to the Pricing and Classification Service Center.

* * * * *

3.12 Flexibility Standards for Automation Letters

* * * * *

3.12.2 USPS Services for Flexibility Testing

[Revise the text of 3.12.2 as follows:]

A mailer requesting flexibility testing for letter-size mailpieces must submit at least 5 mailpieces and a written request to their local postmaster or business mail entry manager for submission to the Pricing and Classification Service Center (PCSC) at least 6 weeks before the mailing date. The request must describe mailpiece contents and construction, number of pieces being produced, and preparation level. The PCSC will evaluate the piece and, if warranted, will instruct the mailer to submit samples to USPS Engineering for testing. The PCSC advises the mailer of its findings. If the mailpiece is approved, the letter includes a unique number identifying the piece and serves as evidence that the piece meets the relevant standards. A copy of the letter must accompany each postage statement submitted for mailings of the approved piece. If requested by the USPS, the mailer must show that pieces presented for mailing are the same as those approved.

3.13 Labels, Stickers, Release Cards, and Perforated Pockets Affixed to the Outside of Letter-Size Mailpieces

* * * * *

3.13.4 Letter-Size Piece With Attached Release Card

[Revise the introductory text of 3.13.4 as follows:]

A letter-size mailpiece, with one or two attached release cards, must have the following characteristics:

* * * * *

230 First-Class Mail

233 Prices and Eligibility

1.0 Prices and Fees for First-Class Mail

* * * * *

1.2 Price Computation for First-Class Mail Letters

[Revise the text of 1.2 as follows:]

Commercial First-Class Mail presorted letters are charged at one price for the first two ounces, with separate prices for pieces over two ounces up to three ounces and for pieces over three ounces up to 3.5 ounces. Any fraction of an ounce is considered a whole ounce. For example, if a piece weighs 2.2 ounces, the weight (postage) increment is 3 ounces. The pricing per ounce is similar for automation First-Class Mail letters, with pricing differences per sortation level.

* * * * *

3.0 Basic Standards for First-Class Mail Letters

* * * * *

3.4 Presort Mailing Fee

[Revise the text of 3.4 by adding a new second sentence as follows:]

* * * Payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

7.0 First-Class Mail Incentive Programs

* * * * *

[Delete 7.2, Reply Rides Free Program, in its entirety.]

* * * * *

234 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted and Automation Letters

* * * * *

2.2 Affixing Postage for Presorted and Automation First-Class Mail

Unless permitted by other standards or authorization by Business Mailer Support, when precanceled postage or meter stamps are used, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

[Revise item 2.2a as follows:]

a. Each metered piece weighing more than 2 ounces must bear the correct additional postage to pay for the additional ounce(s).

* * * * *

[Revise item 2.2c as follows:]

c. Each metered piece must bear full postage at the lowest First-Class Mail letter price (or card price as applicable) appropriate to the mailing plus any additional ounce(s) or nonmachinable surcharge.

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.4 Presort Mailing Fees

[Revise the text of 3.4 by adding a new second sentence as follows:]

* * * Payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

245 Mail Preparation

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.4 Nonmachinable Preparation

* * * * *

5.4.2 Traying and Labeling

[Revise the introductory text of 5.4.2 as follows:]

When all full trays for a destination have been prepared, mailers may include a group of 10 or more overflow pieces for that destination in a qualified tray at either of the next two tray levels. For example, overflow pieces for a 5-digit destination may be placed into an existing correct 3-digit tray; if a 3-digit tray that includes the 5-digit destination does not exist, the overflow pieces may be placed into the correct existing ADC tray. Bundle the overflow pieces separately with the correct presort bundle label or OEL; the pieces will still qualify for the 5-digit price. Mailers must note these trays on standardized documentation (see 708.1.2). Preparation sequence, tray size, and labeling:

* * * * *

300 Commercial Flats

301 Physical Standards

* * * * *

3.0 Physical Standards for Automation Flats

3.1 Basic Standards for Automation Flats

[Revise the text of 3.1 as follows:]

Flat-size pieces claimed at automation prices must meet the standards in 1.0 and in 3.0, and the eligibility standards for the class of mail and price claimed.

* * * * *

330 First-Class Mail

333 Prices and Eligibility

* * * * *

3.0 Eligibility Standards for First-Class Mail Flats

* * * * *

3.4 Presort Mailing Fee

[Revise the text of 3.4 by adding a new second sentence as follows:]

* * * Payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.4 Presort Mailing Fees

[Revise the text of 3.4 by adding a new second sentence as follows:]

* * * Payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90% or more pieces qualifying for full-service prices. * * *

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

1.1.4 Barcoded Discount—Flats

[Revise the text of 1.1.4 as follows:]

The barcoded discount applies only to BPM flat-size pieces that meet the requirements in 301.3.0 and bear a delivery point POSTNET barcode or Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 302.5.0 and 708.4.0. The pieces must be part of a nonpresorted mailing of 50 or more flat-size pieces.

* * * * *

1.2 Commercial Bound Printed Matter

* * * * *

1.2.6 Destination Entry Mailing Fee

[Add a new second sentence to 1.2.6 as follows:]

* * * Payment of this fee is waived for mailers who present only full-service automation mailings (under 705.23) containing 90 percent or more pieces qualifying for full-service prices.

* * * * *

400 Commercial Parcels

401 Physical Standards

1.0 Physical Standards for Parcels

* * * * *

1.3 Maximum Weight and Size

[Revise text of 1.3 by adding a new fourth sentence to read as follows:]

* * * Standard Mail Marketing parcels (see 2.4) may not be larger than 12 inches long, 9 inches high, and 2 inches thick. * * *

* * * * *

1.5 Machinable Parcels

1.5.1 Criteria

[Revise the introductory sentence to 1.5.1 as follows:]

A machinable parcel is any piece that is not a letter or a flat and that is (see Exhibit 1.5.1):

* * * * *

[Revise item 1.5.1b as follows:]

b. Not more than 27 inches long, or 17 inches high, or 17 inches thick. Parcels cannot weigh more than 25 pounds, except Parcel Select and Parcel Return parcels which have a maximum weight of 35 pounds, except for those

containing books or other printed matter (25 pound maximum).

Exhibit 1.5.1 Machinable Parcel Dimensions

[Revise the current length dimension to read 27 inches and delete the sentences describing the minimum and maximum weights in Exhibit 1.5.1.]

* * * * *

[Revise the title and the introductory text of 1.5.2 as follows:]

1.5.2 Criteria for Lightweight Machinable Parcels

A parcel that weighs less than 6 ounces (but not less than 3.5 ounces) is machinable if it meets all of the following conditions:

* * * * *

1.5.4 Exception

[Revise 1.5.4 as follows:]

Mailers of parcels that do not conform to the machinability criteria in 1.5.1 or 1.5.2 may request authorization to mail such parcels as machinable parcels by contacting the manager, Pricing and Classification Service Center (PCSC; see 608.8.1 for address). The manager, PCSC, in conjunction with the manager, Operations Integration and Support, may authorize such parcels as machinable if the parcels are tested on NDC parcel sorters and prove to be machinable. Mailers requesting testing of parcels for machinability must:

a. Submit a written request and two sample parcels to the PCSC. The request must list the mailpiece characteristics for every shape, weight, construction, and size to be considered. If the request describes a mailpiece that falls within the specifications of pieces that were tested previously, the mailpiece may not require testing.

b. State the estimated number of parcels to be mailed in the next 12 months, and the anticipated preparation level (e.g., destination NDC pallets).

c. Upon acknowledgement from the manager, Operations Integration and Support, the mailer may be required to send 100 mailpiece samples to the designated test facility at least 6 weeks prior to the first mailing date. The USPS may recommend changes to physical characteristics of the mailpieces, and additional testing of the redesigned pieces, before authorizing parcels as machinable.

* * * * *

2.0 Additional Physical Standards by Class of Mail

* * * * *

[Revise the title of 2.4 to read as follows:]

2.4 Standard Mail Parcels

* * * * *

[Revise title and text of 2.4.2 to delete references to Not Flat-Machinables and add standards for Marketing parcels to read as follows:]

2.4.2 Marketing Parcels

Marketing parcels do not meet letters or flats standards and have the following characteristics:

a. Height not more than 9 inches high. Minimum height must be 3½ inches if the parcel is ¼ inch thick or less.

b. Length not more than 12 inches long. Minimum length must be 5 inches if the parcel is ¼ inch thick or less.

c. Thickness at least 0.009 thick, but not more than 2 inches.

d. An alternative addressing format, according to 602.3.0.

* * * * *

2.6 Bound Printed Matter Parcels

2.6.1 General Standards

[Revise the text of 2.6.1 by moving the text of item 2.6.1a into the introductory sentence and deleting item 2.6.1b in its entirety as follows:]

Pieces mailed at Bound Printed Matter prices may not weigh more than 15 pounds.

402 Elements on the Face of a Mailpiece

1.0 All Mailpieces

* * * * *

1.2 Delivery and Return Address

[Revise 1.2 by reorganizing the text and adding a new last sentence to read as follows:]

The delivery address specifies the location to which the USPS is to deliver a mailpiece (see 602 for more information). Except for pieces prepared with detached address labels under 602.4.0, each mailpiece must have a visible and legible delivery address only on the side of the piece bearing postage. A return address is required in specific circumstances (see 3.2 and 602.1.5). Standard Mail Marketing parcels (see 443) must use an alternative addressing format under 602.3.0.

* * * * *

4.0 General Barcode Placement for Parcels

* * * * *

4.3 POSTNET Barcodes, GS1–128 Routing Barcodes and Intelligent Mail Package Barcodes

[Revise text of 4.3 by deleting references to Not Flat-Machinable pieces and revising other text to read as follows:]

First-Class Package Service parcels and Standard Mail irregular parcels may bear POSTNET barcodes (under 4.3.1 through 4.3.3) or GS1–128 routing barcodes. First-Class Package Service parcels and Standard Mail irregular parcels bearing POSTNET barcodes representing only the postal routing barcode (destination ZIP Code) are eligible to be mailed using eVS under 705.2.9. POSTNET barcodes may not be used on eVS parcels bearing concatenated GS1–128 barcodes.

4.3.1 General Placement of POSTNET Barcodes

[Revise text of 4.3.1 by deleting references to Not Flat-Machinable piece under 6 ounces and revising other text to read as follows:]

On a First-Class Package Service parcel or Standard Mail irregular parcel, the POSTNET barcode may be anywhere on the address side at least ⅛ inch from any edge of the piece. Print POSTNET barcodes according to 708.4.0. Address block barcodes are subject to 4.3.2.

* * * * *

440 Standard Mail

443 Prices and Eligibility

1.0 Prices and Fees for Standard Mail

* * * * *

[Revise title of 1.2 to read as follows:]

1.2 Regular and Nonprofit Standard Mail—Marketing Parcel Prices

* * * * *

[Revise title of 1.3 as follows:]

1.3 Nonprofit Standard Mail—Machinable and Irregular Parcel Prices

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

3.2 Defining Characteristics

* * * * *

[Renumber current 3.2.2 through 3.2.8 as 3.2.4 through 3.2.10 and add new 3.2.2 and 3.2.3 as follows:]

3.2.2 Standard Mail Marketing Parcels

All Standard Mail Marketing parcels (both regular and nonprofit) must bear an alternative addressing format (see 602.3.0) and are subject to size restrictions in 401.2.4.2.

3.2.3 Nonprofit Standard Mail Machinable and Irregular Parcels

Nonprofit Standard Mail parcels that do not qualify as Marketing parcels may be prepared and mailed as machinable or irregular parcels.

* * * * *

3.3 Additional Basic Standards for Standard Mail

Each Standard Mail mailing is subject to these general standards:

* * * * *

[Revise text of item 3.3d to read as follows:]

d. Each Marketing parcel must bear an alternative addressing format subject to 602.3.0. Nonprofit Standard Mail machinable or irregular parcels must bear the addressee's name and complete delivery address, or may use an alternative addressing format. Detached address labels may be used subject to 602.4.0.

* * * * *

4.0 Price Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Prices

The minimum per piece prices (i.e., the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise text of item 4.2c as follows:]

c. Individual Prices. There are separate minimum per piece prices for each product and, within each product, for the presort and destination entry levels within each mailing. There are also separate prices for Marketing parcels and for Nonprofit machinable parcels and Nonprofit irregular parcels. DDU prices are available for parcels entered only at 5-digit or one of the Enhanced Carrier Route prices.

4.3 Piece/Pound Prices

[Revise the text of 4.3 as follows:]

Pieces that exceed 3.3 ounces (0.2063 pound) are subject to a two-part piece/pound price that includes a fixed charge per piece and a variable pound charge based on weight. There are separate per piece prices for each product and within each product for the type of mailing and the presort and destination entry levels within each mailing. There are separate per pound prices for each product. There are also separate prices for Marketing parcels and for Nonprofit machinable parcels and Nonprofit irregular parcels.

4.4 Surcharge

[Revise the introductory text of 4.4 to read as follows:]

Unless prepared in carrier route or 5-digit/scheme containers, Standard Mail parcels are subject to a surcharge if:

* * * * *

[Revise item 4.4b as follows:]

b. The Marketing parcels or the machinable parcels do not bear a GS1–128 routing barcode or Intelligent Mail package barcode, under 708.5.0, for the delivery address.

[Delete current item 4.4c in its entirety; redesignate current item d as new item c and revise to read as follows:]

c. The irregular parcels do not bear a GS1–128 routing barcode, Intelligent Mail package barcode or POSTNET barcode for the delivery address.

4.5 Extra Services for Standard Mail

4.5.1 Available Services

[Revise the introductory text of 4.5.1 as follows:]

Only the following extra services may be used with Standard Mail parcels, with restrictions as noted in 4.5.2:

* * * * *

[Delete 4.5.2, Eligible Matter, in its entirety and renumber current 4.5.3 and 4.5.4 as new 4.5.2 and 4.5.3.]

5.0 Additional Eligibility Standards for Presorted Standard Mail Pieces

* * * * *

5.2 Price Application

[Revise 5.2 as follows:]

Prices for Standard Mail and Nonprofit Standard Mail apply separately to Marketing parcels that meet the eligibility standards in 2.0 through 4.0 and the preparation standards in 445.5.0, 705.6.0, 705.8.0, or 705.20. Prices for Nonprofit parcels not qualifying as Marketing parcels apply separately to machinable parcels and irregular parcels. When parcels are combined under 445.5.0, 705.6.0, or 705.20, all pieces are eligible for the applicable prices when the combined total meets the eligibility standards.

* * * * *

[Revise title of 5.4 to read as follows:]

5.4 Prices for Irregular Parcels and Marketing Parcels

5.4.1 5-Digit Price

[Revise the introductory text of 5.4.1 as follows:]

5-digit prices apply to irregular parcels and to Marketing parcels that are dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU and presented:

* * * * *

[Delete item 5.4.1e in its entirety.]

5.4.2 SCF Price

[Revise the introductory text of in 5.4.2 as follows:]

SCF prices apply to irregular parcels and to Marketing parcels that are dropshipped and presented to a DSCF or DNDC:

* * * * *

5.4.3 NDC Price

[Revise the introductory text of 5.4.3 as follows:]

NDC prices apply to irregular parcels and to Marketing parcels as follows under either of the following conditions:

* * * * *

5.4.4 Mixed NDC Price

[Revise the text of 5.4.4 as follows:]

Mixed NDC prices apply to irregular parcels and to Marketing parcels in origin NDC or mixed NDC containers that are not eligible for 5-digit, SCF, or NDC prices. Place irregular parcels at mixed NDC prices in origin NDC or mixed NDC sacks under 445.5.4.4 or on origin NDC or mixed NDC pallets under 705.8.10.

[Revise the title of 6.0 as follows:]

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Marketing Parcels

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

[Revise the introductory text of 6.1.2 as follows:]

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route mailing of Standard Mail Marketing parcels must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP + 4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these addressing standards:

* * * * *

[Revise item d2 to require alternative addressing to read as follows:]

2. An alternative addressing format as described in 602.3.0.

* * * * *

[Revise the first sentence of item 6.1.2f to indicate new size restrictions to read as follows:]

f. Enhanced Carrier Route Marketing parcels may not be more than 9 inches high, 12 inches long, or 2 inches thick.

* * *

* * * * *

445 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Delete current item 1.3e, Origin/Entry 3-Digit, in its entirety and redesignate current item 1.3f as new item 1.3e.]

[Delete current items 1.3g, Origin Optional Entry SCF, and 1.3h, ADC, in their entirety and redesignate current items 1.3i through1.3 l as new items 1.3f through 1.3i.]

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Delete current item 1.4d in its entirety and redesignate current items e through j as new items d through i.]

2.0 Bundles

2.1 Definition of a Bundle

[Revise the last sentence in 2.1 by deleting the reference to 5-digit bundles and Not Flat-Machinables to read as follows:]

* * * Bundling under 445 is allowed only for Marketing parcels mailed at carrier route prices.

* * * * *

2.11 Facing Slips—All Carrier Route Mail

All facing slips used on carrier route bundles must show this information:

* * * * *

[Revise item 2.11b as follows:]

b. Line 2: Content (appropriate to the class), followed by carrier route type and route number (e.g., ''STD MKTG LOT CR R 012'').

* * * * *

4.0 Sack Labels

* * * * *

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

b. *Codes:* The codes shown below must be used as appropriate in Line 2 of sack labels:

[Revise the table in item 4.4b by adding a new row after ''Machinable'' (seventh row) with ''Marketing Parcels'' (new eighth row) in the ''CONTENT TYPE'' column and with ''MKTG'' in the ''CODE'' column as follows:]

Content type	Code
* * * * * * *	
Machinable	MACH
Marketing Parcels	MKTG
* * * * * * *	

5.0 Preparing Presorted Parcels

5.1 Basic Standards

[Revise the introductory sentence of 5.1 as follows:]

All mailings and all pieces in each mailing at Standard Mail and Nonprofit Standard Mail parcel prices are subject to preparation standards in 5.3 or 5.4, and to these general standards:

* * * * *

[Revise item 5.1b as follows:]

b. Marketing parcels, Nonprofit machinable parcels, and Nonprofit irregular parcels must each be prepared as separate mailings, except under 5.3.1.

* * * * *

5.2 Markings

[Revise the text of 5.2 as follows:]

All parcels must be marked according to 402.2.0.

[Revise the title of 5.3 as follows:]

5.3 Preparing Marketing Parcels (6 Ounces or More) and Machinable Parcels

5.3.1 Sacking

[Revise the introductory text of 5.3.1 as follows:]

Prepare mailings of Marketing parcels weighing 6 ounces or more and mailings of machinable parcels under 5.3.0. Prepare 5-digit sacks only for parcels dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Prepare ASF or NDC sacks only for parcels dropshipped to a DNDC (or ASF when claiming DNDC prices). There is no minimum for parcels in 5-digit/scheme sacks entered at a DDU. Mailers combining irregular parcels with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 5.3.2a. Mailers combining Marketing parcels weighing 6 ounces or more with machinable parcels placed in ASF, NDC, or mixed NDC sacks must prepare the sacks under 5.3.2. For mailings of only Marketing parcels weighing 6 ounces or more, use ''MKTG'' on line 2 of sack labels instead of ''MACH'' under items 5.3.2a through e.

* * * * *

[Revise the title of 5.4 as follows:]

5.4 Preparing Marketing Parcels (Less Than 6 Ounces) and Irregular Parcels

5.4.1 Bundling

[Revise the text of 5.4.1 as follows:]

Bundling is permitted only for bundles of carrier route Marketing parcels under 7.0.

5.4.2 Sacking

[Revise the text of 5.4.2 as follows:]

Prepare mailings of Marketing parcels weighing less than 6 ounces and mailings of irregular parcels under 5.4.0. Prepare 5-digit sacks only for parcels dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. See 5.4.3 for restrictions on SCF, ASF, and NDC sacks. Mailers must prepare a sack when the quantity of mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers combining irregular parcels with machinable parcels and Marketing parcels weighing 6 ounces or more in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with Marketing parcels weighing less than 6 ounces in sacks under 5.4.3. For mailings of only Marketing parcels weighing less than 6 ounces, use ''MKTG'' on line 2 of sack labels instead of ''IRREG'' under items 5.4.3a through f.

* * * * *

[Delete 5.4.3, Drop Shipment, in its entirety and renumber current 5.4.4 as new 5.4.3.]

[Delete current 6.0 in its entirety and renumber all of current 7.0 as new 6.0.]

* * * * *

6.0 Preparing Enhanced Carrier Route Parcels

6.1 Basic Standards

[Revise the introductory text of renumbered 6.1 as follows:]

All mailings and all pieces in each mailing at an Enhanced Carrier Route (ECR) parcel price are subject to specific preparation standards in 6.4, and 6.5, and to these general standards:

[Revise items 6.1a through d as follows:]

a. All pieces must meet the standards for basic eligibility in 443.2.0 through 443.4.0 and specific eligibility in 443.6.0. Nonprofit Enhanced Carrier Route Standard Mail must meet the additional eligibility standards in 703.1.0.

b. All pieces in each mailing must be Marketing parcels as defined in 443.3.2.2.

c. All pieces must meet the applicable general preparation standards in 1.0 through 4.0, and the following:

1. Pieces must be sequenced according to 6.6 and 6.7.

2. Pieces with a simplified address format must meet the standards in 602.3.0.

d. All pieces in the mailing must meet the specific sortation and preparation standards in 6.0 or the palletization standards in 705.8.0.

* * * * *

6.3 Residual Pieces

[Revise the text of renumbered 6.3 as follows:]

Parcels not sorted as a carrier route mailing must be prepared as a separate mailing at Standard Mail Presorted prices.

6.4 Bundling

* * * * *

6.4.2 Bundles and Sacks With Fewer Than the Minimum Number of Pieces Required

[Revise the text of renumbered 6.4.2 as follows:

As a general exception to 6.4.1 and 6.5.1, mailers may prepare a bundle with fewer than 10 pieces and a less-than-full sack with fewer than 125 pieces or less than 15 pounds of pieces to a carrier route when they are claiming the saturation price for the contents and the applicable density standard is met. Mailers using Express Mail Open and Distribute or Priority Mail Open and Distribute to dropship ECR parcels also may prepare sacks of fewer than 125 pieces or less than 15 pounds of mail.

[Revise the title of renumbered 6.5 as follows:]

6.5 Preparing Carrier Route Marketing Parcels

6.5.1 Sack Minimums

[Revise the introductory text of renumbered 6.5.1 as follows:]

Except under 6.4.1, a sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

* * * * *

[Revise item 6.5.1b as follows:]

b. For nonidentical-weight pieces, mailers must use the minimum that applies to either the average piece weight for the entire mailing or the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

* * * * *

6.5.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

a. Carrier route: required (minimum of 125 pieces/15 pounds).

* * * * *

[Revise item a2 as follows:]

2. Line 2: ''STD MKTG WSS'' or ''STD MKTG WSH'' or ''STD MKTG LOT'' as applicable, followed by the route type and number.

b. 5-digit carrier routes: required (no minimum).

* * * * *

[Revise item b2 as follows:]

2. Line 2: ''STD MKTG CR–RTS.''

* * * * *

446 Enter and Deposit

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

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5.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU, addressed for delivery within that facility's service area, and prepared as follows:

* * * * *

[Revise item 5.2b by deleting the reference to Not Flat-Machinable pieces to read as follows:]

b. One or more parcels in 5-digit containers.

* * * * *

460 Bound Printed Matter

463 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

[Delete 1.1.3 Barcode Discount—Machinable Parcels in its entirety and renumber current items 1.1.4 and 1.1.5 as new 1.1.3 and 1.1.4.]

1.2 Commercial Bound Printed Matter

* * * * *

1.2.3 Bound Printed Matter Presorted and Carrier Route Prices

[Delete the second sentence of 1.2.3.]

1.2.4 Bound Printed Matter Destination Entry Prices

[Delete the second sentence of 1.2.4.]

* * * * *

4.0 Price Eligibility for Bound Printed Matter Parcels

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[Delete item 4.1d in its entirety.]

* * * * *

470 Media Mail and Library Mail

473 Prices and Eligibility

* * * * *

6.0 Price Eligibility for Media Mail and Library Mail Parcels

* * * * *

6.3 Price Categories for Media Mail and Library Mail Parcels

* * * The price categories and discounts are as follows:

[Delete item 6.3c in its entirety.]

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

6.0 Return Receipt

* * * * *

6.2 Basic Information

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6.2.4 Additional Services

[Revise the introductory text of 6.2.4 as follows:]

If return receipt service has been purchased with one of the services listed in 6.2.2, one or more of the following extra services may be added at the time of mailing if the standards for the services are met and the additional service fees are paid:

* * * * *

[Add new item 6.2.4f as follows:]

f. Adult Signature (Express Mail and Priority Mail only), under restrictions in 8.2.6.

* * * * *

8.0 Adult Signature

* * * * *

8.2 Basic Information

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8.2.5 Confirmation of Delivery

Confirmation of delivery information for Adult Signature is available as follows:

* * * * *

[Add new item 8.2.5c as follows:]

c. Return receipt service (hard copy PS Form 3811 option only), under 6.0, may be purchased with Express Mail or Priority Mail pieces requesting Adult Signature.

8.2.6 Additional Services

Adult Signature may be combined with:

* * * * *

[Add new item 8.2.6d as follows:]

d. Return receipt (hard copy PS Form 3811 only) for Express Mail and Priority Mail pieces.

* * * * *

10.0 Delivery Confirmation

* * * * *

10.2 Basic Information

* * * * *

10.2.2 Eligible Matter

[Revise the first sentence of the introductory text of 10.2.2 as follows:]

Delivery Confirmation is available for First-Class Mail parcels and First-Class Package Service parcels; all Priority Mail pieces; Standard Mail parcels (electronic option only); Package Services, Parcel Select, and Parcel Select Regional Ground parcels (electronic option only) under 401.1.0. * * *

* * * * *

10.2.3 Electronic Option Delivery Confirmation for Standard Mail

[Revise the first sentence of 10.2.3 as follows:]

If electronic option Delivery Confirmation is requested for all pieces in the mailing and the pieces are of identical weight, then postage may be paid with metered postage or permit imprint under the applicable standards in 444.2.0 for parcels. * * *

* * * * *

11.0 Signature Confirmation

* * * * *

11.2 Basic Information

* * * * *

11.2.2 Eligible Matter

[Revise the first sentence of the introductory text of 11.2.2 as follows:]

Signature Confirmation is available for First-Class Mail parcels and First-Class Package Service parcels; all Priority Mail pieces; Standard Mail parcels (electronic option only); Package Services, Parcel Select, and Parcel Select Regional Ground parcels (electronic option only) under 401.1.0. * * *

* * * * *

[Revise the title of 14.0 as follows:]

14.0 Confirm Service and IMb Tracing

[Delete the current text of 14.1 through 14.4 and replace with the following:]

14.1 Basic Information

14.1.1 General Information

IMb Tracing is a replacement for Confirm service. Participation in Confirm service is limited to those customers who have already paid for a current subscription until the subscription expires. After the expiration of a Confirm subscription, IMb Tracing provides the same basic information as Confirm, but is available at no charge without a subscription. Requirements for participation in IMb Tracing are the use of the Intelligent Mail barcode, the use of a Mailer Identifier that has been registered (via the Business Customer Gateway, accessible on usps.com) to receive scan data, and verification by the Postal Service that the Intelligent Mail barcode (IMb) as printed meets all applicable postal standards.

14.1.2 Description of Service

IMb Tracing (and Confirm) provides a mailer with data electronically collected from the scanning of barcoded mailpieces as they pass through automated mail processing operations. Scanned data can include the postal facility where such pieces are processed, the postal operation used to process the pieces, the date and time when the pieces are processed, and the numeric equivalent of a barcode(s) that help to identify the specific pieces. Any piece intended to generate scanned data must meet the physical characteristics and standards in 14.0, although not every piece is guaranteed such data or complete data. This service does not provide proof of delivery. Existing users must convert to the use of an IMb to receive data once existing subscriptions expire.

14.1.3 Availability

IMb Tracing is available to mailers for obtaining scan data for automation-compatible letter-size and automation-compatible flat-size mail.

14.2 Barcodes

14.2.1 General Barcode Requirements

Each piece in a mailing that is intended to generate IMb Tracing information must bear an Intelligent Mail barcode under 14.2.2. Until the time when their current Confirm subscription expires, mailers may use PLANET Code barcodes and POSTNET barcodes under the provisions in Publication 197, *Confirm Service Featuring OneCode Confirm,* accessible online at *http://ribbs.usps.gov/.* Otherwise, mailers must apply Intelligent Mail barcodes under 708.4.0 and the following standards:

a. Reply pieces must meet the following standards:

1. For Business Reply Mail, the piece must bear a barcode that corresponds to the subscriber's Business Reply Mail ZIP+4 codes assigned by the USPS under 507.9.0.

2. For other reply mail, the piece must bear a barcode that correctly corresponds to the delivery address.

b. Outgoing pieces must bear an Intelligent Mail barcode that correctly corresponds to the delivery address.

14.2.2 Intelligent Mail Barcode Requirements

To obtain IMb Tracing, mailers apply Intelligent Mail barcodes on letter-size pieces or on flat-size pieces meeting automation-compatibility standards in 201.3.0 (letters) or 301.3.0 (flats). No other barcode use is acceptable on these pieces. Only one Intelligent Mail barcode may appear on each piece, according to these standards:

a. Intelligent Mail barcodes must meet the barcode and format standards in 708.4.0 and in Specification USPS–B–3200 at *http://ribbs.usps.gov/.*

b. Place barcodes on letters according to 202.5.0, and on flats according to 302.5.0.

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

* * * * *

1.5.3 Standard Mail

Undeliverable-as-addressed (UAA) Standard Mail is treated as described in Exhibit 1.5.3a and Exhibit 1.5.3k, with these additional conditions:

* * * * *

[Revise item 1.5.3j as follows:]

j. A returned piece endorsed ''Return Service Requested'' is charged the applicable single-piece First-Class Mail price for the weight and shape of the piece, or the Priority Mail price for the weight and destination of the piece.

* * * * *

1.5.4 Package Services and Parcel Select

Undeliverable-as-addressed (UAA) Package Services and Parcel Select mailpieces are treated as described in Exhibit 1.5.4, with these additional conditions:

* * * * *

[Revise item 1.5.4d as follows:]

d. If a Package Services (except for unendorsed Bound Printed Matter) or a Parcel Select mailpiece and any attachment are not opened by the addressee, the addressee may refuse delivery of the piece and have it returned to the sender without affixing postage. Pieces endorsed ''change service requested'' are not returned to sender. If a Package Services or Parcel Select piece or any attachment to that piece is opened by the addressee, the addressee must affix the applicable postage to return the piece to the sender. If the addressee does not want to pay forwarding postage for all Package

Services mail, use Form 3546 to notify the postmaster of the old address to discontinue the forwarding of Package Services mail.

[Revise item 1.5.4e as follows:]

e. An undeliverable Package Services (except for unendorsed Bound Printer Matter) or a Parcel Select mailpiece that bears postage with a postage evidencing imprint and that has no return address or illegible return address is returned to the meter licensee or PC Postage customer upon payment of the return postage. The reason for nondelivery is attached, with no address correction fee. All Package Services and Parcel Select pieces must have a legible return address.

* * * * *

Exhibit 1.5.4 Treatment of Undeliverable Package Services Mail and Parcel Select

* * * * *

[Revise the text in the Exhibit 1.5.4 column ''USPS Treatment of UAA Pieces'' endorsement ''Address Service Requested as follows:]

If change-of-address order on file:

[Revise the first sentence of the introductory text in the first bullet as follows:

• *Months 1 through 12:* Package Services forwarded at the single-piece price for the class of mail. * * *

* * * * *

[Revise the text in the Exhibit 1.5.4 column ''USPS Treatment of UAA Pieces'' endorsement ''Forwarding Service Requested as follows:]

If change-of-address order on file:

[Revise the first sentence of the introductory text in the first bullet as follows:]

• *Months 1 through 12:* Package Services forwarded at the single-piece price for the class of mail. * * *

* * * * *

2.0 Forwarding

* * * * *

2.3 Postage for Forwarding

* * * * *

2.3.6 Package Services and Parcel Select

[Delete the current second sentence of 2.3.6 and revise the text to read as follows:]

Package Services and Parcel Select pieces are subject to the collection of additional postage at the applicable price for forwarding; Parcel Select at the Parcel Select nonpresort price plus the additional service fee and Package Services at the single-piece price for the specific class of mail. The addressee may refuse any piece of Package Services or Parcel Select that has been forwarded. Shipper Paid Forwarding, under provisions in 4.2.9, provides mailers an option of paying forwarding postage for parcels instead of the addressee paying postage due charges.

* * * * *

508 Recipient Services

* * * * *

4.0 Post Office Box Service

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4.2 Basic Information for Post Office Box Service

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4.2.7 Service Period

[Revise the text of 4.2.7 as follows:]

Post Office Box service is available in 3-, 6- or 12-month prepaid periods. The 3-month option is available only through recurring automatic payments. The 3-month option is not available at Post Office locations on the semi-annual (April/October) payment schedule.

* * * * *

4.5 Basis of Fees and Payment

* * * * *

4.5.4 Payment

[Revise the first sentence of 4.5.4 as follows:]

All fees for Post Office Box service are for 3-, 6- or 12-month prepaid periods, except as noted under 4.5.6, 4.5.7, and 4.5.10. * * *

* * * * *

4.7 Fee Refund

4.7.1 Calculation

When Post Office Box service is terminated or surrendered by the customer, the unused portion of the fee may be refunded as follows:

[Revise item 4.7.1a as follows:]

a. If service is discontinued any time within the first 3 months of the service period, then one-half of the fee is refunded, except that none of the fee is refunded under the 3-month payment option.

* * * * *

[Revise item 4.7.1c as follows:]

c. If service is discontinued and the customer has prepaid for the next quarterly or semiannual service period, then the entire fee for that next period is refunded.

4.7.2 Discontinued Postal Facility

[Revise the second sentence of 4.7.2 as follows:]

* * * For this purpose, one-sixth of a semiannual fee is refunded for each month left in the payment period. For the 3-month payment option, one-third of a 3-month fee is refunded for each month left in the payment. * * *

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

11.0 Cigarettes and Smokeless Tobacco

* * * * *

11.5 Exception for Business/Regulatory Purposes

* * * * *

11.5.2 Mailing

* * * All mailings under the business/regulatory purposes exception must:

[Revise 11.5.2a as follows:]

a. Be entered in a face-to-face transaction with a postal employee (carrier pickup not permitted) as Express Mail with Hold for Pickup service, Express Mail with an Adult Signature service (see 503.8.0), or Priority Mail with an Adult Signature service;

* * * * *

11.6 Exception for Certain Individuals

* * * * *

11.6.2 Mailing

* * * Each mailing under the certain individuals exception must:

[Revise 11.6.2a as follows:]

a. Be entered (carrier pickup not permitted) as Express Mail with Hold for Pickup service, Express Mail with an Adult Signature service (see 503.8.0), or Priority Mail with an Adult Signature service; unless shipped to APO/FPO/DPO addresses under 11.6.4.

* * * * *

[Revise 11.6.2c as follows:]

c. Bear the full name and mailing address of the sender and recipient on the Express Mail or Priority Mail label;

* * * * *

11.6.3 Delivery

Delivery under the certain individuals exception is made under the following conditions:

* * * * *

[Revise 11.6.3c as follows:]

c. For Express Mail or Adult Signature articles, once age is established, the recipient must sign PS Form 3849 in the appropriate signature block.

* * * * *

11.7 Consumer Testing Exception

* * * * *

11.7.2 Mailing

* * * Mailings must be tendered under the following conditions:

* * * * *

b. All mailings under the consumer testing exception:

[Revise 11.7.2b1 as follows:]

1. Be entered in a face-to-face transaction with a postal employee (carrier pickup not permitted) as Express Mail with Hold for Pickup service, Express Mail with Adult Signature Restricted Delivery service (see 503.8.0), or Priority Mail with Adult Signature Restricted Delivery service;

* * * * *

[Revise 11.7.2b4 as follows:]

4. Must bear the full mailing addresses of both the sender and recipient on the Express Mail or Priority Mail label (the name and address of the sender must match exactly those listed on the customer's application on file with the PCSC);

* * * * *

11.7.3 Delivery

Mailings bearing the markings for consumer testing can only be delivered to the named addressee under the following conditions:

* * * * *

[Revise 11.7.3c as follows:]

c. The name on the identification must match the name of the addressee on the Express Mail or Priority Mail label.

* * * * *

602 Addressing

* * * * *

[Revise the title of 4.0 as follows:]

4.0 Detached Address Labels (DALs) and Detached Marketing Labels (DMLs)

[Revise the title of 4.1 as follows:]

4.1 DAL and DML Use

[Revise the title and text of 4.1.1 as follows:]

4.1.1 Definitions

For these standards, *item(s)* refers to the types of mail described in 4.1.2 through 4.1.4. *DALs* in their basic form may be used by mailers as an optional method of addressing and printing of postage indicia on the DALs instead of printing addresses and postage on the items mailed with the DALs. *DMLs* are types of DALs, but also include advertising. For purposes of standards in 4.0, the term ''DALs'' (or ''DAL'') will be used to mean both DALs and DMLs, unless a standard specifically states that it applies only to DMLs.

* * * * *

[Revise the title and text of 4.1.3 as follows:]

4.1.3 Standard Mail Marketing Parcels

DALs may be used with Standard Mail Marketing parcels mailed at carrier route, high density, or saturation parcel prices.

* * * * *

4.1.5 Alternative Addressing Format

[Revise the text of 4.1.5 as follows:]

DALs may have alternative addressing formats under 3.0, subject to the applicable standards.

* * * * *

4.2 Label Preparation

* * * * *

4.2.5 Other Information

[Revise the text of 4.2.5 as follows:]

In addition to the information described in 4.2.2 and 4.2.4 and an indicium of postage payment, only official pictures and data circulated by the National Center for Missing and Exploited Children may appear on the front of a DAL. Advertising may appear on a DML, under the following conditions:

a. The DMLs must meet the physical characteristics for DALs under 4.2.1 and have a correct POSTNET or Intelligent Mail barcode with an 11-digit routing code (see 708.4.0).

b. The advertising must not obstruct or overlap any of the required elements on the front of a DML.

c. The advertising must be to the left of the delivery address and placed to maintain required clear spaces around the address and postage payment (see 202 and 1.0).

* * * * *

4.5 Postage

4.5.1 Prices

[Revise the text of 4.5.1 as follows:]

DAL mailings are not eligible for automation prices, but the pieces may qualify for carrier route prices, subject to applicable standards. Mailers must pay a surcharge for each DAL used with Standard Mail flats. See Notice 123-Price List for prices.

4.5.2 Postage Computation and Payment

[Revise the introductory text of 4.5.2 as follows:]

Postage is computed based on the combined weight of the item and the accompanying DAL. If the number of DALs and items mailed is not identical, the number of pieces used to determine postage is the greater of the two. No postage refund is allowed in these situations. In addition, these methods of postage payment apply:

* * * * *

[Revise items 4.5.2b and 4.5.2c as follows:]

b. Standard Mail flats and parcels (at the applicable postage) and Bound Printed Matter pieces must be paid by permit imprint, which must appear on each DAL.

c. A surcharge applies to each DAL (including DMLs) used in a Standard Mail flats mailing.

* * * * *

604 Postage Payment Methods

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2.0 Stamped Stationery

* * * * *

2.3 Other Stationery

2.3.1 Stamped Cards

[Revise 2.3.1 as follows:]

Stamped cards are available as single stamped cards, double (reply) stamped cards, and in sheets of 40 for customer imprinting. Single and double stamped cards are 3½ inches high by 5½ inches long. Stamped cards are also available in 8½ inches by 11-inches perforated and non-perforated sheets with four 4¼ inches by 5½ inches cards. Sheets must be cut so that the stamp is in the upper right corner of each card. The USPS offers personalized stamped cards (cards imprinted with a return address).

* * * * *

[Add the new 2.3.4 as follows:]

2.3.4 Printing Specifications

The printing specifications for personalized stamped envelopes also apply to stamped postcards (see 2.2.3).

* * * * *

[Add new item 2.4 as follows:]

2.4 Stamp Fulfillment Service

2.4.1 Description

Stamp Fulfillment Services provides the fulfillment of stamp orders placed by customers via mail, phone, fax, or online to the Stamp Fulfillment Services organization. Stamp Fulfillment Services charges shipping and handling fees associated with fulfilling stamp orders. The fees vary depending on the dollar amount of the order. All prices and fees are listed on Notice 123—Price List.

* * * * *

700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

* * * * *

6.0 Combining Mailings of Standard Mail, Package Services, and Parcel Select Parcels

[Revise title of 6.1 by deleting the reference to NFMs to read as follows:]

6.1 Basic Standards for Combining Parcels

6.1.1 Basic Standards

[Revise text in the first sentence of 6.1.1 by deleting NFMs to read as follows:]

Standard Mail parcels, Package Services, and Parcel Select parcels in combined mailings must meet the following standards:

* * * * *

[Revise title of 6.2 by deleting reference to NFMs to read as follows:]

6.2 Combining Parcels—DNDC Entry

[Revise 6.2 by deleting reference to NFMs 6 ounces or more to read as follows:]

Mailers may combine Standard Mail machinable parcels with Package Services and Parcel Select machinable parcels for entry at an NDC when authorized by the USPS under 6.1.4.

* * * * *

6.2.2 Additional Standards

[Revise the introductory text of 6.2.2 by deleting references to NFMs 6 ounces or more to read as follows:]

Standard Mail machinable parcels and Package Services and Parcel Select machinable parcels prepared for DNDC entry must meet the following conditions in addition to the basic standards in 6.1:

[Revise text of 6.2.2a by deleting references to NFMs to read as follows:]

a. Each piece in a combined Standard Mail, Package Services, and Parcel Select mailing must meet the criteria for machinable parcels in 401.1.5.

* * * * *

[Revise text of 6.2.2e by deleting references to NFMs to read as follows:]

e. Mailers must deposit combined machinable parcels at NDCs or ASFs (see Exhibit 6.2.3) under applicable standards in 15.0.

* * * * *

6.3 Combining Parcels—Parcel Select ONDC Presort, NDC Presort, DSCF, and DDU Prices

6.3.1 Qualification

Combination requirements for specific discounts and prices are as follows:

[Revise items 6.3.1a through d by deleting references to NFMs 6 ounces or more to read as follows:]

a. When claiming Parcel Select ONDC Presort discounts, machinable Standard Mail parcels may be combined with machinable Parcel Select and Package Services parcels under 6.3 only if the mailpieces are palletized and each pallet or pallet box contains a 200-pound minimum.

b. When claiming Parcel Select NDC Presort discounts, machinable Standard Mail parcels may be combined with machinable Parcel Select and Package Services parcels under 6.3 only if the mailpieces are palletized and each pallet or pallet box contains a 200 pound minimum.

c. When claiming the DSCF price for Parcel Select or Bound Printed Matter parcels, Standard Mail parcels may be combined with Package Services and Parcel Select parcels under 6.3.

d. All Standard Mail parcels may be combined with Package Services and Parcel Select parcels prepared for DDU prices under 6.3.

* * * * *

6.4 Combining Package Services, Parcel Select, and Standard Mail—Optional 3-Digit SCF Entry

* * * * *

6.4.2 Qualifications and Preparation

[Revise the introductory paragraph of 6.4.2 by deleting references to NFMs to read as follows:]

Parcel Select, Bound Printed Matter machinable parcels, and Standard Mail parcels may be prepared for entry at designated SCFs under these standards:

[Revise item 6.4.2a by deleting references to NFMs to read as follows:]

a. Standard Mail parcels that weigh less than 2 ounces and Standard Mail parcels that are tubes, rolls, triangles, and similar pieces may not be included.

[Revise item 6.4.2b as follows:]

b. Mailers must prepare pieces on 3-digit pallets or pallet boxes, or unload and physically separate the pieces into containers as specified by the destination facility.

* * * * *

[Revise item 6.4.2d by deleting references to NFMs to read as follows:]

d. Standard Mail machinable parcels are eligible for the NDC presort level, DNDC price; irregular parcels are eligible for the 3-digit presort level, DSCF price.

* * * * *

8.0 Preparing Pallets

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.2 Periodicals—Bundles, Sacks, or Trays

[Add a new last sentence in the introductory text to read as follows:]

* * * Prepare pallets in the following sequence:

* * * * *

[Revise the introductory text of item 8.10.2k to read as follows:]

k. *Mixed ADC, optional,* permitted for sacks and trays, and bundles of flats. Pallet may contain carrier route, automation price, and/or presorted price mail. Pallets must not contain origin mixed ADC (OMX) sacks. Labeling:

* * * * *

8.10.3 Standard Mail—Bundles, Sacks, or Trays

[Revise the third sentence of 8.10.3 for clarity to read as follows:]

* * * For irregular parcels, use this preparation only for pieces in sacks or in carrier route bundles. * * *

* * * * *

[Revise the title and introductory text of 8.10.6 to read as follows:]

8.10.6 Standard Mail, Package Services, Parcel Select

Prepare pallets under 8.0 in the sequence below. Unless indicated as optional, all sort levels are required. Combined mailings of Standard Mail, Parcel Select, and Package Services machinable parcels also must meet the standards in 6.0 or 20.0. Label pallets according to Line 1 and Line 2 information below and under 8.6, except for combined mailings that include Standard Mail parcels.

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH.'' to revise item 8.10.6a as follows:]

a. *5-digit scheme, required.* Pallet must contain parcels for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD/PSCV MACH 5D;,'' followed by ''SCHEME'' (or ''SCH'').

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH.'' to revise item 8.10.6b as follows:]

b. 5-digit, required. Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD/PSVC MACH 5D''

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH.'' to revise item 8.10.6c as follows:]

c. *ASF, optional, but required for DNDC prices.* Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.

2. Line 2: ''STD/PSVC MACH ASF.''

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH.'' to revise item 8.10.6d as follows:]

d. *NDC, required.* Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: Use L601.

2. Line 2: ''STD/PSVC MACH NDC.''

[Delete the reference to ''NFM'' and replace the reference to ''STD MACH'' with ''STD/PSVC MACH.'' to revise item 8.10.6e as follows:]

e. *Mixed NDC, optional.* Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office (or labeled to plant serving entry Post Office if authorized by processing and distribution manager).

2. Line 2: ''STD/PSVC MACH WKG.,''

[Revise title and introductory text of 8.10.7 to remove references to Not Flat-Machinables and NFMs and revise as follows:]

8.10.7 Standard Mail and Parcel Select Lightweight Machinable Parcels

Mailers who palletize machinable parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below for DNDC, DSCF, or DDU prices. When prepared at origin, a 200-pound minimum is required for the NDC price. Prepare pallets under 8.0 in the sequence below. Unless indicated as optional, all sort levels are required. Label pallets according to Line 1 and Line 2 information below and under 8.6.

[Revise items 8.10.7a through f by removing reference to NFMs and revising as follows:]

a. 5-digit scheme, required. Pallet must contain parcels for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, prepare 5-digit pallets under 8.10.7b, Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD/PSLW MACH 5D.

b. 5-digit, required. Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD/PSLW MACH 5D.,''

c. ASF, optional, but required for DNDC prices. Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.

2. Line 2: ''STD/PSLW MACH ASF.''

d. NDC, required. Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: Use L601.

2. Line 2: ''STD/PSLW MACH NDC.''

e. Origin NDC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''STD/PSLW MACH NDC.''

f. Mixed NDC, optional; no minimum. Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office (or labeled to plant serving entry Post Office if authorized by processing and distribution manager).

2. Line 2: ''STD/PSLW MACH WKG.''

[Revise title and introductory text of 8.10.8 as follows:]

8.10.8 Standard Mail and Parcel Select Lightweight Irregular Parcels Weighing 2 Ounces or More

Mailers who palletize unbundled or unsacked irregular parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below for DNDC, DSCF, or DDU prices. When prepared at origin, a 200 pound minimum is required for the NDC price. Prepare pallets or pallet boxes of irregular parcels (except tubes, rolls, and similar pieces) weighing 2 ounces or more under 8.0 and in the sequence listed below. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6. Mailers may not prepare tubes, rolls, and similar pieces or pieces that weigh less than 2 ounces on pallets or in pallet boxes, except for pieces in carrier route bundles or in sacks under 8.10.3.

[Revise items 8.10.8a through g by deleting references to NFMs and changing line 2 content as follows:]

a. 5-digit scheme, required. Pallet or pallet box must contain parcels only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606 prepare 5-digit pallets under 8.10.8b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD/PSLW IRREG 5D; followed by ''SCHEME'' (or ''SCH'').

b. 5-digit, required. * * *. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD IRREG 5D.''

c. SCF, required. * * * Labeling:

1. For Line 1, L002, Column C.

2. For Line 2, ''STD/PSLW IRREG SCF.''

d. ASF, optional, but required for DNDC prices. Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.

2. Line 2: ''STD/PSLW IRREG ASF''.

e. NDC, required. Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: Use L601.

2. Line 2: ''STD/PSLW IRREG NDC''.

f. Origin NDC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''STD/PSLW IRREG NDC''.

g. Mixed NDC, optional. Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office (or labeled to plant serving entry Post Office if authorized by processing and distribution manager).

2. Line 2: ''STD/PSLW IRREG WKG''.

* * * * *

[Delete current 8.10.9, Standard Mail Not Flat-Machinable Pieces Weighing Less Than 6 Ounces, in its entirety.]

* * * * *

8.17 Pallets of Machinable Parcels

8.17.1 DNDC Price

[Revise text of 8.17.1 to read as follows:]

Pieces may be eligible for the 5-digit price only when prepared under 8.10.7a or 8.10.7b and entered at a destination facility under 446.

* * * * *

21.0 Optional Combined Parcel Mailings

21.1 Basic Standards for Combining Parcel Select, Package Services, and Standard Mail Parcels

21.1.1 Basic Standards

[Revise first sentence in 21.1.1 by deleting the references to NFMs to read as follows:]

Package Services parcels, Parcel Select parcels, and Standard Mail parcels in a combined parcel mailing must meet the following standards:

* * * * *

d. Combined mailings must meet the following minimum volume requirements:

[Revise item d1 to delete the reference to NFMs to read as follows:]

1. Standard Mail—Minimum 200 pieces or 50 pounds of Standard Mail parcels.

* * * * *

21.2 Price Eligibility

* * * * *

21.2.2 Price Application

Apply prices based on the criteria in 400 and the following standards:

[Revise item 21.2.2a by deleting the reference to NFMs to read as follows:]

a. Standard Mail parcels are based on the container level and entry (see 443.5.0.

* * * * *

21.3 Mail Preparation

21.3.1 Basic Standards

Prepare combined mailings as follows:

a. Different parcel types must be prepared separately for combined parcel mailings as indicated below:

[Revise item a1 through a4 by deleting the references to NFMs to read as follows:]

1. Standard Mail, Parcel Select, and Package Services machinable parcels. Use ''STD/PSVC MACH'' for line 2 content labeling.

2. Standard Mail, Parcel Select, and Package Services irregular parcels at least 2 ounces and up to (but not including) 6 ounces, except for tubes, rolls, triangles, and other similarly irregularly-shaped pieces. Use ''STD/PSVC'' for line 2 content labeling.

3. Standard Mail, Parcel Select, and Package Services tubes, rolls, triangles, and similarly irregularly-shaped parcels; and all parcels weighing less than 2 ounces. Use ''STD/PSVC IRREG'' for line 2 content labeling.

4. Combine all parcel types in 5-digit and 5-digit scheme containers. Use ''STD/PSVC PARCELS'' for line 2 content labeling.

* * * * *

[Revise title of 21.3.2 to read as follows:]

21.3.2 Combining Standard Mail, Parcel Select, and Package Services Machinable Parcels

* * * * *

[Revise title of 21.3.3 to read as follows:]

21.3.3 Combining Standard Mail, Parcel Select, and Package Services Apps-Machinable Parcels

* * * * *

[Revise title of 21.3.4 to read as follows:]

21.3.4 Combining Standard Mail (Under 2 Ounces), Parcel Select, and Package Services Other Irregular Parcels

* * * * *

23.0 Full-Service Automation Option

* * * * *

[Revise the title of 23.2 as follows:]

23.2 General Eligibility Standards

[Renumber current 23.3 and 23.4 as new 23.4 and 23.5, and add new 23.3 as follows:]

23.3 Eligibility for Waiver of Annual Fees and Waiver of Deposit of Permit Imprint Mail Restrictions

Mailers who present only full-service automation mailings (of First-Class Mail cards, letters, and flats, Standards Mail letters and flats, or Bound Printed Matter flats) that contain 90 percent or more pieces eligible for full-service automation prices are eligible for the following exceptions to standards:

a. The annual presort mailing or destination entry fees, as applicable, will be waived for qualified full-service mailings.

b. Mailers may present qualified full-service mailings with mailpieces bearing a current valid permit imprint for acceptance at any USPS acceptance office that has *PostalOne!* acceptance functions without payment of any additional permit imprint application or annual mailing fees.

c. If any mailing (of the classes and shapes of mail in 23.3) presented under a mailing permit does not contain at least 90 percent of the pieces qualifying for full-service automation prices:

1. The mailer must pay the applicable annual fee before that mailing may be accepted.

2. The provision in 23.3b for presentation of mailings at multiple offices is discontinued for all mailings presented under the applicable permit imprint.

* * * * *

707 Periodicals

* * * * *

2.0 Price Application and Computation

2.1 Price Application

* * * * *

2.1.2 Applying Outside-County Piece Prices

* * * Apply piece prices for Outside-County mail as follows:

* * * * *

c. Nonmachinable flats:

* * * * *

[Revise item 2.1.2c2 as follows:]

2. Apply the ''Nonmachinable Flats—Nonbarcoded'' prices to pieces that meet the standards for nonmachinable flats in 707.26 but do not include a barcode.

* * * * *

708 Technical Specifications

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

6.2.4 3-Digit Content Identifier Numbers

* * * * *

Exhibit 6.2.4 3-Digit Content Identifier Numbers

CLASS AND MAILING CIN HUMAN-READABLE CONTENT LINE

* * * * *

STANDARD MAIL

[Delete the following heading and the six rows beneath it in their entirety.]

STD Not Flat-Machinable Pieces Less Than 6 Ounces—Nonautomation

[Delete the following heading and the five rows beneath it in their entirety.]

STD Not Flat-Machinable Pieces 6 Ounces Or More—Nonautomation

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–27365 Filed 10–21–11; 8:45 am]

BILLING CODE 7710–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0223; FRL–9482–5]

RIN 2060–AO60

New Source Performance Standards (NSPS) Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The purpose of this advanced notice of proposed rulemaking (ANPRM) is to request public comment on a proposed approach the EPA has developed to carry out the statutorily required periodic evaluation of the new source performance standards (NSPS) program. Consistent with Executive

Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011, this proposed approach will provide a streamlined process to ensure that public and private resources are focused on the rules that provide the greatest public health protection and are most likely to warrant revision to include current technology and eliminate obsolete or unnecessary requirements. By demonstrating the continued efficacy of the standards, the agency will be able to fulfill its statutory requirement to review, and, if necessary, revise NSPS at a minimum of every 8 years. This ANPRM is part of the EPA's effort to meet these statutory obligations. The agency is seeking comment on the overall approach to managing the NSPS program, in particular the criteria used to determine that no review is needed for a subset of NSPS.

DATES: Comments must be received on or before November 23, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0223. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the NSPS Review Under CAA Section 111(b)(1)(B) ANPRM Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0223. The U.S. Environmental Protection Agency's (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. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Public Reading Room.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Godfrey, Policy and Strategies Group, Office of Air Quality Planning and Standards (D205–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–3391; *fax number:* (919) 541–4991; *e-mail address: godfrey.janice@epa.gov.*

SUPPLEMENTARY INFORMATION: Outline. The information in this ANPRM is organized as follows:

I. General Information
A. What should I consider as I prepare my comments for the EPA?
B. Where can I get a copy of this document and other related information?
II. Background Information
A. What is the NSPS program?
B. What is the status of the NSPS program?
C. What is the purpose of this ANPRM?
III. Developing an NSPS Evaluation Strategy
A. What are the goals of an evaluation strategy for the NSPS program?
B. Which NSPS do not need review?
C. NSPS Potentially in Need of a Review
IV. Request for Comment and Next Steps
V. Statutory and Executive Order Review

I. General Information

A. What should I consider as I prepare my comments for the EPA?

Please provide data and explanatory information in a format that is thorough and complete enough for use by the EPA to justify any modifications to the proposed approach. Do not submit CBI to the EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the 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.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this ANPRM will be available on the Worldwide Web through the Technology Transfer Network (TTN). The TTN provides information about various areas of air pollution control. Following signature, an electronic version of this document will be posted at *http://www.epa.gov/ttn/oarpg* under ''Recent Additions.''

The EPA has also created a technical support document (TSD) that provides supporting data and information for this ANPRM. The TSD will also be available in the docket and on the TTN at *http://www.epa.gov/ttn/oarpg* under ''Recent Additions.''

II. Background Information

A. What is the NSPS program?

Clean Air Act (CAA) section 111 requires the EPA Administrator to list categories of stationary sources if such sources cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA must then issue NSPS for such source categories. NSPS reflect the degree of emission limitation achievable through the application of the ''best system of emission reduction'' which the EPA determines has been adequately demonstrated. The EPA may consider certain costs and non-air quality health and environmental impacts and energy requirements when establishing NSPS. For a NAAQS pollutant or a Hazardous Air Pollutant (one listed under 112), only new or modified or reconstructed stationary sources are regulated. For other regulated pollutants, section 111(d) also requires states to set standards for existing sources.

Under section 111(b), the EPA has the authority to define the source categories, determine the pollutants for which standards should be developed, identify the facilities within each source category to be covered, and set the emission level of the standards. Air pollutants currently regulated through various CAA section 111(b) standards include particulate matter (PM, $PM_{2.5}$, PM_{10}), nitrogen oxides (NO_X), carbon monoxide (CO), lead (Pb), volatile organic compounds (VOC), sulfur dioxide (SO_2), sulfuric acid mist, fluorides, hydrogen sulfide, reduced sulfur compounds, total reduced sulfur, and landfill gas. CAA section 111(b)(1)(B) generally requires the EPA to ''at least every 8 years review and, if appropriate, revise'' NSPS. While conducting a review of existing NSPS, the EPA has also promulgated emission limits for pollutants not currently regulated for that source category and added additional affected facilities where appropriate. See, *e.g.*, 75 FR 54970 (Sept. 9, 2010),[1] 73 FR 35883 (June 24, 2009).[2] In addition, section 111(b)(1)(B) also states that the EPA need not conduct this review if the EPA determines that reviewing an NSPS ''is not appropriate in light of readily available information on the efficacy of such standard.''

In setting or revising NSPS, CAA section 111(a)(1) provides that NSPS are to ''reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' The format of NSPS can vary from source category to source category (and even from facility type to facility type within an NSPS) including a numerical emission limit, a design standard, an equipment standard, or a work practice standard. In determining the best system of emission reduction, we typically conduct a review that identifies what emission reduction systems exist and how much they reduce air pollution in practice. This allows the EPA to identify potential emission limits. We evaluate each system in conjunction with cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements. The resultant standard is usually a numerical emissions limit, expressed as a performance level (i.e., a rate-based standard or percent control). Although such standards are based on the effectiveness of one or more specific air pollution control systems, section 111(b)(5) provides that the EPA may not prescribe a particular technology that must be used to comply with an NSPS, except in instances where the Administrator determines it is not feasible to prescribe or enforce a standard of performance, as defined in section 111(h). Upon promulgation, NSPS become national standards to which all new, modified, or reconstructed sources must comply.

B. What is the status of the NSPS program?

Since December 23, 1971, the Administrator has promulgated over 70 NSPS. These standards can be found in the Code of Federal Regulations (CFR) at 40 CFR part 60. A list of all NSPS promulgated under the authority of CAA 111(b)(1)(B) is provided in Table 1, which includes the promulgation date of the original standards and information on the most recent activity. Not all **Federal Register** actions indicate a review of the standard. In many cases the most recent action includes only minor amendments. For example, on October 17, 2000, EPA made final minor amendments to numerous NSPS to include miscellaneous editorial changes and technical corrections to stationary testing and monitoring rules. See 65FR61768 through 65FR61792. Seventeen standards have been promulgated or revised within the last 8 years. In addition to those standards that are current within their review cycle, there are also multiple standards in different phases of the review process, including some standards that are in various stages of the litigation process.

[1] EPA promulgated emission limits for nitrogen oxides and sulfur dioxide to the NSPS for Portland Cement plants which had previously only regulated particulate matter emissions.

[2] In this rulemaking, EPA extended the coverage of the NSPS program to include additional affected facilities (*e.g.*, delayed coking units) at a petroleum refinery.

TABLE 1—LIST OF CAA § 111(b)(1)(B)NSPS [3]

NSPS	Subpart	Date of promulgation (FR citation)	Date of most recent action (FR citation) [4]
Ammonium Sulfate Manufacture	PP	11/12/1980 (45FR74846)	10/17/2000 [5] [6] (65FR61760)
Asphalt Concrete (Hot Mix Asphalt)	I	03/08/1974	02/14/1989 [4] (54FR6667)
Asphalt Processing and Roofing Manufacture	UU	08/06/1982 (47FR34147)	10/17/2000 [3] [4] (65FR61762)
Auto/Light Duty Truck Surface Coating	MM	12/24/1980 (45FR85410)	10/17/2000 [3] [4] (65FR61760)
Basic Oxygen Process Furnaces	N	03/08/1974 (39FR9318)	10/17/2000 [3] [4] (65FR61756)
Basic Process Steelmak- ing Facilities (Integrated Steel Plants)	Na	01/02/1986 (51FR161)	10/17/2000 [3] [4] (65FR61756)
Beverage Can Surface Coating	WW	08/25/1983 (48FR38728)	10/17/2000 [3] [4] (65FR61763)
Bulk Gasoline Terminals	XX	08/18/1983 (48FR37578)	12/19/2003 (68FR70965)
Calciners and Dryers in Mineral Industries	UUU	09/28/1992 (57FR44496)	10/17/2000 [3] [4] (65FR61778)
Coal Prep Plants	Y	01/15/1976 (41FR2234)	10/08/2009 (74FR51977)
Electric Utility Steam Generating Units [7]	Da	06/11/1979 (44FR33581)	01/28/2009 [4] (74FR5078)
Ferroalloy Production Facilities	Z	05/04/1976 (41FR18501)	10/17/2000 [3] [4] (65FR61758)
Flexible Vinyl/Urethane Coating and Printing	FFF	06/29/1984 (49FR26885)	10/17/2000 [3] [4] (65FR61768)
Fossil-Fuel Fired Steam Generators [4]	D	12/12/1971	01/28/2009 [3] [4] (74FR5078)
Glass Manufacturing	CC	10/07/1980 (45FR66742)	10/17/2000 [3] [4] (65FR61759)
Grain Elevators	DD	08/03/1978 (43FR34347)	10/17/2000 [3] [4] (65FR61759)
Graphic Arts Industry/Publi-cation Rotogravure Printing	QQ	11/08/1982 (47FR50644)	04/09/2004 [4] (69FR18803)
Industrial, Commercial, Institutional Steam Generating Units	Db	11/25/1986 (51FR42768)	01/28/2009 [4] (74FR5084)
Kraft Pulp Mills	BB	02/23/1978 (43FR7568)	09/21/2006 [4] (71FR55127)
Large Appliances Surface Coating	SS	10/27/1982 (47FR47778)	10/17/2000 [3] [4] (65FR61761)
Lead Acid Batteries	KK	04/16/1982 (47FR16564)	10/17/2000 [3] [4] (65FR61760)
Lime Manufacturing	HH	03/07/1978	10/17/2000 [3] [4] (65FR61760)
Magnetic Tape Coating Facilities	SSS	10/03/1988 (53FR38892)	02/12/1999 (64FR7467)
Metal Coil Surface Coating	TT	11/01/1982 (47FR49606)	10/17/2000 [3] [4] (65FR61761)
Metal Furniture Surface Coating	EE	10/29/1982 (47FR49278)	10/17/2000 [3] [4] (65FR61759)
Metallic Mineral Processing Plants	LL	02/21/1984 (49FR6458)	10/17/2000 [3] [4] (65FR61760)
Municipal Solid Waste Landfills	WWW	03/12/1996 (60FR9905)	09/21/2006 (71FR55127)
New Residential Wood Heaters	AAA	08/02/1985 (50FR31504)	10/17/2000 [3] [4] (65FR61764)
Nitric Acid Plants	G	12/23/1971	02/14/1989 [4] (54FR6666)
Nonmetallic Mineral Processing Plants	OOO	08/01/1985 (50FR31328)	04/28/2009 (74FR19309)
Onshore Natural Gas Processing Plants—Equipment Leaks	KKK	06/24/1985 (50FR26122)	10/17/2000 [3] [4] (65FR61773)
Onshore Natural Gas Processing: SO_2 Emissions	LLL	10/01/1985 (50FR40158)	10/17/2000 [3] [4] (65FR61773)
Petroleum Dry Cleaners	JJJ	09/21/1984 (49FR37331)	10/17/2000 [3] [4] (65FR61773)
Petroleum Refineries	J	03/08/1974 (39FR9308)	06/24/2008 (73FR35865)
Petroleum Refineries	Ja	06/24/2008 (73FR35867)	12/22/2008 [4] (73FR78552) (Stay)
Phosphate Fertilizers—Diammonium Phosphate Plants	V	08/06/1975 (40FR33155)	10/17/2000 [3] [4] (65FR61757)
Phosphate Fertilizers—Granular Triple Superphosphate Stor- age Facilities.	X	08/06/1975 (40FR33156)	10/17/2000 [3] [4] (65FR61757)
Phosphate Fertilizers—Superphosphoric Acid Plants	U	08/06/1975 (40FR33155)	10/17/2000 [3] [4] (65FR61757)
Phosphate Fertilizers—Triple Superphosphate Plants	W	08/06/1975 (40FR33156)	10/17/2000 [3] [4] (65FR61757)
Phosphate Fertilizers—Wet-Process Phosphoric Acid Plants	T	08/06/1975 (40FR33154)	10/17/2000 [3] [4] (65FR61757)
Phosphate Rock Plants	NN	04/16/1982 (47FR16589)	10/17/2000 [3] [4] (65FR61760)
Polymeric Coating of Supporting Substrates	VVV	09/11/1989 (54FR37551)	
Polymers Manufacturing Industry	DDD	12/11/1990 (55FR51035)	12/14/2000 (65FR78278)
Portland Cement	F	12/23/1971 (36FR24877)	08/09/2010 (75FR54970)
Pressure Sensitive Tape and Label Surface Coating Oper- ations.	RR	10/18/1983 (48FR48375)	10/17/2000 [3] [4] (65FR61761)
Primary Aluminum Reduction Plants	S	01/26/1976 (41FR3826)	10/17/2000 [3] [4] (65FR61757)
Primary Copper Smelters	P	01/15/1976 (41FR2338)	10/17/2000 [3] [4] (65FR61756)
Primary Lead Smelters	R	01/15/1976 (41FR2340)	02/14/1989 [4] (54FR6668)
Primary Zinc Smelters	Q	01/15/1976 (41FR2340)	02/14/1989 [4] (54FR6668)
Refineries: Equipment Leaks	GGG	05/30/1984 (49FR22606)	06/02/2008 [4] (73FR31376)
Refineries: Wastewater	QQQ	11/23/1988 (53FR47623)	10/17/2000 [3] [4] (65FR61778)
Rubber Tire Manufacturing	BBB	09/15/1987 (52FR34874)	10/17/2000 [3] [4] (65FR61765)
Secondary Brass and Bronze Production Plants	M	03/08/1974 (39FR9318)	10/17/2000 [3] [4] (65FR61756)
Secondary Lead Smelters	L	03/08/1974 (39FR9317)	10/17/2000 [3] [4] (65FR61756)
Small Industrial, Commercial, Institutional Steam Generating Units.	Dc	09/12/1990 (55FR37674)	01/28/2009 (74FR5091)
SOCMI Air Ox Unit Processes	III	06/29/1990 (55FR 26922)	12/14/2000 (65FR78278)
SOCMI Distillation	NNN	06/29/1990 (55FR 26942)	12/14/2000 (65FR78279)
SOCMI Equipment Leaks	VV	01/18/1983 (48FR48335)	06/02/2008 [4] (73FR31375) (Stay)
SOCMI Reactor Processes	RRR	08/31/1993 (58FR45962)	12/14/2000 (65FR78279)
Stationary Combustion Turbines	KKKK	06/06/2006 (71FR38497)	3/20/2009 [4] (74FR11858)
Stationary Compression Ignition Internal Combustion Engines	IIII	7/11/2006 (71FR39172)	06/08/2011 (75FR32612)
Stationary Gas Turbines	GG	09/10/1979 (44FR 52798)	02/24/2006 [4] (71FR9458)
Stationary Spark Ignition Internal Combustion Engines	JJJJ	01/18/2008 (73FR 3591)	06/08/2011 (75FR32612)
Steel Plants: Electric Arc Furnaces	AA	09/23/1975 (40FR43850)	02/22/2005 (70FR8532)
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels.	AAa	10/31/1984 (49FR43845)	02/22/2005 (70FR8533)
Sulfuric Acid Plants	H	12/23/1971 (36FR24877)	02/14/1989 (54FR6666)

TABLE 1—LIST OF CAA § 111(b)(1)(B)NSPS [3]—Continued

NSPS	Subpart	Date of promulgation (FR citation)	Date of most recent action (FR citation) [4]
Surface Coating of Plastic Parts for Business Machines	TTT	01/29/1988 (53FR2676)	10/17/2000 [3] [4] (65FR61778)
Synthetic Fibers	HHH	04/05/1984 (49FR13651)	10/17/2000 [3] [4] (65FR61768)
Volatile Organic Liquid Storage Vessels [8]	Ka	04/04/1980 (45FR23379)	12/14/2000 (65FR78275)
Volatile Organic Liquid Storage Vessels (incl. Petroleum Liquid Storage Vessels).	Kb	04/08/1987 (52FR11429)	10/15/2003 [4] (68FR 59333)
Wool Fiberglass Insulation Manufacturing Plants	PPP	02/25/1985 (50FR7699)	10/17/2000 [3] [4] (65FR61778)

C. What is the purpose of this ANPRM?

The purpose of this ANPRM is to request public comment on a strategy for focusing reviews of the NSPS so as to maximize the public health and welfare benefits while ensuring that the resources of stakeholders, state and local agencies, and the federal government are used most efficiently and effectively. As part of this strategy, we are proposing criteria that would be used to assess whether review of a particular NSPS is necessary during the review cycle. A listing of any NSPS for which we recommend not reviewing the standard based on these criteria (after considering comments to this ANPRM) will be published in the **Federal Register** for public comment. Subsequent to this ANPRM, all NSPS for which no review is warranted will be addressed with detailed technical information in a rulemaking proposal which will provide a further opportunity for public comment.

If, after review of the public comments, EPA determines there is sufficient evidence that a full review of a standard is warranted, EPA would withdraw its no review conclusion for that standard. Otherwise by having demonstrated the continued effectiveness of an NSPS, the agency will have fulfilled its statutory obligations under 111(b) with respect to the 8-year review requirement for that standard.

In addition to fulfilling the mandate in CAA section 111(b)(1)(B), this process is also responsive to Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued on January 18, 2011, which directs each federal agency to ''periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.'' The EPA's proposed approach will allow this process to be made more efficient, so that both public and private resources can be focused where it makes the most sense. This strategy will reduce the resource burden to the government and stakeholders by eliminating the need for costly and time consuming reviews of certain standards, which are not expected to result in any environmental benefits. By determining which NSPS are not in need of review, the agency can then focus its resources on the remaining NSPS that are in need of revision (or at least a closer review to determine if revision is needed). This ANPRM is seeking comment on this proposed process and on the appropriateness of the proposed criteria for making a finding that a current NSPS does not need review, and the application of those criteria in this evaluation of the NSPS program. Additionally, this ANPRM is seeking comment on pertinent factors for the prioritization of NSPS to be reviewed, and potentially revised.

III. Developing an NSPS Evaluation Strategy

A. What are the goals of an evaluation strategy for the NSPS program?

The primary goal of the NSPS strategy is to assist the agency in fulfilling our statutory obligations in a streamlined process that ensures both public and private resources are focused on the rules that provide the greatest improvement in air quality, health and welfare benefits and are most likely to warrant review and revision to include current technology and eliminate obsolete or unnecessary requirements. At the same time, this focus on NSPS where greatest emission reductions can be achieved promotes better use of resources for industry, government agencies, environmental organizations, and all other stakeholders and participants in the regulatory review process. Additionally, in some instances, sources remain well controlled through other CAA programs, such as the national emission standards for hazardous air pollutants (NESHAP), that have provided similar, if not more stringent, regulations than what would be required through the revision of existing NSPS or implementation of new NSPS. We are also aware that, in some instances, an evaluation of NSPS may show the current requirements of the standard continue to meet the statutory requirements, and no review is required.

To optimize the air quality, health and welfare benefits of the NSPS program, the EPA is proposing to prioritize NSPS reviews such that those NSPS likely to bring about greater benefits to public health and welfare through air quality improvements, including environmental justice considerations, are reviewed first. This prioritization is being done with consideration of multiple pollutants and processes, and synchronization of regulatory efforts as the primary driver, allowing the EPA to seek opportunities for increased air quality, health and welfare benefits, and greater administrative efficiency.

B. Which NSPS do not need review?

1. What is the EPA's authority in determining whether to review NSPS?

As described previously, CAA section 111(b) (1) (B) requires the agency to review and, if appropriate, revise NSPS ''at least every 8 years''. Section 111(b) (1) (B) also gives the EPA authority to determine that reviewing an NSPS ''is not appropriate in light of readily available information on the efficacy of

[3] Table only includes NSPS promulgated under the authority of CAA § 111(b) (1) (B), and does not include standards promulgated under the authority of CAA § 129 or § 111(d).

[4] ''Date of Most Recent Action'' refers to the most recently dated **Federal Register** action affecting the referenced Subpart as referenced in the electronic Code of Federal Regulations (*http://www.gpoaccess.gov/cfr/*).

[5] On October 17, 2000 (65FR61743), EPA made editorial and technical changes to test method and continuous emission modeling system (CEMS) performance specification requirements for Part 60 and other regulations. This included organizational changes and the promulgation of Performance Specification 15, for Fourier Transform Infrared (FTIR) CEMS.

[6] Action was only minor amendment and not a full review of the standard.

[7] Subpart D was superseded by subpart Da and, thus, will not be reviewed or revised as all subpart D units that modify or reconstruct would be subject to subpart Da.

[8] Subpart K was superseded by subpart Ka and, thus, will not be reviewed or revised as all subpart K units that modify or reconstruct would be subject to subpart Ka.

such standard.'' In most instances, the EPA has met the requirement of this section solely through formal review and revision (when deemed appropriate) of standards.

We note that the majority of NSPS will be reviewed and considered for revision, as there are likely potential process improvements and technology advances that would alter the best system of emission reduction. In addition, a regular evaluation gives the EPA and the public the opportunity to consider whether requirements of a particular NSPS are outmoded or no longer necessary. However, there are some NSPS where currently available information indicates that there are no potential gains to public health and welfare from a review of the NSPS. When the continued efficacy of a standard is demonstrated, the agency believes that using its authority to not devote resources to a rulemaking in these cases should also be considered as an option. All NSPS, including those that we determined do not need review, will be subject to continual evaluation cycles, at least every 8 years. This ANPRM presents three independent criteria that the agency believes can be used to demonstrate that review of NSPS would not provide emission reductions and associated air quality, health and welfare benefits.

2. What are the criteria we believe are appropriate for determining the continued efficacy of NSPS?

We have identified three criteria that we have determined are appropriate to determine that review of existing NSPS would not result in any health and welfare benefits, and, thus, should not be reviewed in the current review cycle. For this programmatic evaluation, we believe that in most cases NSPS that meet any one of these criteria do not need to be reviewed. However, several possible conditions exist where a review might be appropriate, even if one or more of the criteria described above are met. For instance, if there are emissions units not addressed by the existing NSPS, or if there has been stakeholder interest (*e.g.,* environmental justice concerns) in updating an NSPS, then additional deliberation would be necessary before a decision not to review NSPS could be made.

The first criterion focuses on the existence of updated or new control technology, which is used to inform a decision on the potential improvement in air quality or health and welfare benefits. We address the criterion with the following questions: Have there been advances in control technologies, process operations, design or efficiency improvements, or other factors that would lead to selection of a more stringent best system of emission reduction? Are there available controls for pollutants or emission sources that were previously uncontrolled? If available information on control technology indicates that review of the standard would not result in more stringent emission limits or no greater level of control, and would not provide improvements in air quality and health and welfare benefits, such standard would be listed as a potential candidate for no review.

There are certain source categories for which the information available from national databases (*e.g.,* the National Emissions Inventory), publicly available data, the EPA's interaction with stakeholders from industries, environmental organizations, state, local, and Tribal governments on other rulemakings provides a strong technical basis to assess the availability and economic feasibility of employing new control technologies, or design or efficiency improvements that could result in a revised best system of emission reduction determination. As an example, information developed under the CAA section 112 air toxics program provides a significant amount of information on control technologies and pollution control measures for stationary sources.

We specifically request comment on this criterion and the level of certainty required in making a finding that no review is needed based upon an evaluation of readily available information that indicates no greater level of control would be expected at the conclusion of an evaluation under this criterion.

The second criterion considers whether we anticipate any new, modified, or reconstructed sources within a source category, which would trigger applicability under the NSPS in question over the next 8 years. The predicted growth rate of an industry is used as an indicator of satisfying this criterion to the extent that no new, modified, or reconstructed sources are anticipated over the next 8 years. It is possible to have a predicted negative growth rate, and still trigger NSPS applicability through modification or construction of new sources at a rate less than the closure rate of existing facilities. Some of the source categories covered by the NSPS represent very mature industries for which there is currently no growth, and this trend has existed for numerous years. For example, industries that rely on metal and mineral raw materials have tended to move out of the country to be closer to the sources of the raw materials. Copper mines in the U.S. have closed while new mines have opened in South America where there is greater access to raw materials. In other industries there have historically been multiple processes used to make some products, but cost, efficiency, and other forces have reduced the variety of processes in use. The result of these trends may be that NSPS address emission sources which are no longer in use, technology is outdated, and which likely will not be used in the future. Some other source categories include industries whose primary product has been superseded by a substitute product which serves the same purpose, but is produced using an entirely different process (*e.g.,* optical storage media as a substitute for magnetic tape) and as a result there are no expected new facilities or modifications of existing facilities. If this criterion were met, the rule would remain in effect for the remainder of the review cycle in the event that sources no longer in operation were to begin operation again.

The agency is requesting comment on the appropriateness of this second criterion. Specifically, we request comment on the level of certainty required in making a finding that no review is needed based on the expectation that no new sources are to be constructed, reconstructed or modified in the source category within the current 8 year review cycle.

The third criterion that may support a finding that review is not necessary is the existence of other regulatory programs that are applicable to the same pollutants (either directly or as surrogates) and emission sources as the NSPS, such that a revision of the NSPS would result in best system of emission reduction requirements that are no more stringent than another applicable CAA requirement. When evaluating a standard by this criterion, we will also ensure that no inconsistencies or conflicts exist with these other rules. The intent of this criterion is to avoid reviewing NSPS to adopt more stringent emission limitations that are already being achieved by another regulation, and, thus, providing no or limited actual additional health and welfare benefit while redirecting resources from revision of standards where there are potential significant emission decreases.

For example, the air toxics program implemented under CAA section 112(d) includes standards for major sources of toxic air pollutants based on Maximum Achievable Control Technology (MACT). Although the CAA section 112(d) program regulates air toxics, rules under the program sometimes

regulate the air toxics through the use of surrogates, such as criteria pollutants (PM and VOC). Section 112 establishes a minimum baseline or ''MACT floor'' for standards, which, for existing sources in categories or subcategories with 30 or more sources, is based on the average emission limitation achieved by the best performing 12 percent of existing sources. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best controlled similar sources, as determined by the Administrator (CAA section 112(d)(3)). The MACT floors form the least stringent regulatory option the EPA may consider in the determination of MACT standards under section 112(d) for a source category. The EPA must also determine whether to control emissions ''beyond-the-floor,'' after considering the costs, non-air quality health and environmental impacts, and energy requirements of such more stringent control (CAA section 112(d) (2)).

MACT for new sources is the most stringent level of control identified under CAA section 112(d). Therefore, where the EPA regulated air toxics through regulation of criteria pollutants as surrogates for the toxic pollutant(s), it would be expected in most cases that the level of the MACT standard would reflect a level that would meet or exceed the best system of emission reduction when the same pollutants are covered. Therefore, where the MACT and NSPS have comparable applicability (*e.g.,* covers the same emission sources and effectively controls the same pollutants), the MACT would in many cases accomplish emissions reductions that would be equivalent to or greater than those achieved by a revised NSPS. In such cases, even if new facilities are constructed, the MACT would serve to achieve the level of control that would otherwise be achieved through updating the NSPS through the review process. Under CAA section 112(d) (6), the MACT standards are also subject to technology reviews every 8 years.

Another potential consideration for applying this criterion is the potential interaction with other CAA programs such as Best Available Control Technology (BACT) requirements for New Source Review (NSR). The CAA and corresponding implementing regulations require that a permitting authority conduct a BACT analysis on a case-by-case basis, and the permitting authority must evaluate the amount of emissions reductions that each available emissions-reducing technology or technique would achieve, as well as the energy, environmental, economic and other costs associated with each technology or technique. Based on this assessment, the permitting authority must establish a numeric emissions limitation that reflects the maximum degree of reduction achievable for each pollutant subject to BACT through the application of the selected technology or technique. BACT requirements must be at least as stringent as the best system of emission reduction set by the NSPS.

The agency is requesting comment on the appropriateness of this third criterion. Although we are taking the position that this criterion is sufficient to make a finding that no review is needed, we solicit comment on whether interaction with other CAA requirements would make source categories meeting this criterion more appropriate for a streamlined review that incorporates the level of control achieved by the MACT into the NSPS, rather than a no review determination. We also solicit comment on how interaction with the CAA's NSR programs (including the BACT, offset and netting regulations) should be accounted for in developing and implementing this criterion.

In addition to the three detailed criteria, several possible conditions exist where a review might be appropriate, even if one or more of the criteria described above are met. For instance, if there are emissions units not addressed by the existing NSPS, or if there has been stakeholder interest (*e.g.,* environmental justice concerns) in updating an NSPS, then additional deliberation would be necessary before a decision not to review NSPS could be made. In addition, if there are pollutants that are not currently regulated by an NSPS, but which the agency believes should be, we would likely take the opportunity to review the existing standards to see if they should be updated at the same time. If the NSPS is outdated, or could be made less burdensome without lessening the public health protection it provides, or conflicts with another applicable requirement, review might well be appropriate. These conditions have been considered in addition to a standard's ability to meet one or more of the three criteria as the agency developed the NSPS evaluation. In instances where one of the above conditions indicated the need for further consideration, those NSPS would be recommended to undergo a traditional review, with subsequent potential revision.

In addition to taking comment on the general approach described in this ANPRM, we also request comment on the following: (1) Are the three criteria appropriate for determining whether NSPS should be reviewed, (2) are there additional criteria that should be used to make a finding that NSPS remains efficacious and, therefore, review of the standard is not needed, and (3) are there different criteria that should be used. In judging the appropriateness of criteria, commenters should also consider Executive Order 13563, which calls for periodic review of regulations ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

3. How many NSPS are potentially not in need of review?

Of the NSPS requiring periodic review, the majority of NSPS would be subject to review and potential revision, and would not meet the criteria for establishing no review as defined in this document. However, using the criteria outlined in this ANPRM, the agency has identified a limited number of NSPS as potential candidates to not undergo review. These NSPS are listed in Table 2 along with the applicable criteria.

TABLE 2—NSPS POTENTIALLY MEETING CRITERIA TO NOT BE REVIEWED BASED ON CAA 111(B)(1)(B) AUTHORITY

Subpart	NSPS	No review criteria		
		Level of control in current standard remains appropriate	No expected applicability of NSPS (No new/modified/reconstructed sources)	Equivalent/more stringent requirements in other CAA actions
P	Primary Copper Smelters	X	X	X
Q	Primary Zinc Smelters	X	X	X
T	Phosphate Fertilizers—Wet-Process Phosphoric Acid Plants			X

TABLE 2—NSPS POTENTIALLY MEETING CRITERIA TO NOT BE REVIEWED BASED ON CAA 111(B)(1)(B) AUTHORITY—Continued

Subpart	NSPS	No review criteria		
		Level of control in current standard remains appropriate	No expected applicability of NSPS (No new/modified/reconstructed sources)	Equivalent/more stringent requirements in other CAA actions
U	Phosphate Fertilizers—Super Phosphoric Acid Plants			X
V	Phosphate Fertilizers—Diammonium Phosphate Plants			X
W	Phosphate Fertilizers—Triple Superphosphate Plants		X	X
X	Phosphate Fertilizers—Granular Triple Superphosphate Storage Facilities.		X	X
EE	Metal Furniture Surface Coating		X	
MM	Auto/Light Duty Truck Surface Coating			X
NN	Phosphate Rock Plants	X	X	
QQ	Graphic Arts Industry/Publication Rotogravure Printing			X
BBB	Rubber Tire Manufacturing			X
HHH	Synthetic Fibers	X		
SSS	Magnetic Tape Coating Facilities		X	

We are requesting comment on the list of NSPS provided in Table 2 as potentially not in need of review. Specifically, we are soliciting comment on the appropriateness of NSPS not undergoing review based on the criteria indicated in Table 2. We are also soliciting comment on any additional NSPS that should be considered as potentially not in need of review based on the criteria provided in this document. For example, the following three NSPS may meet the third criterion that revision of the NSPS would result in best system of emission reduction requirements that are no more stringent than another applicable CAA requirement (i.e., NESHAP). However, a more detailed assessment would be necessary to ensure that the emission points covered by the other regulatory programs are comparable to those covered by the NSPS:

- Large Appliances Surface Coating, Subpart SS
- Flexible Vinyl/Urethane Coating and Printing, Subpart FFF
- Surface Coating of Plastic Parts for Business Machines, Subpart TTT

EPA is soliciting comments as to the extent to which the NESHAP sufficiently covers the above NSPS categories.

4. What are examples of how the no review criteria would be applied to NSPS categories?

Evaluation of NSPS categories for which no review is recommended may be influenced by comments received regarding the criteria as discussed in this document. However, we present as examples three NSPS categories that meet one or more of the criteria for which we believe, based on a preliminary evaluation, review of the standards is not necessary. These three categories are described below, along with a brief description of the reasons for their selection. A more detailed description of these three examples, including the rationale for recommending no review, is provided in the TSD. All NSPS for which no review is recommended, including the three examples presented in this ANPRM, will be presented, with detailed technical supporting documentation, in a proposal following this ANPRM and will have further and full opportunity for public comment.

a. Primary Zinc Smelters NSPS Example

Primary Zinc Smelters is a source category for which currently available information indicates that there is no need at this time for review of the NSPS (40 CFR 60 subpart Q). Following an evaluation of the currently available technologies (i.e., double-absorption on sulfuric acid plant), we believe that a revised standard would not result in a more stringent level of control because no new control technologies, or design or efficiency improvements exist that would result in more stringent requirements.[9] We do not find the current requirements of the rule to be outmoded or unnecessarily burdensome. We also do not expect any applicability of the standard over the next 8 years as no new, modified, or reconstructed facilities subject to the NSPS are expected, due to changes in the types of processes typically used (i.e., there have been no new facilities since 1974, and only one facility remains in operation). Furthermore, this category meets the criterion presented in this document that another CAA requirement would apply to any new, modified, or reconstructed facility with provisions that are effectively as stringent as what would likely be considered the best system of emission reduction under NSPS review. Specifically, in complying with the NESHAP (40 CFR part 63, subpart GGGGGG), the source must use control technologies that provide equal or more stringent SO_2, PM, and opacity requirements than would result from revisions to the NSPS for both roaster and sinter processes. The agency believes that the Primary Zinc Smelters NSPS (subpart Q) meets all three of the criteria to not review a standard as described in this document. Therefore, the current standard would remain in effect until the next review cycle.

b. Magnetic Tape Production Operations NSPS Example

The second example of an NSPS category for which currently available information indicates that there is no need at this time for review of the NSPS is Magnetic Tape Production Operations (40 CFR 60 subpart SSS), consisting of coating and mixing operations at affected facilities. The agency concluded this because this industry has been in continual decline for over 20 years. As a result, there is no growth anticipated in the industry over the next 8 years, and there are no anticipated new sources, reconstructions, or modifications that would trigger NSPS

[9] The criterion that no new control technology exists that would result in more stringent requirements can be met when there is no new technology in existence at all or when there is no new technology that provides more effective controls. In the case of Primary Zinc smelters both conditions are met.

applicability. Consumer preferences and technology have changed such that the primary product of this industry has been superseded by a substitute product(s) which serves the same purpose, but is produced using an entirely different process (i.e., optical storage media). On this basis, we believe that there would be no emission reductions and associated air quality and health and welfare benefits in reviewing the best system of emission reduction for the magnetic tape production operations NSPS category. The new process for manufacturing optical storage media (*e.g.,* compact disks) is assessed under the NESHAP for Surface Coating of Plastic Parts and Products (40 CFR part 63 subpart PPPP). Therefore, the current rule would remain in effect for the remainder of the review cycle. In subsequent NSPS reviews, the EPA would consider whether rescinding the rule permanently is an appropriate action in accordance with E.O. 13563.

c. Graphic Arts Industry/Publication Rotogravure Printing NSPS Example

The third example of an NSPS category for which currently available information indicates that there is no need at this time for review of the applicable NSPS is Graphic Arts Industry/Publication Rotogravure Printing (40 CFR part 60 subpart QQ). In accordance with criterion 3, the NESHAP (40 CFR subpart KK) for Printing and Publishing is significantly more stringent than the NSPS under subpart QQ. The NESHAP recently went through the EPA's Risk and Technology Review (RTR) process and no additional technology standards were adopted pursuant to CAA section 112(d)(6). Only two new facilities have been built in the past 15 years since the NESHAP was promulgated in 1996. Both of these facilities placed their presses in permanent total enclosures using carbon absorbers to achieve very efficient solvent recovery. As part of the EPA's RTR, it was determined that no new advancements in practices, processes or control technologies beyond those in place at the two new facilities were identified. The BACT level control at the two new facilities is representative of current industry practice and is state of the art technology, and a revised best system of emission reduction for the solvent recovery practice listed in the NSPS would not be more stringent. Under criterion 2, there has been almost no growth in the industry in the past decade. The number of publication rotogravure printing facilities has declined from 27 to under 20 in the last 10 years. Only two facilities have been built in the last 15 years. No new facilities are anticipated during the next 8 year review cycle. Therefore, we do not expect applicability of the NSPS in the foreseeable future. Therefore, we believe no additional emission reductions would be achieved from a revision to the current standard. Thus the agency believes that the Publication Rotogravure Printing NSPS (subpart QQ) meets the criteria to not review as described in this document.

Detailed evaluations of the Primary Zinc Smelters source category, the Magnetic Tape Production Operations source category, and the Graphic Arts Industry/Publication Rotogravure Printing source category can be found in the TSD. Following comment on this ANPRM, more detailed analyses will be completed for other NSPS that meet one or more of the criteria listed in this document. The EPA is seeking comment on the appropriateness of the application of the proposed criteria as shown in these three examples. We are also seeking comment on any additional independent criteria that could be used in making a determination to not review NSPS.

C. NSPS Potentially in Need of Review

After identifying those NSPS that do not currently need review, the focus of the NSPS strategy will be on reviewing, and potentially revising, those remaining standards as required by the statute. This will be done through prioritization of NSPS based on multi-pollutant and sector-based [10] approaches. The benefits of multi-pollutant and sector-based analyses and approaches include the ability to identify optimal strategies that consider feasibility, costs, and benefits across multiple pollutant types—criteria, toxics, and others.

We intend to prioritize NSPS in need of a review based on a number of different criteria. Possible prioritization criteria would include the types and magnitude of emissions, population exposure, trends in industry growth, advances in control measures and technologies, level and accuracy of monitoring required by the existing standards, expected NSPS applicability, ability to synchronize NSPS review with other CAA requirements (*e.g.,* RTR under CAA sections 112(f) and 112(d)(6)), and availability of relevant information.

[10] A sector-based approach is based on integrated assessments that consider multiple pollutants in a comprehensive and coordinated manner to manage emissions and CAA requirements. (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; August, 2010.)

IV. Request for Comment and Next Steps

As described throughout this ANPRM, the EPA is soliciting comments to develop an evaluation plan for the NSPS program. We also encourage readers to submit other comments and supporting data that could help us further improve NSPS review strategies. To ensure a well balanced response and develop the best possible product, we encourage the submittal of both comments offering suggestions and changes and those supporting the strategies included in this ANPRM.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this is a ''significant regulatory action'' because we expected this action to raise novel legal or policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations will be documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for the agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemakings do not apply in this case. Should the EPA subsequently determine to pursue a rulemaking, the EPA will address the statutes and Executive Orders as applicable to that rulemaking.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 18, 2011.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. 2011–27441 Filed 10–21–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110803468–1612–01]

RIN 0648–BB33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 18

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 18 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). If implemented, this rule would remove species from the FMP; modify the framework procedures; establish two migratory groups for cobia; establish annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) for king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 would set allocations for Atlantic cobia and establish control rules for king mackerel, Spanish mackerel, and cobia. The intent of this rule is to specify ACLs for species not undergoing overfishing while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: Written comments must be received on or before November 21, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0202'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: http://www.regulations.gov, click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0202'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0202'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of documents supporting this proposed rule, which include a draft environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/MackerelHomepage.htm.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery in the Gulf of Mexico (Gulf) and the Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The 2006 revisions to the Magnuson-Stevens Act require that by 2011, for fisheries determined by the Secretary of Commerce (Secretary) to not be subject to overfishing, ACLs and AMs must be established at a level that prevents overfishing and helps to achieve OY. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Currently two migratory groups of king mackerel and Spanish mackerel are established, Gulf migratory group and Atlantic migratory group. The Gulf Council determines management measures for the Gulf migratory groups and the South Atlantic Council determines management measures for the Atlantic migratory groups.

Management Measures Contained in This Proposed Rule

This rule would remove four species from the FMP; modify the framework procedures; establish two migratory groups for cobia; establish ACLs, ACTs, and AMs for each migratory group of king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 would set allocations for Atlantic cobia and establish control rules for king mackerel, Spanish mackerel, and cobia.

Removal of Species From the FMP

Species currently in the FMP include king mackerel, Spanish mackerel, cobia, cero, little tunny, dolphin, and bluefish (Gulf only). Dolphin in the Atlantic are managed under a different FMP, and bluefish in the Atlantic are managed by the Mid-Atlantic Council. At present, only king mackerel, Spanish mackerel, and cobia have associated regulatory text; the other species are in the FMP for data collection purposes only.

This rule would remove cero, little tunny, dolphin, and bluefish from the FMP. The Councils and NMFS have determined that these species are not in need of Federal management at this time. Although these species are targeted in some areas, landings are relatively low. In addition, the Councils have never managed cero, little tunny, dolphin, or bluefish under the FMP. The species were originally included in the FMP ''for data collection purposes,'' but data collection on any species can be required of fishermen and dealers that hold Federal permits, regardless of the presence of that species in an FMP. At this time, the Southeast Fisheries Science Center has no plans to remove any species from their data collection programs. If landings or effort change for any of these species and the Councils determine management at the Federal level is needed, these species could be added back into the FMP at a later date.

Cobia Migratory Groups

Although there is mixing of cobia from the Gulf and the Atlantic, the preponderance of scientific data indicate that there are at least two separate migratory groups, if not two separate stocks in the Gulf and Atlantic. These two groups have separate seasonal migrations and distinct life history parameters. The Councils have determined they should manage these groups separately within their individual areas of jurisdiction. This

rule would establish two migratory groups for cobia, a Gulf migratory group and an Atlantic migratory group. The boundary would be the line of demarcation between the Gulf EEZ and the South Atlantic EEZ. ACLs and AMs would be established separately for each group by the responsible Council. However, this rule would not change the current possession limit of two cobia per person per day for either commercial or recreational fishermen.

ACLs and AMs

In 2006, the Magnuson-Stevens Act was re-authorized and included a number of changes to improve the conservation of managed fishery resources. Included in these changes are requirements that fishery management councils establish both a mechanism for specifying ACLs at a level such that overfishing does not occur in a fishery and AMs to mitigate any overages that may occur. Guidance also requires fishery management councils to establish a control rule to determine allowable biological catch (ABC).

The Councils accepted ABC control rules for Gulf migratory groups of king mackerel, Spanish mackerel, and cobia, and for the Atlantic migratory group of cobia, based on the control rule recommended by the Gulf Council's Scientific and Statistical Committee (SSC). They accepted ABC control rules for Atlantic migratory group king mackerel and Spanish mackerel based on the control rule recommended by the South Atlantic Council's SSC. For all species, this rule proposes ACLs equal to the ABC. For purposes of tracking the ACL, for king and Spanish mackerel, landings will be evaluated based on the commercial fishing year. Recreational landings for all Atlantic species will be evaluated based on a moving multi-year average of landings, as described in the FMP.

Gulf Migratory Group King Mackerel

For Gulf migratory group king mackerel this rule proposes separate ACLs and AMs for the commercial and recreational sectors based on sector allocations.

The commercial sector would close by zone, subzone, or gear type when the commercial quota for the applicable zone, subzone, or gear type is reached or is projected to be reached. In addition, current trip limit adjustments would remain in place. When the commercial sector closes, harvest and possession of king mackerel for the applicable zone, subzone, or gear type would be prohibited for persons aboard a vessel for which a commercial permit for king mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of king mackerel would be limited to the applicable bag limit. Also, sale and purchase of king mackerel from the closed zone, subzone, or gear type would be prohibited, including king mackerel taken under the bag or possession limits.

For the recreational sector, the Regional Administrator would have the authority to revert the bag and possession limit to zero if the recreational allocation (recreational ACL) is reached or projected to be reached. This bag and possession limit would also apply on board a vessel for which a valid charter vessel/headboat permit has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

Atlantic Migratory Group King Mackerel

For Atlantic migratory group king mackerel, this rule proposes separate ACLs for the commercial and recreational sectors based on sector allocations. This rule also proposes a stock ACL and an ACT for the recreational sector.

The commercial sector would close when the commercial ACL is reached or projected to be reached. When the commercial sector closes, harvest and possession of king mackerel would be prohibited for persons aboard a vessel for which a commercial permit for king mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of king mackerel would be limited to the applicable bag limit. Also, sale and purchase of king mackerel would be prohibited, including king mackerel taken under the bag or possession limits, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector, if the stock ACL is exceeded in any year, the bag limit would be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year.

A payback would be assessed if Atlantic migratory group king mackerel are determined to be overfished and the stock ACL is exceeded. The payback would include a reduction in the sector ACL for the following year, by the amount of the overage by that sector in the prior fishing year. Atlantic migratory group king mackerel are not considered overfished at this time.

Gulf Migratory Group Spanish Mackerel

For Gulf migratory group Spanish mackerel, this rule proposes stock ACLs and AMs. Both the commercial and recreational sectors would close when the stock ACL is reached or projected to be reached. Harvest, possession, sale, and purchase of Spanish mackerel would be prohibited, without regard to where such species were harvested, *i.e.* in state or Federal waters.

Atlantic Migratory Group Spanish Mackerel

For Atlantic migratory group Spanish mackerel, this rule proposes separate ACLs for the commercial and recreational sectors based on sector allocations. This rule also proposes an ACT for the recreational sector.

The commercial sector would close when the commercial quota is reached or projected to be reached. In addition, current trip limit adjustments would remain in place. When the commercial sector closes, harvest and possession of Spanish mackerel would be prohibited for persons aboard a vessel for which a commercial permit for Spanish mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of Spanish mackerel would be limited to the applicable bag limit. Also, sale and purchase of Spanish mackerel would be prohibited, including Spanish mackerel taken under the bag or possession limits, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector, if the stock ACL is exceeded in any year, the bag limit would be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year.

A payback would be assessed if the Atlantic migratory group Spanish mackerel are determined to be overfished and the stock ACL is exceeded. The payback would include a reduction in the sector ACL, for the following year by the amount of the overage by that sector in the prior fishing year. Atlantic migratory group Spanish mackerel are not considered overfished at this time.

Gulf Migratory Group Cobia

For Gulf migratory group cobia, this rule proposes stock ACLs and AMs. A stock ACT is proposed that is 90 percent

of the ACL. Both the commercial and recreational sectors would close when the stock ACT is reached or projected to be reached. Harvest, possession, sale, and purchase of cobia would be prohibited, without regard to where such species were harvested, *i.e.* in state or Federal waters.

Atlantic Migratory Group Cobia

For Atlantic migratory group cobia, this rule proposes separate ACLs for the commercial and recreational sectors based on sector allocations. Because sector allocations do not currently exist for cobia, Amendment 18 proposes an allocation of 8 percent of the ACL for the commercial sector and 92 percent of the ACL for the recreational sector, based on landings. This rule also proposes an ACT for the recreational sector.

The commercial sector would close when the commercial ACL is reached or projected to be reached. Sale and purchase of cobia would be prohibited, including cobia taken under the possession limit, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector, if the stock ACL is exceeded in any year, the fishing season would be reduced the following year by the amount necessary to ensure that recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year.

A payback would be assessed if Atlantic migratory group cobia are determined to be overfished and the stock ACL is exceeded. The payback would include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year. Atlantic migratory group cobia are not considered overfished at this time.

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Councils have added the ability to adjust ACLs and AMs, and establish and adjust target catch levels, including ACTs, to the current framework procedures. These adjustments or additions may be accomplished through a regulatory amendment which is less time-intensive than an FMP amendment. By including ACLs, AMs, and ACTs in the framework procedures, the Councils and NMFS would have the flexibility to more promptly alter those harvest parameters as new scientific information becomes available. The proposed addition of other management options into the framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 18, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this rule. The IRFA describes the economic impact this rule, if adopted, would have on small entities. A description of the rule, why it is being considered, the objectives of, and legal basis for this rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This rule would affect all fishing in the EEZ that is managed under the FMP for Coastal Migratory Pelagic Resources in the Gulf and Atlantic. This includes the EEZ in the Gulf and South Atlantic, as well as the EEZ in the Mid-Atlantic for king mackerel, Spanish mackerel, and cobia. For purposes of fishery management, Atlantic and Gulf migratory groups have been designated for each of the mackerels, and, under this rule, cobia.

This rule would be expected to apply to 1,000 to 2,000 commercial fishing vessels and as many as 2,500 vessels that have Federal permits to engage in for-hire fishing for coastal migratory pelagic species. The commercial fishing vessels that would be expected to be affected by this rule are estimated to average $28,000 to $46,000 (2008 dollars) in gross revenue per vessel for those fishing for king and Spanish mackerel, and $16,000 to $277,000 for vessels harvesting other CMP species (the lower value is for vessels harvesting cero while the upper value is for vessels harvesting dolphin; this range encompasses the vessels harvesting all the remaining CMP species). The for-hire vessels expected to be affected by this rule are mostly charter boats, which charge by the trip, often with six or fewer anglers (paying passengers), and a smaller number of head boats, which charge for each individual angler (only 15 percent of all of the CMP for-hire vessels can carry more than six anglers). Including revenue from all activities, charter boats are estimated to average approximately $88,000 (2008 dollars) in gross revenue per year, while the headboat average is $461,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in commercial finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. A for-hire business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

All of the actions in this rule that would be jointly applicable to the Gulf and Atlantic migratory groups would be administrative in nature or allow status quo harvest behavior. As a result, none of these actions would be expected to result in any direct economic impacts on small entities.

With the exception of the AMs for the Gulf migratory groups of king mackerel, Spanish mackerel, and cobia, the actions in this rule applicable to the Gulf migratory groups are either administrative or allow status quo harvests and fishing behavior. As a result, these actions would not be expected to result in any direct economic impacts on small entities. The proposed AMs for each species would be expected to result in unquantifiable short-term reductions in economic benefits associated with the implementation of harvest restrictions necessary to correct for harvest overages, should such overages be forecast or occur. These impacts cannot be quantified at this time because the overages, and necessary corrections, cannot be forecast. However, any harvest corrections, and associated reduction in short-term economic

benefits, would be expected to preserve the long-term biological goals, and long-term economic benefits, associated with the harvest of these stocks.

Because the majority of the actions in this rule applicable to the Atlantic migratory groups are either administrative or allow status quo harvests and fishing behavior, only minimal economic effects would be expected to occur. Only the Spanish mackerel ACL and AMs for king mackerel, Spanish mackerel, and cobia, if implemented, would be expected to result in adverse economic impacts. The specification of the Spanish mackerel ACL would be expected to result in a reduction in ex-vessel revenue to commercial fishermen due to a reduction in the allowable commercial harvest and the AM requirement that harvest, possession, and sale of Spanish mackerel be prohibited when the commercial quota is met. The economic activity associated with this reduction in revenue is an estimated 17 harvester and 10 dealer/processor full-time equivalent jobs. The relative effect of this estimated reduction per small entity is unknown. For the 2004/2005 through 2008/2009 fishing years, an average of 349 vessels recorded Atlantic migratory group Spanish mackerel harvests in the Southeast Federal logbook program. These vessels averaged approximately $28,000 in ex-vessel revenue per vessel per year from all species recorded in the logbook. If divided among these vessels, the estimated reduction in ex-revenue for Spanish mackerel alone (approximately $680,000) would equate to a reduction in average vessel gross revenue of approximately 7 percent. These results do not include any reduction in gross revenue for other species if trips do not occur (are cancelled) as a result of a prohibition on Spanish mackerel commercial harvest. Total vessel Federal logbook-recorded landings of Spanish mackerel accounted for approximately 57 percent (approximately 2.03 million lb (0.9 million kg) of the total Atlantic migratory group Spanish mackerel harvest during this period (approximately 3.57 million lb (1.62 million kg). A significant portion of the difference between these harvest totals may be attributed to harvest in Florida waters where Federal permits and logbooks are not required for Spanish mackerel. The average annual revenue profile of the vessels that harvested the remaining portion of the species is unknown. As a result, the total relative effect of the projected reduction in ex-vessel revenue on the profit of small entity commercial vessels is not known.

Three alternatives, including 13 options or sub-options, were considered for the action to modify the fishery management unit (FMU). The proposed action, which incorporates 7 of the 13 options and sub-options, would remove cero, little tunny, and dolphin from the FMP for both the Gulf and South Atlantic regions, and remove bluefish from the FMP for the Gulf region. The no-action alternative, which would retain the four subject species in the FMP for data-collection purposes only, was not adopted because it would not satisfy the Magnuson-Stevens Act guidelines, which do not allow species to be retained in an FMU for data collection purposes only. The third alternative would add the four species to the FMU and set ACLs and AMs for each, following the stated geographic designations. This alternative was not adopted because the Councils determined that these species no longer require Federal management in the respective regions. The proposed action would not be expected to result in any direct economic impact on small entities.

Five alternatives, including three options, were considered for the action to modify the framework procedures. The no-action alternative would not change the framework procedures and was not adopted because it is not consistent with current assessment and management methods. The remaining alternatives were not adopted either because they would have been more restrictive in the items that could be changed through framework procedures, or because they would have given the Councils and NMFS either too much or too little authority to change management outside of the plan amendment process. The proposed action is administrative in nature and would not be expected to result in any direct economic impact on small entities.

Three alternatives were considered for the action to establish separate Atlantic and Gulf migratory groups of cobia. The proposed action would separate cobia into two groups at the Gulf and South Atlantic jurisdictional boundary. The no-action alternative would not split cobia into two migratory groups, and was not adopted because the Councils determined that sufficient information exists to demonstrate that there are at least two different migratory groups and regional management is appropriate. The other alternative to the proposed action would split the two migratory groups at the Miami-Dade/Monroe County line, and was not adopted because it would not best meet the Councils' goals and objectives for the FMP. The proposed action is administrative in nature and would not be expected to result in any direct economic impact on small entities.

Four alternatives were considered for the action to set the ACL for Gulf migratory group cobia. The proposed action would establish a single stock ACL and set the ACL equal to the ABC. The no-action alternative was not adopted because it would not establish an ACL, as required by the Magnuson-Stevens Act. Another alternative would also set the total ACL equal to the ABC, but would specify sector ACLs. This alternative was not adopted because both sectors are currently managed under the same harvest restrictions and sector separation would not be expected to be beneficial at this time. The remaining alternatives and associated options would establish a buffer between the ACL and ABC and result in lower stock or sector ACLs. These alternatives and options were not adopted because the Councils elected to establish a buffer to the ABC for this species through the ACT rather than the ACL.

Three alternatives, including four options, were considered for the action to set the ACT for Gulf migratory group cobia. The proposed action would specify a single stock ACT and set the ACT equal to 90 percent of the ACL. The no-action alternative would not establish an ACT, but would be an acceptable action because an ACT is not required. This alternative was not adopted because the Councils determined that a buffer between the ABC and allowable harvest was appropriate for this stock and the adoption of the no-action alternative would be inconsistent with the Councils' decision to establish this buffer through the ACT instead of the ACL. The other options were not adopted because they would establish sector ACTs, which would be inconsistent with the Councils' decision to establish a single stock ACL, and/or they would specify a lower stock ACT than the proposed action, and thereby establish a larger buffer than is expected to be necessary for this stock.

Three alternatives, including seven options (options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group cobia. The proposed action would set an in-season AM and prohibit harvest for the remainder of the fishing year from the date the ACT is reached or is projected to be reached. AMs for the commercial harvest of this stock do not currently exist under the status quo. As a result, the no-action alternative

was not adopted because it would not establish AMs that account for the harvest from all sectors, as required by the Magnuson-Stevens Act. Two options to the proposed action would also establish in-season AMs but would trigger the AMs when 90 percent of the ACT is reached or projected to be reached. Both options would reduce the possession limit to one fish per person per day, but only one option would prohibit possession of cobia and only then if the ACL is reached and not the ACT. These options were not adopted because the option that would just reduce the possession limit would provide insufficient assurance that the ACL would not be exceeded, while data monitoring issues would likely render the other option inoperable. The remaining alternative and associated four options to the proposed action would establish post-season AMs, each varying in method (overage payback, reduction in possession limit, reduced season) or period of assessment (the overage assessment would be based on multi-year averages). These options were not adopted because the Councils determined that in-season assessment would be more effective in ensuring the ACL is not exceeded. The proposed action would not be expected to result in any direct economic impact on small entities because the proposed ACT (1.31 million lb (0.59 million kg)) exceeds the estimated status-quo harvest (1.07 million lb (0.49 million kg)) for Gulf migratory group cobia.

Five alternatives, including 12 options, were considered for the action to set the ACL for Gulf migratory group king mackerel. The proposed action would set the aggregate (stock) ACL equal to the ABC, and set sector ACLs using current allocation percentages. The no-action alternative would set the stock ACL equal to the current total allowable catch (TAC), and was not adopted because the TAC is less than the ABC and, as a result, this action would have resulted in less economic benefits than the proposed action. The remaining three alternatives to the proposed action would set the stock ACL at 80–90 percent of ABC, and were not adopted because each would have allowed lower harvest, and associated economic benefits, than the proposed action, and the Councils have determined that the condition of this stock and level of management uncertainty does not require a buffer between the ACL and ABC. It is noted that the proposed stock ACL would be expected to allow continued average annual harvest. As a result, the proposed action would not be expected to result in any direct economic impacts on small entities.

Three alternatives, including 7 options or sub-options (options and sub-options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group king mackerel. The proposed action, the no-action alternative, would not set new AMs for this stock. The alternatives, and associated options or sub-options, to the proposed action can be divided into two general categories; alternatives that would change the current in-season AMs (two options), and alternatives that would set post-season AMs (two options encompassing five sub-options). None of these options or sub-options were adopted because the Councils determined that current regulations provide sufficient AMs for the recreational and commercial sectors. The proposed action is not expected to have a direct economic impact on small entities.

Four alternatives, including nine options, were considered for the action to set the ACL for Gulf migratory group Spanish mackerel. The proposed action would set the aggregate ACL equal to the ABC and establish a stock ACL encompassing harvest by both sectors. The no-action alternative would maintain an ACL equal to the current TAC for Gulf migratory group Spanish mackerel. This action was not adopted because the ACL cannot exceed the ABC and the status quo TAC is greater than the proposed ABC. Compared with the proposed action, some options would establish sector ACLs. These options were not adopted because the Councils determined the establishment of sector ACLs would unnecessarily restrict catch and not allow the achievement of optimum yield. The remaining two alternatives, encompassing six options, would specify a single, stock ACL as a portion of ABC (80 percent or 90 percent of ABC, rather than 100 percent). These alternatives and options would have resulted in reductions in economic benefits relative to the proposed action and were not adopted because the Councils determined that a buffer between the ACL and ABC was not needed for this stock.

Three alternatives, including six options or sub-options (options and sub-options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group Spanish mackerel. The proposed action would establish in-season AMs that would allow harvest to be prohibited if the stock ACL is reached or projected to be reached. The no-action alternative would maintain current AMs for Gulf migratory group Spanish mackerel and was not adopted because the current AMs are implemented by sector and are inconsistent with the proposed action to establish a stock ACL. One option to the proposed action would establish in-season AMs that implement a commercial trip limit and reduced recreational bag limits if the stock ACL is reached or projected to be reached. This option was not adopted because it would require multiple in-season actions and may result in a lower certainty that the ACL not be exceeded compared to the proposed action because harvest would not be prohibited. The remaining alternative and associated options would establish post-season AMs. These options were not adopted because they would be expected to impose an increased and unnecessary burden on fishermen and the administration. The proposed action is not expected to have an economic impact on small entities because the proposed stock ACL (5.15 million lb (2.34 million kg)) is greater than the 5-year average (3.63 million lb (1.65 million kg)) or 10-year average (3.95 million lb (1.79 million kg) landings.

Five alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group king mackerel. The proposed action would set the ACL and OY equal to the ABC, with the ABC set equal to the average of the current South Atlantic Council's SSC's ABC recommendations for the 2011–2013 seasons. This would result in an ACL of 10.46 million lb (4.75 million kg). The no-action alternative was not adopted because it would not have resulted in as concise a rule for setting the ACL and OY and would have resulted in a lower ACL, 10.0 million lb (4.54 million kg), than the proposed action. Two alternatives to the proposed action would have also set the ACL and OY equal to the ABC but with the ABC equal to, alternatively, the lowest and highest SSC recommended ABCs for 2011–2013. These alternatives were not adopted because they were determined to be, alternatively, excessively or insufficiently conservative compared to the proposed action. The final alternative to the proposed action, which included five options, would have set the ACL and OY equal to a percentage of the ABC, varying from 65–90 percent. These options were not adopted because the Councils determined that the status and management certainty of the king

mackerel stock did not require a buffer between the ACL or OY and the ABC.

Four alternatives were considered for the action to set the recreational sector ACT for Atlantic migratory group king mackerel. The proposed action for this sector would set the ACT based on the uncertainty associated with the estimate of the ACL and would result in a recreational sector ACT of 6.11 million lb (2.77 million kg), which would be less than the proposed recreational sector ACL, but greater than current average annual harvests. As a result, no reduction in current recreational harvest or associated economic benefits or impacts on small entities would be expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock is sufficient to require a buffer between allowable harvest and the ACL. The two remaining alternatives to the proposed action would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because they would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL than the proposed action. As applied to the proposed estimate of the ACL, each of these alternatives would also result in a lower recreational harvest, and reduced economic benefits, than the proposed action.

Four alternatives, including ten options, were considered for the action to set AMs for Atlantic migratory group king mackerel. The proposed action includes seven of the options spread over three alternatives. The proposed action would continue in-season quota monitoring and closure if the commercial sector ACL is met or projected to be met, as occurs under the status quo. In addition, the proposed action would adopt post-season adjustments. These adjustments include post-season reductions in bag limits for the recreational sector based on moving multi-year average harvests, to assure that the recreational sector ACL is not exceeded. Post-season bag limits would only be reduced if the stock ACL (both sectors) is exceeded. Post-season overage payback would be required for both sectors, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current quota monitoring for the commercial sector, and closure when appropriate; it also includes authority under the framework procedures for the Regional Administrator (RA) to implement several actions, including reduction of the recreational bag limit to zero, if the recreational allocation has been met or is projected to be met. This alternative was not adopted because it would not have been as flexible as the proposed action in factoring in the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. One option to the proposed action would have reduced the length of the subsequent recreational fishing season instead of a reduction in the bag limit in the event of a recreational overage. This alternative was not adopted because allowing the sector to continue harvest all year under a reduced bag limit, as would be allowed under the proposed action, would be expected to result in more economic benefits than a closed season. The remaining options to the proposed action would have imposed sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Three alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group Spanish mackerel. The proposed action would set the ACL and OY equal to the ABC. The no-action alternative was not adopted because it would not have resulted in as concise a procedure as the proposed action to determine the ACL based on the ABC, and the resultant ACL would exceed the proposed ABC, which would be inconsistent with the Magnuson-Stevens Act National Standard 1 guidelines (74 FR 3178, January 16, 2009). The third alternative to the proposed action, which included five options, would have set the ACL equal to a percentage of the ABC, varying from 75–95 percent. These options were not adopted because they would be inconsistent with the Councils' determination that specification of a buffer for this stock could be adequately accomplished through the proposed ACT.

Four alternatives were considered for the action to set a recreational sector ACT for Atlantic migratory group Spanish mackerel. The proposed action would be based on the uncertainty associated with the estimate of the sector ACL and would result in a recreational sector ACT of 2.32 million lb (1.05 million kg), which would be less than the proposed recreational sector ACL, but greater than current average annual harvests. As a result, no reduction in current harvest or associated economic benefits or impacts on small entities in the recreational sector would be expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Council determined that the management uncertainty associated with the recreational harvest of this stock requires a buffer between allowable harvest and the ACL. The two remaining alternatives to the proposed action would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because they would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL than the proposed action. As applied to the proposed estimate of the ACL, each of these alternatives would also result in a lower recreational harvest and reduced economic benefits than the proposed action.

Four alternatives, including nine options, were considered to set AMs for Atlantic migratory group Spanish mackerel. The proposed action includes six of the options spread over three alternatives. The proposed action would implement enhanced quota monitoring for the commercial sector, should in-season closure be necessary, and would adopt post-season adjustments for the recreational sector based on moving multi-year average harvests, including a reduction in the bag limit to assure that the sector ACL is not exceeded, if the stock ACL is exceeded. The proposed action would also require sector overage payback, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current quota monitoring and staged trip limits for the commercial sector in place of sector closure. It also includes authority under the framework procedures for the RA to implement several actions, including reduction of the recreational bag limit to zero, if the recreational allocation has been met or is projected to be met. This alternative was not adopted because it would not have been as flexible as the proposed action in factoring in the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. This alternative was also not adopted because it would not provide for in-season closure for the commercial sector. In the event of a sector overage, one option to the proposed action would have reduced the length of the subsequent recreational fishing season (no reduction in the bag limit) to assure that the sector ACL is not exceeded. This option was not adopted because it

would result in lower economic benefits than the proposed action. The remaining two options to the proposed action would have imposed sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Three alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group cobia. The proposed action would set the ACL and OY equal to the ABC. The no-action alternative was not adopted because it would not set the ACL or OY, as required by the Magnuson-Stevens Act guidelines. The third alternative to the proposed action, which included five options, would have set the ACL and OY equal to a percentage of the ABC, varying from 75–95 percent. These options were not adopted because they would be inconsistent with the Councils' determination that specification of a buffer for this stock could be adequately accomplished through the proposed ACT.

Four alternatives were considered for the action to set a recreational sector ACT for Atlantic migratory group cobia. The proposed action for the recreational sector would set the ACT based on the uncertainty associated with the estimate of the ACL and would result in a recreational sector ACT of 1,184,688 lb (537,365 kg), which would be less than the proposed sector ACL but equal to current average annual harvests. As a result, no reduction in current recreational harvest or associated economic benefits or impacts on small entities would be expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock requires a buffer between allowable harvest and the sector ACL. The two remaining alternatives to the proposed action would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because they would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL than the proposed action.

Five alternatives, including seven options, were considered for the action to set AMs for Atlantic migratory group cobia. The proposed action includes five of the options spread over three alternatives and would: Implement in-season quota monitoring for the commercial sector; adopt post-season adjustments for the recreational sector based on moving multi-year average harvests, including a reduction in the season length to assure that the sector ACL is not exceeded if the stock ACL is exceeded; and require sector overage payback, where appropriate, but only if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current authority to revert the recreational and commercial possession limit to zero if the sectors have met or are projected to meet their allocation. This alternative was not adopted because it would not be as flexible as the proposed action in factoring the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. One alternative to the proposed action would explicitly prohibit the purchase and sale of cobia if the commercial quota is met or projected to be met, though this would be functionally equivalent to the status quo as a zero possession limit would preclude purchase or sale. This alternative would not establish additional AMs for the recreational sector, resulting in current recreational AMs remaining in effect. Thus, this alternative would be functionally equivalent to the status quo. Nevertheless, this alternative was not adopted because it, like the no-action alternative, would not be as flexible as the proposed action in factoring the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. The remaining options to the proposed action would have imposed sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Additional actions and alternatives were considered in the amendment but are not included in this rule because they would either establish management reference points or the proposed action would not result in any regulatory change. These actions and alternatives are discussed in the following paragraphs.

Three alternatives were considered for the action to establish an ABC control rule for Gulf migratory group cobia. The proposed action would determine the appropriate level of risk and/or buffer to set between the overfishing limit (OFL) and ABC based on a tiered approach that considers new information available on the stock and identified through updated stock assessments. The no-action alternative was not adopted because it would not establish an ABC control rule, as recommended by the Magnuson-Stevens Act guidelines. The second alternative to the proposed action was not adopted because it would establish an ABC control rule that sets the ABC using a static definition which would not allow for changes in the level of risk based on updated stock assessments and, therefore, would not be as flexible as the proposed action.

Three alternatives were considered for the action to establish an ABC control rule for Gulf migratory king mackerel. The proposed action would determine the appropriate level of risk and/or buffer to set between the OFL and ABC based on a tiered approach that would consider new information available on the stock and identified through updated stock assessments. The no-action alternative was not adopted because it would not establish an ABC control rule, as recommended by the Magnuson-Stevens Act guidelines. The second alternative to the proposed action was not adopted because it would establish an ABC control rule that sets the ABC using a static definition which would not allow for changes in the level of risk based on updated stock assessments and, therefore, would not be as flexible as the proposed action.

Three alternatives were considered for the action to set an ACT for Gulf migratory group king mackerel. The proposed action, the no-action alternative, would not set an aggregate ACT. The remaining alternatives and associated options would all set the aggregate ACT equal to a portion of the ACL, varying from 85–90 percent, with or without sector ACTs. These alternatives and options were not adopted because each would have allowed lower harvest, and associated economic benefits, than the proposed action and the Councils determined that the condition of this stock and level of management uncertainty did not require a buffer between the ACT and ACL. Four options would have set ACTs that would not be consistent with the Councils' decision to set ACLs in accordance with current allocation percentages.

Three alternatives were considered for the action to establish an ABC control rule for Gulf migratory group Spanish mackerel. The proposed action would determine the appropriate level of risk and/or buffer to set between the OFL and ABC based on a tiered approach that considers new information available on the stock and identified through updated stock assessments. The no-action alternative was not adopted because it would not establish an ABC control rule, as recommended by the

Magnuson-Stevens Act guidelines. The second alternative to the proposed action was not adopted because it would establish an ABC control rule that sets the ABC using a static definition which would not allow for changes in the level of risk based on updated stock assessments and, therefore, would not be as flexible as the proposed action.

Four alternatives, including six options, were considered for the action to set an ACT for Gulf migratory group Spanish mackerel. The proposed action, the no-action alternative, would not set an ACT for Gulf migratory group Spanish mackerel. The alternatives to the proposed action, and associated options, would implement a stock ACT lower than the ACL and result in lower harvest, and associated economic benefits, than the proposed action. These alternatives and options were not adopted because the Councils determined that a buffer between the ACT and ACL was not needed for this stock. Some options would have set ACTs that are not consistent the Councils' decision to specify a single (stock) ACL.

Four alternatives, including three options, were considered for the action to establish an ABC control rule for Atlantic migratory group king mackerel. The proposed action would determine the appropriate level of risk and/or buffer to set between the OFL and ABC based on a tiered approach that considers new information available on the stock and identified through updated stock assessments. The no-action alternative was not adopted because it would not establish an ABC control rule, as recommended by the Magnuson-Stevens Act guidelines. The remaining alternatives and associated options to the proposed action were not adopted because they would establish an ABC control rule that sets the ABC using a static definition which would not allow for changes in the level of risk based on updated stock assessments and, therefore, would not be as flexible as the proposed action.

Three alternatives were considered for the action to set the commercial sector ACT for Atlantic migratory group king mackerel. The no-action alternative is the proposed action for this sector and would not set a commercial sector ACT for Atlantic migratory group king mackerel. Two alternatives to this proposed action would set ACTs that establish a buffer between the commercial sector ACT and the commercial sector ACL, resulting in lower allowable harvest and reduced economic benefits than the proposed action. Neither of these two alternatives was adopted because the Councils determined that management uncertainty for this sector of this stock does not require a harvest buffer between the ACT and ACL.

Two alternatives were considered for the action to establish an ABC control rule for Atlantic migratory group Spanish mackerel. The proposed action would determine the appropriate level of risk and/or buffer to set between the OFL and ABC based on a tiered approach that considers new information available on the stock and identified through updated stock assessments. The no-action alternative was not adopted because it would not establish an ABC control rule, as recommended by the Magnuson-Stevens Act guidelines.

Three alternatives were considered for the action to set a commercial sector ACT for Atlantic migratory group Spanish mackerel. The no-action alternative is the proposed action for this sector and would not set a commercial sector ACT for Atlantic migratory group Spanish mackerel. Under this proposed action, commercial sector harvest would be limited to the ACL, which is less than the current harvest and would be expected to result in a reduction in short-term economic benefits under the proposed AMs. Two alternatives to the proposed action would set ACTs that establish a buffer between the commercial sector ACT and the commercial sector ACL, resulting in an allowable harvest that is further below the current harvest than the proposed action and would be expected to result in a greater reduction in harvests and associated economic benefits than the proposed action. Neither of these alternatives was adopted because the Councils determined that management uncertainty for this sector of this stock does not require a harvest buffer between the ACT and ACL.

Five alternatives were considered for the action to change the management measures for the Atlantic migratory group Spanish mackerel. The proposed action, the no-action alternative, would not make any changes in the management measures for this stock. The four alternatives to the proposed action would have increased the restrictions on recreational harvests through reduced bag limits and/or vessel limits. These alternatives were not adopted because current harvest would not need to be reduced under the proposed allowable recreational harvest for this stock. As a result, increased restrictions on recreational harvest would be expected to unnecessarily reduce economic benefits to fishery participants and associated businesses.

Five alternatives, including three options, were considered for the action to establish an ABC control rule for Atlantic migratory group cobia. The proposed action would adopt the Gulf Council's SSC-recommended ABC control rule, which is essentially the same as the South Atlantic Council's SSC-recommended control rule. This action would determine the appropriate level of risk and/or buffer to set between the OFL and ABC based on a tiered approach that considers new information available on the stock, as identified through updated stock assessments. As applied to this stock, this approach would set the ABC equal to the mean plus 1.5 times the standard deviation of the most recent 10 years of landings data. The no-action alternative was not adopted because it would not establish an ABC control rule, as recommended by the Magnuson-Stevens Act guidelines. The remaining two alternatives and associated options to the proposed action were not adopted because they would establish an ABC control rule that sets the ABC using a static definition which would not allow for changes in the level of risk based on updated stock assessments and, therefore, would not be as flexible as the proposed action. Additionally, application of the rule specified by these alternatives and options would require an estimate of the OFL, which is considered unknown by the SSC.

Three alternatives were considered for the action to define sector allocations for Atlantic migratory group cobia. The proposed action would define allocations based on weighted averages of 2000–2008 and 2006–2008 harvest data. The no-action alternative would not define sector allocations and was not adopted because it would not be consistent with the proposed actions to establish sector ACLs, ACTs (recreational sector only), and AMs. The second alternative to the proposed action would only use 2006–2008 data to determine the allocations and was not adopted because of the potential that this specification may not contain adequate consideration of historic landings. This alternative and the proposed action would result in identical allocations.

Three alternatives were considered for the action to set a commercial sector ACT for Atlantic migratory group cobia. The no-action alternative is the proposed action for this sector and would not set a commercial sector ACT for Atlantic migratory group cobia. Two alternatives to this proposed action would set ACTs that establish a buffer

between the commercial sector ACT and the commercial sector ACL, resulting in lower allowable harvest and reduced economic benefits. Neither of these alternatives was adopted because the Councils determined that management uncertainty for this sector of this stock does not require a harvest buffer between the ACT and ACL.

Six alternatives were considered for the action to change the management measures for the Atlantic migratory group cobia. The proposed action, the no-action alternative, would not make any changes in the management measures for this stock. The five alternatives, and associated options, to the proposed action would have increased restrictions on either commercial or recreational harvests through reduced possession limits per trip, person, or day. These alternatives were not adopted because current harvest would not need to be reduced under the proposed allowable sector harvests for this stock. As a result, increased restrictions on harvest would be expected to unnecessarily reduce economic benefits to fishery participants and associated businesses.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 18, 2011.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

§ 622.1 [Amended]

2. In § 622.1, in Table 1, remove footnotes 2 and 3 and redesignate footnotes 4 through 6 as footnotes 2 through 4.

3. In § 622.2, the definitions for ''coastal migratory pelagic fish'', ''dolphin'', and ''migratory group'' are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Coastal migratory pelagic fish means a whole fish, or a part thereof, of one or more of the following species:

(1) Cobia, *Rachycentron canadum.*

(2) King mackerel, *Scomberomorus cavalla.*

(3) Spanish mackerel, *Scomberomorus maculatus.*

* * * * *

Dolphin means a whole fish, or a part thereof, of the species *Coryphaena equiselis* or *C. hippurus.*

* * * * *

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

(3) *Cobia.* The boundary separating the Gulf and Atlantic migratory groups of cobia is the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

* * * * *

4. In § 622.4, revise the first sentence of paragraph (a)(2)(iv) to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. * * *

* * * * *

5. In § 622.41, remove paragraph (c)(1)(vi) and redesignate paragraph (c)(1)(vii) as paragraph (c)(1)(vi); revise paragraph (c)(1)(v) and newly redesignated paragraph (c)(1)(vi) to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cobia in the Gulf EEZ—all gear except drift gillnet and long gillnet.

* * * * *

6. In § 622.42, revise paragraph (c) to read as follows:

§ 622.42 Quotas.

* * * * *

(c) *Coastal migratory pelagic fish.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). Cobia quotas apply to persons who fish for cobia and sell their catch. A fish is counted against the quota for the area where it is caught.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group.* For the 2012 to 2013 fishing year, the quota for the Gulf migratory group of king mackerel is 3.808 million lb (1.728 million kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone.* The eastern zone is divided into subzones with quotas as follows:

(*1*) *Florida east coast subzone.* For the 2012 to 2013 fishing year, the quota is 1,215,228 lb (551,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg).

(*2*) *Florida west coast subzone.* (*i*) *Southern.* For the 2012 to 2013 fishing year, the quota is 1,215,228, (515,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg), which is further divided into a quota for vessels fishing with hook-and-line and a quota for vessels fishing with run-around gillnets. For the 2012 to 2013 fishing year, the hook-and-line quota is 607,614 lb (275,609 kg) and the run-around gillnet quota is 607,614 lb (275,609 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the hook-and-line quota is 551,448 lb (250,133 kg) and the run-around gillnet quota is 551,448 lb (250,133 kg).

(*ii*) *Northern.* For the 2012 to 2013 fishing year, the quota is 197,064 lb

(89,387 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 178,848 lb (81,124 kg).

(*3*) Description of Florida subzones. From November 1 through March 31, the Florida east coast subzone is that part of the eastern zone south of 29°25′ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary) and north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary). From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4′ N. lat., north to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 25°48′ N. lat. (a line directly west from the Monroe/Collier County, FL, boundary). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. north and west to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary) year round.

(B) *Western zone.* For the 2012 to 2013 fishing year, the quota is 1,180,480 lb (535,457 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,071,360 lb (485,961 kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group.* [Reserved]

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.13 million lb (1.42 million kg).

(3) *Migratory groups of cobia*—(i) *Gulf migratory group.* [Reserved]

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of cobia is 125,712 lb (57,022 kg).

* * * * *

7. In § 622.43, revise the heading of paragraph (a), add a sentence at the end of the introductory paragraph in paragraph (a), revise the heading of paragraph (a)(3), remove the introductory paragraph in paragraph (a)(3), revise paragraph (a)(3)(iii), revise paragraph (b)(1), and revise paragraph (c) to read as follows:

§ 622.43 Closures.

* * * * *

(a) *Quota closures.* * * * (See § 622.49 for closure provisions when an ACL is reached or projected to be reached).

(3) *Coastal migratory pelagic fish.*

* * * * *

(iii) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, subzone, or gear type, is prohibited, including any king or Spanish mackerel taken under the bag limits, or cobia taken under the limited-harvest species possession limit specified in § 622.32(c)(1).

* * * * *

(b) * * *

(1) The prohibition on sale/purchase during a closure for Gulf reef fish, coastal migratory pelagic fish, royal red shrimp, or specified snapper-grouper species in paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

(c) *Reopening.* When a sector has been closed based on a projection of the quota specified in § 622.42, or the ACL specified in § 622.49, being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the quota or ACL to be harvested.

8. In § 622.48, revise paragraph (c) to read as follows:

§ 622.48 Adjustment to management measures.

* * * * *

(c) *Coastal migratory pelagic fish.* For a species or species group: reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

* * * * *

9. In § 622.49, revise the section heading and add paragraph (c) to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(c) *Coastal migratory pelagic fish*—(1) *Gulf migratory group king mackerel*—(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(c)(1)(i) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 8.092 million lb (3.670 million kg), the AA will file a notification with the Office of the Federal Register to implement a bag and possession limit for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary. This bag and possession limit would also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in State or Federal waters.

(iii) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year, July 1 through June 1.

(2) *Atlantic migratory group king mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(1)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (c)(2)(i)(A), if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(2)(iii) of this section, and Atlantic migratory group king mackerel

are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector.* (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational annual catch target (ACT), but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 6.11 million lb (2.77 million kg). The recreational ACL is 6.58 million lb (2.99 million lb)

(B) In addition to the measures specified in paragraph (c)(2)(ii)(A), if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

(3) *Gulf migratory group Spanish mackerel*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in paragraph (c)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group Spanish mackerel is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in State or Federal waters.

(ii) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, April through March.

(iii) The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

(4) *Atlantic migratory group Spanish mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(2)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (c)(4)(i)(A), if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(4)(iii) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector.* (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(4)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 2.32 million lb (1.05 million kg). The recreational ACL is 2.56 million lb (1.16 million kg).

(B) In addition to the measures specified in paragraph (c)(4)(ii)(A), if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(4)(iii) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL and ACT, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group Spanish mackerel is 5.69 million lb (2.58 million kg).

(5) *Gulf migratory group cobia*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACT, as specified in paragraph (c)(5)(ii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This bag and possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(ii) The stock ACT for Gulf migratory group cobia is 1.31 million lb (0.59 million kg). The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg).

(6) *Atlantic migratory group cobia*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(3)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (c)(6)(i)(A), if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota (commercial ACL) for that following year by the amount of any

commercial sector overage in the prior fishing year.

(ii) *Recreational sector.* (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(6)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational harvest achieves but does not exceed the intended harvest level. The recreational ACT is 1,184,688 lb (537,365 kg). The recreational ACL is 1,445,687 (655,753 kg).

(B) In addition to the measures specified in paragraph (c)(6)(ii)(A), if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (c)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group cobia is 1,571,399 lb (712,775 kg).

[FR Doc. 2011–27348 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BB29

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Correction

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

ACTION: Stock status determinations; Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS); request for comments; correction.

SUMMARY: This document corrects an October 7, 2011, notice that announced the stock status of several Atlantic shark stocks and announced NMFS' intent to amend the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) via the rulemaking process to rebuild these shark stocks and end overfishing, as necessary. The notice provided an incorrect date for a scoping meeting held in Galloway, NJ. This document provides the correct date. The address and time for the scoping meeting remain the same. Although the meeting already occurred, it is important that the date be accurate for HMS' records.

DATES: The correct date for the Galloway, NJ, scoping meeting is Tuesday, October 11, 2011.

ADDRESSES: The scoping meeting was held at the Dolce Seaview Resort at 401 South New York Road, Galloway, New Jersey 08205.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Peter Cooper at (301) 427–8503, or Jackie Wilson at (240) 338–3936.

SUPPLEMENTARY INFORMATION:

Background

NMFS announced the stock status of sandbar, dusky, and Atlantic and Gulf of Mexico blacknose shark stocks in a **Federal Register** notice on October 7, 2011 (76 FR 62331). The notice also announced NMFS' intent to undertake rulemaking to rebuild and/or end overfishing of these Atlantic shark stocks and to prepare an Environmental Impact Statement (EIS) to assess the potential effects on the human and natural environment resulting from this rulemaking. The notice also announced that NMFS is in the scoping phase of the rulemaking process and notified the public of five public scoping meetings and one conference call to provide the opportunity for public comment on potential shark management measures. Further details regarding the public scoping meetings are provided in the October 7, 2011, notice and are not repeated here.

Need for Correction

In the original **Federal Register** notice, the date for the Galloway, NJ, public scoping meeting contains an error and is in need of correction.

Correction

Accordingly, in the October 7, 2011 (76 FR 62331) notice (Doc. 2011–26021)—on page 62334, in Table 2, column 1, row 1—the date ''October 12, 2011'' is corrected to read as follows:

''October 11, 2011.''

Dated: October 19, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27476 Filed 10–21–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 101206604–1620–01]

RIN 0648–BA55

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 16 to the Salmon Fishery Management Plan

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

ACTION: Proposed rule; request for comments; notice of availability of a draft environmental assessment.

SUMMARY: NMFS proposes regulations to implement Amendment 16 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). Amendment 16, which was transmitted by the Pacific Fishery Management Council (Council) on September 12, 2011, to the Secretary of Commerce (Secretary) for review and approval, brings the Salmon FMP into compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as reauthorized in 2006, and the corresponding revised National Standard 1 Guidelines (NS1Gs) to end and prevent overfishing. This document also announces the availability for public review and comment of a draft environmental assessment (EA) analyzing the environmental impacts of implementing Amendment 16.

DATES: Written comments on this proposed rule must be received on or before November 18, 2011.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0227, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit

comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0227 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.
- *Fax:* 206–526–6736 Attn: Peggy Mundy, or 562–980–4047 Attn: Jennifer Isé.

Instructions: Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will 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 PDF file formats only.

Information relevant to this proposed rule, which includes a draft environmental assessment (Draft EA), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280, and are posted on its Web site (*http://www.pcouncil.org*). These documents are also linked on the NMFS Northwest Region Web site (*http://www.nwr.noaa.gov*). Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323, or Jennifer Isé at 562–980–4046.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to include new requirements for annual catch limits (ACLs), accountability measures (AMs), and other provisions regarding preventing and ending overfishing and rebuilding fisheries. On January 16, 2009, NMFS published a final rule (74 FR 3178) amending the National Standard 1 Guidelines (NS1Gs) to implement these new requirements. In response, the Pacific Fishery Management Council (Council) convened an ad hoc Salmon Amendment Committee to develop alternatives for Amendment 16 to the FMP to address these new requirements. In June 2011, the Council adopted Amendment 16. The Council transmitted the amendment to NMFS on September 12, 2011. NMFS published a Notice of Availability in the **Federal Register** (76 FR 57945, September 19, 2011) to notify the public of the availability of the amendment and invite comments. Concurrently with developing Amendment 16, alternatives were analyzed in a Draft EA.

This proposed rule identifies changes to the regulations under 50 CFR 660 subpart H to implement Amendment 16. The Council has deemed the proposed regulations to be necessary and appropriate as required by section 303(c) of the MSA. This document also announces the availability of the Draft EA for public review and comment. Key Components of Amendment 16.

Stock Classification

Stocks ''in the fishery.'' Stocks in need of conservation and management measures in Council-area fisheries would be classified as ''in the fishery'' under Amendment 16. Target stocks in Council-area fisheries are hatchery stocks and productive natural stocks with ocean distributions primarily within the Council area. Non-target salmon stocks include stocks listed under the Endangered Species Act (ESA) or depressed natural stocks. Under Amendment 16, all salmon stocks currently included in the FMP would be considered to be in the fishery except for Canadian Chinook, coho and pink stocks, and mid-Columbia River spring Chinook salmon. The Canadian stocks would be removed because they are managed under the Pacific Salmon Treaty, and their status is assessed by the Canadian government. The mid-Columbia River spring Chinook salmon would be removed because Council area fisheries have negligible impacts on the stock, and therefore they are not in need of conservation and management measures in fisheries under Council authority. Two stocks would be added to the FMP: Oregon coastal hatchery coho and Willapa Bay natural coho. Smith River Chinook salmon would also be identified as a separate stock from other ESA listed California Coastal Chinook stocks.

Stock Complexes. Stock complexes are groups of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impacts of management actions on the stocks are similar. Stock complexes may be formed to facilitate management requirements such as setting ACLs, or determining stock status. Three Chinook stock complexes would be specified in Amendment 16 for the purposes of specifying ACLs and AMs: Central Valley Fall (CVF), Southern Oregon Northern California (SONC), and far-north migrating coastal (FNMC). The status of stocks in these complexes would be assessed individually.

Internationally managed stocks. Amendment 16 identifies the FNMC Chinook complex; Washington coastal and Puget Sound coho; and Puget Sound pink salmon as exempt from the ACL and AM requirements in the MSA because these stocks are subject to management under an international agreement (Pub. L. 109–479, sec. 104(b), MSA § 303 note). These stocks are managed in accordance with terms of the Pacific Salmon Treaty between the U.S. and Canada. While stocks managed under an international agreement can be exempted from the specification of ACLs, all other MSA 303(a) requirements apply, such as specification of maximum sustainable yield (MSY) and status determination criteria (SDC).

Status Determination Criteria

Under Amendment 16, SDC would be determined for natural stocks [1] for which specification of these reference points is appropriate and possible, based on the best available science. SDC would be specified only for individual stocks, including indicator stocks within stock complexes, not for stock complexes as a whole. The proposed SDC incorporate the reference points identified in the MSA and NS1Gs; however, the proposed definitions of some of these reference points differ

[1] ''Natural stocks'' have at least some component of the stock that relies on natural production, although hatchery production and naturally spawning hatchery fish may contribute to abundance and spawning escapement estimates.

slightly from those in the NS1Gs to accommodate the life history of Pacific salmon, whose reproduction is semelparous [2] and for which a stock's full reproductive potential can be spread out over a multi-year period. These modified approaches are proposed in accordance with the provision allowing for flexibility in the application of NS1Gs (50 CFR 600.310(h)(3)).

Under Amendment 16, a stock would be considered subject to overfishing when the postseason estimate of the fishing mortality rate (F) exceeds the maximum fishery mortality threshold (MFMT), where the MFMT is generally defined as F_{MSY}. The definitions of overfished, approaching overfished, and rebuilt rely on multi-year postseason estimates of spawning escapement [3] to be assessed using a 3-year geometric mean to determine status. Minimum stock size threshold (MSST) would be variable among stocks, with MSST defined for most stocks as $0.5*S_{MSY}$, but MSST for Sacramento River fall Chinook (SRFC), Klamath River fall Chinook (KRFC), Grays Harbor, Queets, Hoh, and Quillayute coho defined as $0.75*S_{MSY}$, and MSST for Puget Sound coho defined as the stock specific low/critical abundance breakpoint multiplied by one minus the low exploitation rate limit. The Puget Sound coho provisions are designed to be consistent with the conservation and management provisions developed through the Pacific Salmon Treaty. An approaching overfished determination would be made if the geometric mean of the two most recent postseason estimates of spawning escapement and the current preseason forecast of spawning escapement are below the MSST.

Annual Catch Limits and Acceptable Biological Catch

Under Amendment 16, specification of overfishing limit (OFL), ABC, and ACL reference points would be made on an individual stock basis as required based on the best available science. These reference points would not be specified for internationally managed stocks identified in the FMP (Pub. L. 109–479, sec. 104(b), MSA section 303 note). Hatchery stocks and ESA-listed stocks identified in the FMP would be managed to meet hatchery goals and ESA consultation standards, consistent with the NS1Gs, which provide the flexibility to consider alternative approaches for specifying ACLs and AMs for these types of stocks. Under Amendment 16, the relevant stocks for specifying OFL/ABC/ACL reference points would be Sacramento River fall Chinook (SRFC) and Klamath River fall Chinook (KRFC) as indicator stocks for the CVF and SONC Chinook complexes respectively.

Under Amendment 16, OFL, ABC and ACL would be specified as escapement levels for each stock. These OFL, ABC, and ACL escapement levels would be determined annually using exploitation rates (*i.e.,* F_{MSY}, F_{ABC}, and F_{ACL}) and abundance estimates for each stock. F_{ABC} incorporates a reduction from F_{MSY} to account for scientific uncertainty in F_{MSY}. F_{MSY} and F_{ABC} are defined in terms of the total exploitation rate across all salmon fisheries (Federal and nonfederal jurisdiction). Impacts in non-salmon fisheries are included in the natural mortality assumptions used to estimate population parameters for salmon stocks; therefore, all fishing mortality sources are accounted for when reference points are specified. Amendment 16 would generally leave in place existing conservation objectives for stocks in the FMP; the notable exception would be Klamath River fall Chinook salmon, for which the spawning escapement component of the conservation objective would change from 35,000 to 40,700 naturally spawning adults. Under the amendment, the fishery would be managed to meet the greater of either the ACL or the conservation objective in a given year.

De minimis Fishing Provisions

The *de minimis* fishing provisions that exist in the current FMP would be revised by Amendment 16 to allow for more flexibility in setting annual regulations when the conservation objectives for limiting stocks are projected not to be met, and provide opportunity to access more abundant salmon stocks that are typically available in the Council management area when the status of one stock may otherwise preclude all ocean salmon fishing in a large region, as is the case under the conservation alert in the current FMP. *De minimis* fishing provisions vary by stock and depend on the form and structure of the conservation objective. Amendment 16 describes *de minimis* fishing provisions that would be applied to SRFC and KRFC specifically. Under Amendment 16, *de minimis* fishing provisions would use a multi-step F-based control rule that would allow some harvest at all abundance levels. As stock size declines, the allowable exploitation rate declines from F_{ABC} in order to achieve S_{MSY} until F = 0.25. A constant maximum exploitation rate of 0.25 would be allowed until the potential spawner abundance reaches the midpoint between S_{MSY} and MSST where F would be reduced in proportion to abundance to no more than 10 percent at MSST. At potential spawner abundance levels less than or equal to half of MSST the allowable exploitation rate would be further reduced to levels approaching zero as abundance approaches zero.

Changes to Regulations

This proposed rule includes changes to the existing regulations at 50 CFR 660.401 *et seq.* to implement Amendment 16 and additional updates. These are described below.

- *§ 660.402—Definitions*

The definition of the Pacific Coast Salmon Plan is updated to address recent amendments.

- *§ 660.403—Relation to Other Laws*

References to the regulations governing the Pacific groundfish fishery are updated consistent with recent changes to 50 CFR part 660 (75 FR 60868, October 1, 2010).

- *§ 660.405—Prohibitions*

Language is added to allow flexibility in implementing fishery closures by inseason action to meet fishery management objectives. Specifically, under the proposed language fishery closures could be implemented at times other than at 2400 hours (midnight) in order to allow for more precise management of the fishery.

Information on the Salmon Troll Yelloweye Rockfish Conservation area is updated consistent with recent changes to 50 CFR part 660 (75 FR 60868, October 1, 2010).

- *§ 660.408—Annual Actions*

Language regarding annual specifications is modified to include ACLs and to state that they and other specifications and management measures are determined consistent with the FMP. The definition of ''allowable ocean harvest levels'' is revised to specify that such levels must ensure that ACLs and conservation objectives are not exceeded. This section is also modified to allow for mark-selective fisheries and to define the term ''mark-selective.''

[2] Semelparous: reproducing once. All Pacific salmon species managed under the Salmon FMP are semelparous, spawning once before dying, as compared to iteroparous species, such as steelhead (*Oncorhynchus mykiss*), which can, potentially, spawn multiple times.

[3] Escapement, or spawning escapement, refers to anadromous fish that survive the ocean and return to fresh water where they are available for in-river fisheries or spawning.

• *§ 660.410—Conservation Objectives and ACLs*

Language relative to conservation objectives is updated, including treatment of ESA-listed stocks within annual specifications and management measures. Language is added stating that annual management measures will be designed to ensure that escapement levels reach or exceed ACLs.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 16, other provisions of the Magnuson- Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

A Draft EA has been prepared for Amendment 16; a copy of the Draft EA is available online at *http://www.pcouncil.org/.* The Draft EA includes a regulatory impact review (RIR) and preliminary regulatory flexibility analysis, NMFS has revised the RIR and drafted an initial regulatory flexibility analysis (IRFA) and is making available its revised RIR and IRFA for public review and comment.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble, and are not repeated here. The RIR and IRFA are available for public review and comment (see **ADDRESSES**). A summary of the analysis follows: The Salmon FMP (PFMC 2007) establishes conservation and allocation guidelines for annual management of salmon off the coasts of Washington, Oregon, and California. This framework allows the Council to develop measures responsive to stock status in a given year. Section 3 of the current Salmon FMP describes the conservation objectives for Salmon FMP stocks necessary to meet the dual MSA objectives of obtaining optimum yield (OY) from a fishery while preventing overfishing. Each stock has a specific objective, generally designed to achieve MSY, maximum sustained production (MSP), or in some cases, an exploitation rate to serve as an MSY proxy.

The Salmon FMP also specifies criteria to determine when overfishing may be occurring and when a stock may have become overfished. These conditions are referred to as a Conservation Alert and an Overfishing Concern, respectively. In addition, the Salmon FMP also specifies required actions when these conditions are triggered. The alternatives described in Section 2 are structured around the actions required when a Conservation Alert is triggered. This proposed action will bring the Salmon FMP into compliance with the MSA, as amended in 2007, and the revised NS1Gs, by developing and implementing ACLs and AMs to prevent overfishing on stocks in the fishery to which MSA section 303(a)(15) applies, ensure ''measurable and objective'' SDC for stocks in the fishery, and define the control rules under which *de minimis* fishing opportunity would take place consistent with NS1.

The Pacific Fishery Management Council's ''Review 2010 Ocean Salmon Fisheries'' provides the following economic snapshot of the 2010 fishery. Total 2010 ex-vessel value of the Council-managed non-Indian commercial salmon fishery was $7.15 million, which is the fifth lowest on record, but more than four times above its 2009 level of $1.5 million. California had its first commercial salmon fishery since 2007. The 2010 ex-vessel value of the commercial fishery was 28 percent below the 2005–2009 inflation-adjusted average of $10 million and 88 percent below the 1979 through 1990 inflation-adjusted average of $59.3 million. Based on Pacific Coast Fisheries Information Network (PacFIN) data, a total of 641 vessels participated in the non-tribal West Coast commercial salmon fishery in 2010. This is more than double the number that participated in 2009 (313), and nearly triple the number in 2008. However the 2010 total was down 36 percent from 2007's total of 1,007 vessels.

The preliminary number of vessel-based ocean salmon recreational angler trips taken on the West Coast in 2010 was 182,900, a decrease of three percent from 2009, and 70 percent below the 1979 through 1990 average. Compared with 2009, preliminary estimates of the number of trips taken in 2010 decreased by 37 percent in Oregon and 18 percent in Washington. California effort was up substantially since the sport fishery was not restricted to a 10-day fishery in the Klamath Management Zone as it was in 2009; however it was still severely depressed compared to historic levels. Recreational salmon fishing takes place primarily in two modes, (1) Anglers fishing from privately owned pleasure crafts, and (2) anglers employing the services of the charter boat fleet. In general, success rates on charter vessels tend to be higher than success rates on private vessels. Small amounts of shore-based effort directed toward ocean area salmon occur, primarily from jetties and piers. Coastwide, the proportion of angler trips taken on charter vessels in 2010 was relatively stable at 24 percent compared with 23 percent in 2009; however, underlying this trend was a decline in the proportion of charter trips in Oregon and increases in California and Washington. During 2010, the Review indicates that there were 465 charterboats that participated in the 2010 fishery.

While some of the treaty Indian harvest was for ceremonial and subsistence purposes, the vast majority of the catch was commercial harvest. For all of 2010 the preliminary ex-vessel value of Chinook and coho landed in the treaty Indian ocean troll fishery was $1.8 million, compared with the ex-vessel value in 2009 of $1.0 million. According to a Northwest Indian Fisheries Commission representative, the tribal fleet consists of 40 to 50 trollers. The commercial entities directly regulated by the Pacific Council's Fishery Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats. During 2010, these fleets consisted of 641 non-tribal trollers, 40 to 50 tribal trollers, and 465 charterboats.

Total West Coast income impact associated with recreational and commercial ocean salmon fisheries for all three states combined was estimated at $25.5 million in 2010. This was 46 percent above the estimated 2009 level of $17.4 million. 2010 had the third lowest income impacts on record, with 2008 having the lowest on record at $7.5 million and 2009 the second lowest (adjusted for inflation).

The key components of Amendment 16 are administrative, as they are revisions to the key components of the process by which the Council and NMFS make decisions on how best to manage various stocks in the fishery. These key components include defining what stocks are in the fishery; how these stocks may be organized into stock complexes, the treatment of international stocks, revising the stock status determination criteria including definitions of overfishing, ABC, and ACL reference points; and revising *de minimis* fishing provisions to allow for more flexibility in setting annual regulations when the conservation objectives for limiting stocks are projected not to be met, and provide

opportunity to access more abundant salmon stocks that are typically available in the Council management area when the status of one stock may otherwise preclude all ocean salmon fishing in a large region. This action revises the process of how conservation and management decisions will be made; it contains no actual application of the methods to set ABC, ACL, or OFL or the management measures (*e.g.* closed seasons, area closures, bag limits, *etc.*) to keep the fishery within the ACL and other conservation objectives to assure that overfishing does not occur. As a result there are no immediate economic impacts to evaluate. These will occur when the new process is actually applied in future actions and the economic impacts will be evaluated then.

However, the EA did undertake an economic analysis of the expected effects of the preferred action and options relative to ''No Action'' alternative and presented the following conclusions. The proposed alternatives for classifying the stocks in the FMP will have no economic impacts, as there are no biological implications to designating stocks ''in the fishery'' and ''ecosystem components,'' as compared with the no action Alternative. Proposed alternatives for SDC have no significant biological or economic impacts. The stocks have had low frequency of experiencing overfishing in the past and many of the current control rules clearly prevent fishing at or above F_{MSY}. It has been rare that stock abundance or other constraints on the fishery have created opportunity for fishing above F_{MSY} in other cases. Identifying clearer criteria with which to determine stock status will more clearly align with the MSA and NS1Gs, and can help managers implement timelier management responses and contribute to ensuring sustainable salmon stock levels to support the fishery, resulting in positive economic effects. The proposed alternatives for implementing ACLs, ABCs, and associated reference points (*i.e.,* the ACL framework) are similar in nature to the effects of the proposed SDC, thus, have no significant biological or economic impacts. In the short term, fisheries may be constrained in a given year to prevent overfishing, but such actions will provide long-term benefits from more sustainable salmon populations to support harvest and recreational opportunities.

Proposed alternatives to identify AMs have no significant biological or economic impacts, compared to the no action alternative. Many of the proposed AMs identified are actions that exist in the FMP currently and are administrative in nature (*e.g.,* notification). Proposed alternatives for *de minimis* fishing are not expected to result in significant biological or economic effects. However, providing for *de minimis* fishing will afford more opportunities for harvest, consistent with National Standard 8, and achieve optimum yield for the fishery consistent with NS1. Therefore, there are projected positive economic benefits of the proposed action by allowing some minimal harvest of weaker stocks in an effort to harvest healthier, abundant stocks in the mixed stock fishery.

The commercial entities directly regulated by the Pacific Council's Fishery Salmon Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats. During 2010, these fleets consisted of 641 non-tribal trollers, 40 to 50 tribal trollers, and 465 charterboats. A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $4.0 million. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.5 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance. Tribal and non-tribal commercial salmon vessel revenues averaged approximately $13,000 in 2010 (Review of 2010 Ocean Salmon Fisheries). Charterboats participating in the recreational salmon fishery in 2000 had average revenues ranging from $7,000 to $131,000, depending on vessel size class (Pacific States Marine Fisheries Commission study). These figures remain low, and NMFS has no information suggesting that these vessels have received annual revenues since 2000 such that they should be considered ''large'' entities under the RFA. As these average revenues are far below SBA's thresholds for small entities, NMFS has determined that all of these entities are small entities under SBA's definitions.

The economic analysis does not highlight any significant impact upon small businesses. The key components of Amendment 16 are administrative, as they are revisions to the key components of the process by which the Council and NMFS make decisions on how best to manage various stocks in the fishery. As a result there are no immediate economic impacts to evaluate. These will occur when the new process is actually applied in future actions and the economic impacts will be evaluated then. Consequently, the regulations being proposed are not expected to meet any of the tests of having a ''significant'' economic impact on a ''substantial number'' of small entities. Nonetheless, NMFS has prepared an IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

This proposed rule would not establish any new reporting, record-keeping, requirements.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS has issued ESA biological opinions that address the impacts of the Council managed salmon fisheries on listed salmonids as follows: March 8, 1996 (Snake River spring/summer and fall Chinook and sockeye), April 28, 1999 (Oregon Coast natural coho, Southern Oregon/Northern California coastal coho, Central California coastal coho), April 28, 2000 (Central Valley spring Chinook), April 27, 2001 (Hood Canal summer chum 4(d) limit), April 30, 2004 (Puget Sound Chinook), June 13, 2005 (California coastal Chinook), April 28, 2008 (Lower Columbia River natural coho), and April 30, 2010 (Sacramento River winter Chinook, Lower Columbia River Chinook; and listed Puget Sound yelloweye rockfish, canary rockfish, and bocaccio). NMFS reiterates its consultation standards for all ESA listed salmon and steelhead species in their annual Guidance letter to the Council. In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW (biological opinion dated May 5, 2009).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. In addition, a Tribal representative served on the committee appointed by the Pacific Council to develop Amendment 16.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 18, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

2. In § 660.402, revise the definition for ''Pacific Coast Salmon Plan'' to read as follows:

§ 660.402 Definitions.

* * * * *

Pacific Coast Salmon Plan (PCSP or Salmon FMP) means the Fishery Management Plan, as amended, for commercial and recreational ocean salmon fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 nautical miles offshore) off Washington, Oregon, and California. The Salmon FMP was first developed by the Council and approved by the Secretary in 1978. The Salmon FMP was amended on October 31, 1984, to establish a framework process to develop and implement fishery management actions; the Salmon FMP has been subsequently amended at irregular intervals. Other names commonly used include: Pacific Coast Salmon Fishery Management Plan, West Coast Salmon Plan, West Coast Salmon Fishery Management Plan.

* * * * *

3. In § 660.403, revise paragraph (b) to read as follows:

§ 660.403 Relation to other laws.

* * * * *

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart C through G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.20.

* * * * *

4. In § 660.405, revise paragraph (b) and the introductory text of paragraph (c) to read as follows:

§ 660.405 Prohibitions.

* * * * *

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified, except that a fishing period may be ended prior to 2400 hours local time through an inseason action taken under § 660.409 in order to meet fishery management objectives.

(c) Under the Pacific Coast groundfish regulations at § 660.330, fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Vessels may transit through the Salmon Troll YRCA with or without fish on board. The Salmon Troll YRCA is an area off the northern Washington coast. The Salmon Troll YRCA is intended to protect yelloweye rockfish. The Salmon Troll YRCA is defined by straight lines connecting specific latitude and longitude coordinates under the Pacific Coast Groundfish regulations at § 660.70.

* * * * *

5. In § 660.408,

a. Revise paragraph (a);

b. Redesignate paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o), respectively;

c. Add a new paragraph (b);

d. Revise newly redesignated paragraphs (c), (d)(1)(ii), (d)(1)(v)(B), (d)(1)(vi), (d)(2)(iv), (e), (g), (i)(2), (k), (l)(2), (l)(4), and (o) to read as follows:

§ 660.408 Annual actions.

(a) *General.* NMFS will annually establish specifications and management measures or, as necessary, adjust specifications and management measures for the commercial, recreational, and treaty Indian fisheries by publishing the action in the **Federal Register** under § 660.411. Management of the Pacific Coast salmon fishery will be conducted consistent with the standards and procedures in the Salmon FMP. The Salmon FMP is available from the Regional Administrator or the Council. Specifications and management measures are described in paragraphs (b) through (o) of this section.

(b) *Annual catch limits.* Annual Specifications will include annual catch limits (ACLs) determined consistent with the standards and procedures in the Salmon FMP.

(c) *Allowable ocean harvest levels.* Allowable ocean harvest levels must ensure that conservation objectives and ACLs are not exceeded, as described in § 660.410. The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

* * * * *

(d) * * *

(1) * * *

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (d)(1)(iii) through (viii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (d)(1)(ix) and (x) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, conservation objectives, and ACLs. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

* * * * *

(v) * * *

(B) *Chinook distribution.* Subarea distributions of Chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing Chinook restrictions (*i.e.,* area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed Chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of Chinook and coho between commercial and recreational allocations in accordance with paragraph (d)(1)(iii) of this section.

* * * * *

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of Chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the

harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one Chinook to meet the allocation objectives in paragraph (d)(1)(ix) of this section.

* * * * *

(2) * * *

(iv) *Oregon coastal natural coho.* The allocation provisions in paragraph (d)(2) of this section provide guidance only when coho abundance permits a directed coho harvest, not when the allowable harvest impacts are insufficient to allow coho retention south of Cape Falcon. At such low levels, allowable harvest impacts will be allocated during the Council's preseason process.

* * * * *

(e) *Management boundaries and zones.* Management boundaries and zones will be established or adjusted to achieve a conservation purpose or management objective. A conservation purpose or management objective protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), depth contours, distance from shore, or similar criteria.

* * * * *

(g) *Recreational daily bag limits.* Recreational daily bag limits for each fishing area will specify number and species of salmon that may be retained. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

* * * * *

(i) * * *

(2) *Commercial seasons.* Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink salmon, when and where available, without exceeding allowable Chinook or coho harvest levels and within conservation and allocation constraints of the pink stocks.

* * * * *

(k) *Selective fisheries*—(1) *In general.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, species selective fisheries and mark selective fisheries may be established.

(2) *Species selective fisheries.* Selective coho-only, Chinook-only, pink-only, all salmon except Chinook, and all salmon except coho fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(3) *Mark selective fisheries.* Fisheries that select for salmon marked with a healed adipose fin clip may be established in the annual management measures as long as they are consistent with guidelines in section 6.5.3.1 of the Pacific Coast Salmon Plan.

* * * * *

(l) * * *

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems for other stocks.

* * * * *

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated Chinook or coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

* * * * *

(o) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the reports, and the entities receiving the reports will be specified annually.

6. In § 660.409, revise paragraph (b)(2) introductory text to read as follows:

§ 660.409 Inseason actions.

* * * * *

(b) * * *

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, conservation objectives and ACLs, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

* * * * *

7. Revise § 660.410 to read as follows:

§ 660.410 Conservation objectives and ACLs.

(a) *Conservation objectives.* Annual management measures will be consistent with conservation objectives described in Table 3–1 of the Salmon FMP or as modified through the processes described below, except where the ACL escapement level for a stock is higher than the conservation objective, in which case annual management measures will be designed to ensure that the ACL for that stock is met.

(1) *Modification of conservation objectives.* NMFS is authorized, through an action issued under § 660.411, to modify a conservation objective if—

(i) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective or

(ii) Action by a Federal court indicates that modification of a conservation objective is appropriate.

(2) *ESA listed species.* The annual specifications and management measures will be consistent with NMFS consultation standards or NMFS recovery plans for species listed under the Endangered Species Act (ESA). Where these standards differ from those described in FMP Table 3–1, NMFS will describe the ESA-related standards for

the upcoming annual specifications and management measures in a letter to the Council prior to the first Council meeting at which the development of those annual management measures occurs.

(b) *Annual catch limits.* Annual management measures will be designed to ensure escapement levels at or higher than ACLs determined through the procedures set forth in the FMP.

[FR Doc. 2011–27346 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 205

Monday, October 24, 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

Advisory Committee on Minority Farmers; Notice of Meeting

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Office of Advocacy and Outreach (OAO). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2). This meeting will be open to the public.

As required by the Federal Advisory Committee Act, as amended, the OAO announces a public meeting of the Advisory Committee on Minority Farmers (Committee) to advise the Secretary of Agriculture on: (1) The implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, 7 U.S.C. 2279; (2) methods of maximizing the participation of minority farmers and ranchers in Department of Agriculture programs; and (3) civil rights activities within the Department as such activities relate to participants in such programs.

DATES: The meeting will be held on November 3, 2011, and November 4, 2011, from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 5 p.m., respectively. The meeting will be open to the public for public comment on November 3, 2011, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Hotel Albuquerque Old Town, 800 Rio Grande Boulevard, NW., Albuquerque, NM 87104. The hotel's telephone number is 505–843–6300. Written comments may be submitted to: Lauretta Miles, Management Analyst, OAO, 1400 Independence Ave., SW., Whitten Bldg., 520–A, Washington, DC 20250, 202–720–4679.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Lauretta Miles, Management Analyst, OAO, 1400 Independence Ave., SW., Whitten Bldg., 520–A, Washington, DC 20250, 202–720–4679, *Fax:* 202–720–7136 *e-mail: Lauretta.Miles@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to section 14008 of the Food Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2208. The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned agenda topics (1), (2) and (3). Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies. The Secretary selected the members in January 2011.

On November 3, 2011, from 9 a.m. to 12 p.m., there will be an opportunity for public comments. Interested persons may present views, orally or in writing, on issues relating to the above agenda topics (1), (2) and (3) before the committee. Written submissions may be submitted to the contact person on or before October 27, 2011. Oral presentations from the public will be scheduled between approximately 9 a.m. to 12 p.m. Those individuals interested in making oral presentations should notify the contact person and submit a brief statement of the general nature of the issue they wish to present and the names and addresses of proposed participants. (All oral presentations will be given three minutes. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public hearing session timeframe, OAO 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 October 31, 2011.

OAO will make all agenda topics available to the public via the OAO Web site (*http://www.outreach.usda.gov/oasdfr*) no later than 10 business days before the meeting and at the meeting. OAO 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 Lauretta Miles at least 7 days in advance of the meeting. OAO is committed to the orderly conduct of the advisory committee meeting. Please visit our Web site at *http://www.outreach.usda.gov/oasdfr* for procedures on public conduct during the advisory committee meeting.

Anderson Neal, Jr.,

Acting Director, Office of Advocacy and Outreach.

[FR Doc. 2011–27352 Filed 10–21–11; 8:45 am]

BILLING CODE 1240–78–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, South Dakota, Calumet Project Area

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to use multiple vegetation treatments focused on reducing the threat to ecosystem components including forest resources from an existing insect and disease epidemic (mountain pine beetle), creating a landscape condition more adapted to fire and that reduces potential for high severity wildfire near at-risk communities and in the wildland-urban interface. The proposal is being planned for the 31,772 acre Calumet Project Area that includes about 27,617 acres of National Forest System land and about 4,155 acres of interspersed private land. The project area lies approximately six miles southwest of Rapid City, SD. Sheridan Lake is also located within the project area. This project will be conducted as an authorized project under Section 102 of the Healthy Forests Restoration Act of 2003 (HFRA). Actions proposed for the Calumet Project Area include the following:

- Thin and harvest approximately 14,954 acres of pine stands using a variety of methods to treat MPB infested stands, reduce the overall density of pine trees and create a mosaic of structural stages across the landscape. Both commercial and non-commercial sized trees would be removed utilizing multiple contracts including

stewardship, timber sale, and service contracts.

• Remove conifers from hardwood stands (*e.g.,* aspen, oak, and birch) and restore meadows on approximately 3,497 acres to provide habitat diversity and wildfire protection by enhancing natural fuel breaks.

• Reduce the amount of fuels that currently exists. Treatments could include (but are not limited to) lopping, chipping, crushing, piling and burning; creating fuel breaks along roads and adjacent to private property, particularly those properties with houses and subdivisions. Roadway treatments would improve access (ingress/egress) for the public, as well as emergency services in the event of a wildfire. Prescribed broadcast burning would also be allowed anywhere strategically practical within the project area, up to approximately 27,000 acres. The goals of prescribed fire are to reduce fuel loading and continuity to help protect private property and Forest resources, and to increase the quantity and quality of forage for big game and other wildlife resources. Annually, the Mystic Ranger District conducts approximately 2,000 to 4,000 acres of prescribed broadcast burning. These annual, accomplished acres are spread across the district and are split among multiple planning areas. Burning designated areas within the Calumet Project Area could take up to ten years to accomplish.

• Use of existing road templates, with less than five miles of new construction, would be required to carry out vegetation treatments.

DATES: Comments concerning the scope of the analysis would be most useful if received by 30-days following the date of this notice. The draft environmental impact statement is expected to be available for public review by February 2012 and the final environmental impact statement is expected to be completed by May 2012.

ADDRESSES: Send written comments to Jackie Groce, Acting District Ranger, Black Hills National Forest, Mystic Ranger District, Calumet Project Area, 8221 South Highway 16, Rapid City, South Dakota 57702. Telephone Number: (605) 343–1567. E-mail: *comments-rocky-mountain-black-hills-mystic@fs.fed.us* with ''Calumet'' as the subject. Electronic comments must be readable in Word, Rich Text, or PDF formats.

FOR FURTHER INFORMATION CONTACT: If you have any questions or need additional information, please contact Lou Conroy, Team Leader or Jackie Groce, Acting District Ranger, at the Mystic Ranger District office in Rapid City at (605) 343–1567.

SUPPLEMENTARY INFORMATION: The actions proposed are in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The site specific actions are designed, based on Forest Plan Standards and Guidelines, to move existing resource conditions in the Calumet Project Area toward meeting Forest Plan Goals and Objectives. The project area lies approximately six miles southwest of Rapid City, SD. Sheridan Lake is also located within the project area. Anticipated issues include: reducing MPB infestation and risk; protecting local communities, private and public lands, infrastructure and access from severe wildfire; associated fire and fuels hazard reduction needs in the wildland-urban interface; support or opposition to forest thinning using commercial timber harvest; impacts of vegetation treatment and multiple forest uses on wildlife habitat. The range of alternatives analyzed in the EIS is expected to be consistent with Sec. 104 of HFRA.

Purpose and Need for Action

The purpose of the Calumet Project is to:

• Moves existing land and resource conditions toward desired conditions as specified in the Forest Plan.

• Reduce the threat to ecosystem components including forest resources, from the existing insect and disease (mountain pine beetle) epidemic.

• Restore resource conditions to a healthy, resilient fire-adapted ecosystem.

• Help protect local communities and resources from catastrophic wildfire.

This project is focused on implementing management actions that move toward achieving:

• Desired conditions and objectives embodied in Goals 2, 3, 7, and 10 of the Forest Plan (as amended).

• Goals and objectives applicable to Forest Plan Management Area (MA) 3.7—Late Successional Forest Landscape (~780 acres); MA 5.1 Resource Production Emphasis (~5,621 acres); MA 5.4—Big Game Winter Range Emphasis (~18,259 acres); and MA 8.2 Developed Recreation Complex (~2,686 acres), that lie within Calumet Project Area, described in Chapter III of the Forest Plan (Phase II Amendment).

• Goals of the Healthy Forest Restoration Act (HFRA) of 2003 (HR 1904) and other National level initiatives and policy that provide procedural tools to hasten processes focused on reducing insects or disease on public and adjacent private lands, and reducing the probability and occurrence of severe wildfire in the fire adapted ecosystems, especially near at risk communities and in the wildland-urban interface. Moreover, it is appropriate that proposed actions be designed in consideration of the fuels hazard reduction management recommendations and guidelines provided by the Pennington County Community Wildfire Protection Plan of 2007.

Proposed Action

Proposed actions include the following:

• Thin and harvest approximately 14,954 acres of pine stands using a variety of methods to treat MPB infested stands, reduce the overall density of pine trees and create a mosaic of structural stages across the landscape. Both commercial and non-commercial sized trees would be removed utilizing multiple contracts including stewardship, timber sale, and service contracts.

• Remove conifers from hardwood stands (*e.g.,* aspen, oak, and birch) and restore meadows on approximately 3,497 acres to provide habitat diversity and wildfire protection by enhancing natural fuel breaks.

• Reduce the amount of fuels that currently exists. Treatments could include (but are not limited to) lopping, chipping, crushing, piling and burning; creating fuel breaks along roads and adjacent to private property, particularly those properties with houses and subdivisions. Roadway treatments would improve access (ingress/egress) for the public, as well as emergency services in the event of a wildfire. Prescribed broadcast burning would also be allowed anywhere strategically practical within the project area, up to approximately 27,000 acres. The goals of prescribed fire are to reduce fuel loading and continuity to help protect private property and Forest resources, and to increase the quantity and quality of forage for big game and other wildlife resources. Annually, the Mystic Ranger District conducts approximately 2,000 to 4,000 acres of prescribed broadcast burning. These annual, accomplished acres are spread across the district and are split among multiple planning areas. Burning designated areas within the Calumet Project Area could take up to ten years to accomplish.

• Use of existing road templates, with less than five miles of new construction, would be required to carry out vegetation treatments.

Responsible Official

District Ranger, Mystic Ranger District, Black Hills National Forest, 8221 South Highway 16, Rapid City, South Dakota 57702.

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or possible alternative at this time.

Scoping Process

Comments and input regarding the proposal will be received via direct mailing from the public, other groups, and agencies during the initial public comment period in October and November 2011. If you would like to be more involved, a public meeting is scheduled for Thursday, November 3, 2011, from 7 p.m. to 9 p.m. at the Mystic Ranger District Office, Rapid City, South Dakota. Comments submitted based on this NOI will be most useful if received within 30-days from the date of this notice. Response to the draft EIS will be sought from the interested public beginning in February 2012.

Comment Requested

This notice of intent provides information that the agency will prepare an environmental impact statement in response to public comment and feedback during the October and November 2011, scoping period. Comments received will assist the planning team to develop the mailing list for the draft EIS and help identify key issues and opportunities used to refine the proposal or possible alternative and mitigation measures. Comments on the DEIS will be requested during the 45-day comment period following the Notice of Availability, expected to be published in the **Federal Register** in February 2012 (See discussion below).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: October 17, 2011.

Robert J. Thompson,

Acting Deputy Forest Supervisor, Black Hills National Forest.

[FR Doc. 2011–27404 Filed 10–21–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1789]

Expansion of Foreign-Trade Zone 276; Kern County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Kern Department of Airports, grantee of Foreign-Trade Zone 276, submitted an application to the Board for authority to expand FTZ 276 to include a site in Shafter, California, within the Bakersfield U.S. Customs and Border Protection port of entry (FTZ Docket 28–2011, filed 04/28/2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 25300, 05/04/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 276 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Dated: Signed at Washington, DC, this 13th day of October 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27450 Filed 10–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1788]

Reorganization of Foreign-Trade Zone 205 Under Alternative Site Framework Port Hueneme, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Board of Harbor Commissioners of the Oxnard Harbor District, grantee of Foreign-Trade Zone 205, submitted an application to the Board (FTZ Docket 25–2011, filed 03/31/2011) for authority to reorganize under the ASF with a service area of Ventura County, California, within and adjacent to the Port Hueneme U.S. Customs and Border Protection port of entry, and FTZ 205's existing Sites 1 through 4 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 19314–19315, 04/07/2011) and the application has been

processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 205 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1 through 4 if not activated by October 31, 2016.

Signed at Washington, DC, this 13th day of October 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2011–27452 Filed 10–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). The period of review (''POR'') is January 1, 2010 through December 31, 2010. This administrative review covers multiple exporters of the subject merchandise.

Fourteen companies failed to provide separate rate information and, thus, did not demonstrate that they are entitled to a separate rate and have been treated as part of the PRC-wide entity. One company demonstrated that it is entitled to a separate rate. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We intend to issue the final results of this review no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the PRC.[1] On January 3, 2011, the Department notified interested parties of their opportunity to request an administrative review, including a review of the antidumping duty order on wooden bedroom furniture from the PRC.[2] In January 2011, the petitioners, American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, ''Petitioners''), and the domestic interested parties, Kimball International, Inc., Kimball Furniture Group, Inc. and Kimball Hospitality Inc. (collectively, ''Kimball''); Ashley Furniture; Butler Woodcrafters, Inc.; Acme Furniture Industry Inc., as well as a U.S. importer and certain foreign exporters requested that the Department conduct an administrative review. On February 28, 2011, the Department published in the **Federal Register** a notice initiating an antidumping duty administrative review of wooden bedroom furniture from the PRC covering 183 companies/company groupings and the period January 1, 2010 through December 31, 2010.[3]

In the Initiation Notice and Opportunity to Request Administrative Review, parties were notified that if the Department limited the number of respondents selected for individual examination, it would select respondents based on export/shipment data provided in response to the Department's quantity and value (''Q&V'') questionnaire. The Department further stated its intention to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') headings identified in the scope of the antidumping duty order on wooden bedroom furniture from the PRC. The Department noted it intended to send Q&V questionnaires to the 21 companies for which a review was requested with the largest total values of subject merchandise imported into the United States during the POR according to CBP data. See Initiation Notice, 76 FR at 10881. The Initiation Notice also notified parties that they must timely submit separate rate applications or separate rate certifications in order to qualify for a separate rate. See Initiation Notice, 76 FR at 10881–82.

On February 23, 2011, the Department issued Q&V questionnaires to the 21 companies for which a review was requested with the largest shipments by value according to information gathered from CBP.[4] These questionnaires requested that the companies report the Q&V of their POR exports and/or shipments of wooden bedroom furniture to the United States for the purpose of respondent selection. The Department received Q&V questionnaire responses from all of the 21 companies except

[1] See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China, 70 FR 329 (January 4, 2005).

[2] See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 76 FR 90 (January 3, 2011) (''Opportunity to Request Administrative Review'').

[3] See Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China, 76 FR 10880 (February 28, 2011) (''Initiation Notice'').

[4] These companies are: (1) Art Heritage International, Ltd.; Super Art Furniture Co., Ltd.; Artwork Metal & Plastic Co., Ltd.; Jibson Industries Ltd., Always Loyal International; (2) Dalian Huafeng Furniture Co., Ltd. (3) Dongguan Sunrise Furniture Co.; Taicang Sunrise Wood Industry Co., Ltd.; Shanghai Sunrise Furniture Co., Ltd.; Fairmont Designs (4) Dongguan Sunshine Furniture Co., Ltd. (5) Dorbest Ltd.; Rui Feng Woodwork Co., Ltd. aka Rui Feng Woodwork (Dongguan) Co., Ltd.; Rui Feng Lumber Development Co., Ltd. aka Rui Feng Lumber Development (Shenzhen) Co., Ltd.; (6) Fine Furniture (Shanghai) Ltd. (7) Jiangmen Kinwai International Furniture Co., Ltd. (8) (9) Sen Yeong International Co., Ltd.; Sheh Hau International Trading Ltd. (10) Shanghai Aosen Furniture Co., Ltd. (11) Shanghai Fangjia Industry Co. Ltd. (12) Shanghai Maoji Imp and Exp Co., Ltd. (13) Shenzhen Forest Furniture Co., Ltd. (14) Shing Mark Enterprise Co., Ltd.; Carven Industries Limited (BVI); Carven Industries Limited (HK); Dongguan Zhenxin Furniture Co., Ltd.; Dongguan Yongpeng Furniture Co., Ltd. (15) Superwood Co., Ltd.; Lianjiang Zongyu Art Products Co., Ltd. (16) Taicang Fairmount Designs Furniture Co., Ltd. (17) Tube-Smith Enterprise (Zhangzhou) Co., Ltd.; Tube-Smith Enterprise (Haimen) Co., Ltd.; Billionworth Enterprises Ltd. (18) (19) Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd./Dongguan Wanengtong Industry Co., Ltd. (20) Woodworth Wooden Industries (Dong Guan) Co., Ltd.; and (21) Zhangzhou Guohui Industrial & Trade Co. Ltd.

Shanghai Fangjia Industry Co. Ltd., Shanghai Aosen Furniture Co., Ltd. and received an untimely Q&V questionnaire response from Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd./Dongguan Wanengtong Industry Co., Ltd.[5] Seven additional companies or company groupings also submitted Q&V questionnaire responses.[6] From March through May 2011, the Department received separate rate certifications and applications from 73 companies and company groupings. In addition, during that period, the Department received requests from Dalian Huafeng Furniture Group Co., Ltd.; the Dorbest Group;[7] Fine Furniture (Shanghai) Limited; and Guangzhou Maria Yee Furnishings Ltd., Pyla HK Limited, and Maria Yee, Inc. (collectively, ''Maria Yee'') to be treated as voluntary respondents.

On January 31, and March 14, 2011, Petitioners submitted comments on the Department's process of selecting mandatory respondents. Given its limited resources, and the fact that an administrative review was requested for 183 companies/company groupings, on March 30, 2011, the Department decided to individually examine the following companies, based upon the Q&V data: (1) The Dorbest Group; and (2) the Shing Mark Group, which consists of Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., and Dongguan Yongpeng Furniture Co., Ltd.[8]

On March 30, 2011, the Department issued the antidumping questionnaire to the Dorbest Group and the Shing Mark Group, and made the questionnaire available to the voluntary respondents.

From March through June 2011, a number of interested parties withdrew their review requests for all but 22 companies/company groupings.[9] All review requests were withdrawn for the mandatory respondents the Dorbest Group and the Shing Mark Group.

On May 27, 2011, Amini Innovation Corp. (''Amini''), a U.S. importer of wooden bedroom furniture, commented on the Tube-Smith Group[10] sm request for a review of its sales during the POR. On June 6, 2011, the Tube-Smith Group responded to Amini's May 27, 2011, comments. On June 8, 2011, Amini submitted additional comments regarding the Tube-Smith Group's review request.

On June 20, 2011, Petitioners submitted factual information from the first new shipper review of wooden bedroom furniture from the PRC pertaining to the margin calculated for Shenyang Kunyu Wood Industry Co., Ltd.

On June 22, 2011, the Department issued a letter to Zhanjiang Sunwin Arts & Crafts Co., Ltd. (''Sunwin''), a company that reported it made no shipments of subject merchandise to the United States during the POR, requesting more information regarding its claim that it changed its name to Guangdong Sunwin Green Furniture Industry Group Co., Ltd. On July 5, 2011, Sunwin submitted its response to the letter.

On August 12, and August 26, 2011, the Department released CBP data and documents related to potential period of review entries of subject merchandise from the following companies claiming no sales or shipments of subject merchandise: (1) Baigou Crafts Factory of Fengkai; (2) Locke Furniture Factory; Kai Chan Furniture Co., Ltd.; Kai Chan (Hong Kong) Enterprise Ltd.; Taiwan Kai Chan Co., Ltd, (collectively, ''Locke Furniture''); and (3) Sunwin. On August 25, and September 2, 2011, Petitioners submitted comments on the CBP data and documents. On September 2, 2011, Sunwin submitted comments on the CBP data and requested additional time to submit its separate rate information.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[11] highboys,[12] lowboys,[13]

[5] The Department did not accept the untimely information. See letter to Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd. from Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, dated March 28, 2011.

[6] These companies are: (1) Guangzhou Maria Yee Furnishings Ltd.; Pyla HK, Ltd.; Maria Yee, Inc.; (2) Jiangmen Kinwai Furniture Decoration Co., Ltd.; (3) Jiedong Lehouse Furniture Co., Ltd.; (4) Putian Jinggong Furniture Co., Ltd.; (5) Shanghai Jian Pu Export & Import Co., Ltd.; (6) Zhongshan Golden King Furniture Industrial Co., Ltd.; and (7) Sheng Jing Wood Products (Beijing) Co., Ltd.

[7] The Dorbest Group consists of Rui Feng Woodwork Co. Ltd., Rui Feng Lumber Development Co., Ltd., Dorbest Ltd., Rui Feng Woodwork (Dongguan) Co., Ltd., and Rui Feng Lumber Development (Shenzhen) Co., Ltd.

[8] See Memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office 4, AD/CVD Operations through Howard Smith, Program Manager, Office 4, AD/CVD Operations to Abdelali Elouaradia, Office Director, Office 4, AD/CVD Operations regarding, ''Respondent Selection in the 2010 Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated March 30, 2011.

[9] These companies are: (1) Baigou Crafts Factory of Fengkai; (2) Dongguan Bon Ten Furniture Co., Ltd.; (3) Dongguan Grand Style Furniture Co. Ltd.; Hong Kong Da Zhi Furniture Co., Ltd.; (4) Dongguan Hero Way Woodwork Co., Ltd.; Dongguan Da Zhong Woodwork Co., Ltd.; Hero Way Enterprises Ltd.; Well Earth International Ltd.; (5) Dongguan Huansheng Furniture Co., Ltd.; (6) Dongguan Mu Si Furniture Co., Ltd.; (7) Golden Well International (HK) Ltd.; (8) Hainan Jong Bao Lumber Co., Ltd.; Jibbon Enterprise Co., Ltd.; (9) Hangzhou Cadman Trading Co., Ltd.; (10) Kuan Lin Furniture (Dong Guan) Co., Ltd.; Kuan Lin Furniture Factory; Kuan Lin Furniture Co., Ltd.; (11) Kunshan Lee Wood Product Co., Ltd.; (12) Leefu Wood (Dongguan) Co., Ltd.; King Rich International, Ltd.; (13) Locke Furniture Factory; Kai Chan Furniture Co., Ltd.; Kai Chan (Hong Kong) Enterprise Ltd.; Taiwan Kai Chan Co., Ltd.; (14) Meikangchi (Nantong) Furniture Company Ltd.; (15) Nantong Dongfang Orient Furniture Co., Ltd.; (16) Shanghai Fangjia Industry Co. Ltd.; (17) Tube-Smith Enterprise (Zhangzhou) Co., Ltd.; Tube-Smith Enterprise (Haimen) Co., Ltd.; Billionworth Enterprises Ltd. (18) Winny Overseas, Ltd.; Zhongshan Winny Furniture Ltd.; Winny Universal Ltd.; (19) Zhangjiang Sunwin Arts & Crafts Co., Ltd.; (20) Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.; (21) Zhong Shan Fullwin Furniture Co., Ltd.; and (22) Zhongshan Gainwell Furniture Co. Ltd.

[10] The Tube-Smith Group consists of the following companies: Tube-Smith Enterprises (ZhangZhou) Co., Ltd.; Tube-Smith Enterprises (Haimen) Co., Ltd.; and Billionworth Enterprises, Ltd.

[11] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[12] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[13] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

chests of drawers,[14] chests,[15] door chests,[16] chiffoniers,[17] hutches,[18] and armoires;[19] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, standup desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[20] (9) jewelry armories;[21] (10) cheval mirrors;[22] (11) certain metal parts;[23] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds[24] and (14) toy boxes.[25]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the U.S. Harmonized Tariff Schedule (''HTSUS'') as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as ''parts of wood.'' Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, or 9403.20.0018.[26] Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Partial Final Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Because all requesting parties withdrew their respective requests for an administrative review of the following entities within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review with respect to these entities:

- Alexandre International Corp.; Southern Art Development Ltd.; Alexandre Furniture (Shenzhen) Co., Ltd.; Southern Art Furniture Factory
- Art Heritage International, Ltd.; Super Art Furniture Co., Ltd.; Artwork Metal & Plastic Co., Ltd.; Jibson Industries Ltd., Always Loyal International
- Billy Wood Industrial (Dong Guan) Co., Ltd.; Great Union Industrial (Dongguan) Co., Ltd.; Time Faith Ltd.
- Changshu HTC Import & Export Co., Ltd.
- Cheng Meng Furniture (PTE) Ltd.; Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.
- Chuan Fa Furniture Factory

[14] A chest of drawers is typically a case containing drawers for storing clothing.

[15] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[16] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[17] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[18] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[19] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audiovisual entertainment systems.

[20] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[21] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part, 71 FR 38621 (July 7, 2006).

[22] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part, 72 FR 948 (January 9, 2007).

[23] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[24] Upholstered beds that are completely upholstered, i.e., containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 72 FR 7013 (February 14, 2007).

[25] To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[26] This HTSUS number has been added to the scope description in this segment of the proceeding.

- Clearwise Company Limited
- COE Ltd.
- Dalian Huafeng Furniture Co., Ltd./Dalian Huafeng Furniture Group Co., Ltd.[27]
- Decca Furniture Ltd.
- Dongguan Cambridge Furniture Co.; Glory Oceanic Co., Ltd.
- Dongguan Creation Furniture Co., Ltd.; Creation Industries Co., Ltd.
- Dongguan Great Reputation Furniture Co., Ltd.
- Dongguan Hung Sheng Artware Products Co., Ltd.; Coronal Enterprise Co., Ltd.
- Dongguan Kin Feng Furniture Co., Ltd.
- Dongguan Kingstone Furniture Co., Ltd.; Kingstone Furniture Co., Ltd.
- Dongguan Landmark Furniture Products Ltd.
- Dongguan Liaobushangdun Huada Furniture Factory; Great Rich (HK) Enterprises Co. Ltd.
- Dongguan Lung Dong Furniture Co., Ltd.; Dongguan Dong He Furniture Co., Ltd.
- Dongguan Singways Furniture Co., Ltd.
- Dongguan Sunrise Furniture Co., Ltd.; Taicang Sunrise Wood Industry Co., Ltd.; Taicang Fairmount Designs Furniture Co., Ltd.; Meizhou Sunrise Furniture Co., Ltd.
- Dongguan Sunrise Furniture Co.; Taicang Sunrise Wood Industry Co., Ltd.; Shanghai Sunrise Furniture Co., Ltd.; Fairmont Designs
- Dongguan Sunshine Furniture Co., Ltd.
- Dongguan Yihaiwei Furniture Limited
- Dongguan Yujia Furniture Co., Ltd.[28]
- Dongying Huanghekou Furniture Industry Co., Ltd.
- Eurosa (Kunshan) Co., Ltd.; Eurosa Furniture Co., (PTE) Ltd.
- Fine Furniture (Shanghai) Ltd.
- Foshan Guanqiu Furniture Co. Ltd.
- Fuzhou Huan Mei Furniture Co., Ltd.
- Garri Furniture (Dong Guan) Co., Ltd.; Molabile International, Inc.; Weei Geo Enterprise Co., Ltd.
- Guangzhou Maria Yee Furnishings Ltd.; Pyla HK, Ltd.; Maria Yee, Inc.
- Hang Hai Woodcraft's Art Factory
- Hualing Furniture (China) Co., Ltd.; Tony House Manufacture (China) Co., Ltd.; Buysell Investments Ltd.; Tony House Industries Co., Ltd.
- Jardine Enterprise, Ltd.
- Jiangmen Kinwai Furniture Decoration Co., Ltd.
- Jiangmen Kinwai International Furniture Co., Ltd.
- Jiangsu Dare Furniture Co., Ltd.
- Jiangsu Weifu Group Fullhouse Furniture Mfg. Corp.
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.
- Jiangsu Yuexing Furniture Group Co., Ltd.
- Jiedong Lehouse Furniture Co., Ltd.
- Kunshan Summit Furniture Co., Ltd.
- Langfang Tiancheng Furniture Co., Ltd.
- Link Silver Ltd. (V.I.B.); Forward Win Enterprises Company Limited; Dongguan Haoshun Furniture Ltd.
- Longrange Furniture Co., Ltd.
- Nanhai Baiyi Woodwork Co., Ltd.
- Nanhai Jiantai Woodwork Co., Ltd.; Fortune Glory Industrial Ltd. (H.K. Ltd.)
- Nantong Yangzi Furniture Co., Ltd.
- Nantong Yushi Furniture Co., Ltd.
- Nathan International Ltd.; Nathan Rattan Factory
- Perfect Line Furniture Co., Ltd.
- Pleasant Wave Limited; Passwell Corporation
- Prime Wood International Co., Ltd; Prime Best International Co., Ltd.; Prime Best Factory; Liang Huang (Jiaxing) Enterprise Co., Ltd.
- Putian Jinggong Furniture Co., Ltd.
- Qingdao Liangmu Co., Ltd.
- Restonic (Dongguan) Furniture Ltd.; Restonic Far East (Samoa) Ltd.
- Rizhao Sanmu Woodworking Co., Ltd.
- Season Furniture Manufacturing Co.; Season Industrial Development Co.
- Sen Yeong International Co., Ltd.; Sheh Hau International Trading Ltd.
- Shanghai Jian Pu Export & Import Co., Ltd.
- Shanghai Maoji Imp and Exp Co., Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd.; Telstar Enterprises Ltd.
- Shenyang Shining Dongxing Furniture Co., Ltd.
- Shenzhen Jiafa High Grade Furniture Co., Ltd.; Golden Lion International Trading Ltd.
- Shenzhen New Fudu Furniture Co., Ltd.
- Shenzhen Shen Long Hang Industry Co., Ltd.
- Shenzhen Xiande Furniture Factory
- Shun Feng Furniture Co., Ltd.
- Songgang Jasonwood Furniture Factory; Jasonwood Industrial Co., Ltd. S.A.
- Starwood Industries Ltd.
- Strongson Furniture (Shenzhen) Co., Ltd.; Strongson Furniture Co., Ltd.; Strongson (HK) Co.
- Sunforce Furniture (Hui-Yang) Co., Ltd.; Sun Fung Wooden Factory; Sun Fung Co.; Shin Feng Furniture Co., Ltd.; Stupendous International Co., Ltd.
- Superwood Co., Ltd.; Lianjiang Zongyu Art Products Co., Ltd.
- Tarzan Furniture Industries Ltd.; Samso Industries Ltd.
- Techniwood Industries Ltd.; Ningbo Furniture Industries Limited; Ningbo Hengnin Furniture Co. Ltd.
- Tianjin Fortune Furniture Co., Ltd
- Tianjin Master Home Furniture
- Tianjin Phu Shing Woodwork Enterprise Co., Ltd.
- Tradewinds Furniture Ltd.; Fortune Glory Industrial Ltd. (H. K. Ltd.)
- Transworld (Zhang Zhou) Furniture Co. Ltd.
- U–Rich Furniture (Zhangzhou) Co., Ltd.; U–Rich Furniture Ltd.
- Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd.; Dongguan Wanengtong Industry Co., Ltd.
- Wanvog Furniture (Kunshan) Co., Ltd.
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.
- Xiamen Yongquan Sci-Tech Development Co., Ltd.
- Yeh Brothers World Trade, Inc.
- Yihua Timber Industry Co., Ltd.; Guangdong Yihua Timber Industry Co., Ltd.
- Zhang Zhou Sanlong Wood Product Co., Ltd.
- Zhangjiagang Daye Hotel Furniture Co., Ltd.
- Zhangjiagang Zheng Yan Decoration Co., Ltd.
- Zhangzhou Guohui Industrial & Trade Co. Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.
- Zhoushan For-Strong Wood Co., Ltd.

In addition, because all requesting parties withdrew their respective requests for an administrative review of the two mandatory respondents within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review with respect to the Dorbest Group and the Shing Mark Group, in accordance with 19 CFR 351.213(d)(1).

Acme Furniture Industry Inc. (''Acme'') withdrew its request for an

[27] The Department initiated reviews of Dalian Huafeng Furniture Co., Ltd. and Dalian Huafeng Furniture Group Co., Ltd. as separate companies. However, in the administrative review just prior to this review, the Department determined that Dalian Huafeng Furniture Group Co., Ltd. was the successor-in-interest to Dalian Huafeng Furniture Co., Ltd. See Memorandum from Abdelali Elouaradia, Director, Office 4, AD/CVD Operations through Howard Smith, Program Manager, Office 4, AD/CVD Operations from Rebecca Pandolph, International Trade Compliance Analyst, AD/CVD Operations, Office 4 regarding, ''Successor-in-Interest,'' dated March 11, 2011.

[28] Dongguan Yujia Furniture Co., Ltd. is undergoing a new shipper review covering the period January 1, 2010 through December 31, 2010. The Department will issue assessment instructions for Dongguan Yujia Furniture Co., Ltd. at the completion of the new shipper review.

administrative review of Shenzhen Forest Furniture Co., Ltd. and Shenzhen Wonderful Furniture Co., Ltd. (collectively, ''Shenzhen'') on June 9, 2011.[29] The 90-day deadline established by 19 CFR 351.213(d)(1) for withdrawing review requests was May 31, 2011. However, 19 CFR 351.213(d)(1) states that the Secretary may extend this time limit if the Secretary finds it reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend the 90-day deadline, the Department has recently announced that it will not accept withdrawals of review requests after the 90-day deadline except in extraordinary circumstances.[30] Because (1) the Department did not notify parties to this review, prior to Acme's request for a review of Shenzhen, that it would not accept withdrawals of review requests after the 90-day deadline except in extraordinary circumstances, and (2) the Department has allowed parties, in this review and other proceedings, to withdraw review requests after the 90-day deadline for withdrawing review requests despite there being no extraordinary circumstances,[31] the Department has decided to extend the time limit for withdrawing the review request for Shenzhen. However, consistent with the recent announcement regarding withdrawals of review requests, in segments of this proceeding with anniversary months after August 2011, the Department will not consider extending the 90-day deadline for withdrawing review requests unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal of its review request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.[32] Because all parties who requested the review of Shenzhen have subsequently withdrawn their requests, in accordance with 19 CFR 351.213(d)(1), we are also rescinding this review of the antidumping duty order with respect to Shenzhen.

Further, for the following companies for which all requesting parties withdrew their respective requests for an administrative review within 90 days of the date of publication of the notice of initiation, but which were part of the PRC-wide entity during the POR, the Department intends to rescind the review in the final results:

- Brother Furniture Manufacture Co., Ltd.[33]
- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Champion Sun Industries Limited
- Contact Co., Ltd.
- Denny's Furniture Associates Corp.
- Denny's International Co., Ltd.
- Der Cheng Furniture Co., Ltd.
- Der Cheng Wooden Works
- Dong Guan Golden Fortune Houseware Co., Ltd.[34]
- Dongguan Chunsan Wood Products Co., Ltd.[35]
- Dongguan Hua Ban Furniture Co., Ltd.[36]
- DongGuan Sundart Timber Products Co., Ltd
- Ever Spring Furniture Company Ltd.[37]
- Evershine Enterprise Co.
- Fleetwood Fine Furniture LP
- Fujian Putian Jinggong Furniture Co., Ltd.
- Gainwell Industries Limited
- Green River Wood (Dongguan) Ltd.[38]
- Guangdong Gainwell Industrial Furniture Co., Ltd.
- Hong Kong Jingbi Group
- Huasen Furniture Co., Ltd.
- Jiant Furniture Co., Ltd.
- King Kei Trading Company Limited[39]
- King's Way Furniture Industries Co., Ltd.[40]
- Kingsyear Ltd.[41]
- Longkou Huangshan Furniture Factory
- MoonArt Furniture Group
- MoonArt International Inc.
- Nanjing Jardine Enterprise, Ltd.
- Nanjing Nanmu Furniture Co., Ltd.[42]
- Nantong Wangzhuang Furniture Co., Ltd.
- Ningbo Fubang Furniture Industries Limited
- Ningbo Furniture Industries Company Ltd.
- Ningbo Techniwood Furniture Industries Limited
- Northeast Lumber Co., Ltd.
- Passwell Wood Corporation
- S.Y.C. Family Enterprise Co., Ltd.[43]
- Senyuan Furniture Group
- Shanghai Aosen Furniture Co., Ltd.[44]

[29] See letter from Shenzhen regarding, ''Wooden Bedroom Furniture from the People's Republic of China-Acme Furniture Industry, Inc.'s Withdrawal Request for Shenzhen Forest and Shenzhen Wonderful,'' dated June 9, 2011.

[30] See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 76 FR 45773 (August 1, 2011) (August 2011 ''Opporunity Notice'').

[31] See Wooden Bedroom Furniture From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 75 FR 54854 (September 9, 2010) at the section entitled ''Rescission of the Fairmont Group.''

[32] See August 2011 Opportunity Notice, 76 FR at 45773.

[33] Because Brother Furniture Manufacture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[34] Because Dong Guan Golden Fortune Houseware Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[35] Because Dongguan Chunsan Wood Products Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[36] Because Dongguan Hua Ban Furniture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[37] Because Ever Spring Furniture Company Ltd.; S.Y.C. Family Enterprise Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[38] Because Green River Wood (Dongguan) Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[39] Because King Kei Trading Company Limited lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[40] Because King's Way Furniture Industries Co., Ltd.; Kingsyear Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility or a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[41] Because King's Way Furniture Industries Co., Ltd.; Kingsyear Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility or a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[42] 4th Because Nanjing Nanmu Furniture Co., Ltd. lost its separate rate on August 18, 2010 (see 4 Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[43] Because Ever Spring Furniture Company Ltd.; S.Y.C. Family Enterprise Co., Ltd. lost its separate rate on August 18, 2010 (see Llul Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[44] Because Shanghai Aosen Furniture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is

- Shanghai Hospitality Product Mfg., Co., Ltd.
- Shanghai Industries Group
- Shanghai Kent Furniture Co., Ltd.
- Shanghai Season Industry & Commerce Co., Ltd.
- Shanghai Zhiyi (Jiashun) Furniture Co., Ltd.
- Shanghai Zhiyi Furniture and Decoration Co., Ltd.
- Shaoxing Mengxing Furniture Co., Ltd.
- Starwood Furniture Manufacturing Co., Ltd. [45]
- Sundart International, Ltd.
- Techniwood (Macao Commercial Offshore) Limited
- Tradewinds International Enterprise Ltd.
- Trendex Industries Ltd.
- Wan Bao Chen Group Hong Kong Co., Ltd. [46]
- World Design International Co., Ltd.
- Xilinmen Furniture Co., Ltd.
- Xingli Arts & Crafts Factory of Yangchun [47]
- Yuexing Group Co., Ltd.
- Zhejiang Shaoxing Huaweimei Furniture Co., Ltd.
- Zhong Shan Heng Fu Furniture Co.
- Zhongshan Fengheng Furniture Co., Ltd.
- Zhongshan Yiming Furniture Co., Ltd.

Intent To Rescind the 2010 Administrative Review, in Part

Among the companies still under review, seven companies reported that they made no shipments of subject merchandise to the United States during the POR.[48] To test these claims, the Department ran a CBP data query, issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims, and obtained entry documents from CBP.[49] After examining record information, we have preliminarily determined that three of the seven companies, (1) Baigou Crafts Factory of Fengkai, (2) Locke Furniture, and (3) Sunwin, had shipments of subject merchandise that entered the United States during the POR.[50]

Since record evidence does not contradict the no-shipment claims of the following companies, the Department intends to rescind this administrative review with respect to these companies, pursuant to 19 CFR 351.213(d)(3):

- Hangzhou Cadman Trading Co., Ltd.
- Dongguan Huangsheng Furniture Co., Ltd.
- Golden Well International (HK) Ltd.
- Zhejiang Tianyi Scientific and Educational Equipment Co., Ltd.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested NME treatment. Accordingly, the Department has continued to treat the PRC as an NME country in this review

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 assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in a NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de 'ire 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 (May 6, 1991) (''Sparklers''), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586–87 (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 not necessary to determine whether it is independent from government control. See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign-owned and thus qualified for a separate rate).

Separate Rate Recipients

Of the 73 companies or company groupings that had submitted separate applications or certifications, all but one request for review of these companies have been withdrawn. The Tube-Smith Group is the only company that has submitted separate rate information for which there still remains a request for review. The Tube-Smith Group reported that it is wholly-owned by individuals or companies located in a market economy. The record indicates that the Tube-Smith Group is wholly foreign-owned and the Department has no evidence indicating that it is under the control of the PRC governments [51] Accordingly, the Department has preliminarily granted a separate rate to the Tube-Smith Group.

treating this company as part of the PRC-wide entity.

[45] Because Starwood Furniture Manufacturing Co., Ltd. lost its separate rate on August 18, 2010 (see Llth Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[46] Because Wan Bao Chen Group Hong Kong Co., Ltd. lost its separate rate on August 18, 2010 (see 461Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[47] Because Xingli Arts & Crafts Factory of Yangchun lost its separate rate on August 18, 2010 (see 4 Review Final Results), and has not filed a separate rate application to establish its eligibility for a separate rate in this review, the Department is treating this company as part of the PRC-wide entity.

[48] These companies are Baigou Crafts Factory of Fengkai; Locke Furniture; Sunwin; Hangzhou Cadman Trading Co., Ltd.; Dongguan Huangsheng Furniture Co., Ltd.; Golden Well International (HK) Ltd.; Zhejiang Tianyi Scientific and Educational Equipment Co., Ltd.

[49] See Memorandum to the File from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4 regarding, ''Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2010 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 12, 201 land Memorandum to the File from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4 regarding, ''Second Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2010 Administrative Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 26, 2011.

[50] See Memorandum to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations from Rebecca Pandolph, International Trade Compliance Analyst, AD/CVD Operations, Office 4, regarding ''Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Analysis of No Sales/Shipments Claims Made by Certain Companies'' dated concurrently with this notice (''No Shipments Memorandum'').

[51] See letter from Billionworth Enterprises, Ltd. to the Secretary of Commerce, regarding, ''Wooden Bedroom Furniture from the People's Republic of China: Separate Rate Certification of Billionworth Enterprises, Ltd.,'' dated May 2, 2011 and Letter from Tube-Smith Enterprise (Zhangzhou) Co., Ltd. to the Secretary of Commerce, regarding ''Wooden Bedroom Furniture from the People's Republic of China: Separate Rate Application for Tube-Smith Enterprise (Zhangzhou) Co., Ltd.,'' dated May 2, 2011.

Margin for Separate Rate Recipient Not Individually Examined

We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the companies selected for examination excluding zero and *de minimis* rates and rates based entirely on adverse facts available (''AFA''). In the instant review, however, as discussed above, the Department is rescinding the review of the two entities selected as mandatory respondents and no other companies were selected for individual examination. Thus, there were no company-specific margins calculated in this review. Additionally, as discussed below, the rate for the PRC-wide entity is based on total AFA.

While the statute does not specifically address this particular set of circumstances, the Department has generally looked to section 735(c)(5) of the Act for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs the Department not to calculate an all-others rate using any zero or de minimis margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. Consistent with Department practice, we preliminarily find that a reasonable method for assigning the rate to non-selected respondents is to use the most recent rate calculated for the non-selected company in question, unless we calculated in a more recent review a rate for any company that was not zero, de minimis or based entirely on facts available. Therefore, the Department has preliminarily assigned a rate of 41.75 percent to the Tube-Smith Group. This rate is the most recently calculated rate that is not zero or de minimis and not based entirely on facts available.[52] Also, this rate is for a period that is more recent than the period for which the Tube-Smith Group was assigned a rate.

Companies Not Receiving a Separate Rate

The following 14 companies and company groupings for which the Department initiated the instant review did not provide a separate rate certification or application:

- Dongguan Bon Ten Furniture Co., Ltd.
- Dongguan Grand Style Furniture Co. Ltd.; Hong Kong Da Zhi Furniture Co., Ltd.
- Dongguan Hero Way Woodwork Co., Ltd.; Dongguan Da Zhong Woodwork Co., Ltd.; Hero Way Enterprises Ltd.; Well Earth International Ltd.
- Dongguan Mu Si Furniture Co., Ltd.
- Hainan Jong Bao Lumber Co., Ltd.; Jibbon Enterprise Co., Ltd.
- Kuan Lin Furniture (Dong Guan) Co., Ltd.; Kuan Lin Furniture Factory; Kuan Lin Furniture Co., Ltd.
- Kunshan Lee Wood Product Co., Ltd.
- Leefu Wood (Dongguan) Co., Ltd.; King Rich International, Ltd.
- Meikangchi (Nantong) Furniture Company Ltd.
- Nantong Dongfang Orient Furniture Co., Ltd.
- Shanghai Fangjia Industry Co. Ltd.
- Winny Overseas, Ltd.; Zhongshan Winny Furniture Ltd.; Winny Universal Ltd.
- Zhong Shan Fullwin Furniture Co., Ltd.
- Zhongshan Gainwell Furniture Co. Ltd.

The companies listed above, which were named in the Initiation Notice, were notified in that notice that they must timely submit separate rate applications or separate rate certifications in order to qualify for a separate rate. Additionally, the Initiation Notice identified the Web site address where the separate rate certification and the separate rate application could be found. Since each of the companies listed above did not provide separate rate information, they have failed to demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters as part of the PRC-wide entity.

Also, we have preliminarily found that (1) Baigou Crafts Factory of Fengkai, (2) Locke Furniture Factory, and (3) Sunwin, shipped subject merchandise during the POR, despite their claims to the contrary.[53] Because these companies did not file a timely separate rate certification or application[54] and thereby failed to provide separate rate information, they have failed to demonstrate their eligibility for separate rate status. As a result, the Department is treating these three companies as part of the PRC-wide entity.[55]

Use of Facts Available and AFA

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if: (1) Necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used,

[52] See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729, 49733 (August 11, 2011) (''5th Review Results'').

[53] See No Shipments Memorandum.

[54] The due date for submitting separate rate information was April 29, 2011. On September 2, 2011, approximately one month before the due date for the preliminary results of the instant review, Sunwin requested that the Department permit it to submit an ''out of time separate rate certification * * *.'' The Department has not granted Sunwin's request.

[55] Sunwim claims it changed its name from Zhangjiang Sunwin Arts & Crafts Co., Ltd. to Guangdong Sunwin Green Furniture Industry Group Co., Ltd. However, a timely separate rate application has not been filed in this review under either name. Thus, entries of subject merchandise during the POR exported under either name would be subject to the PRC-wide rate. Since Zhangjiang Sunwin Arts & Crafts Co., Ltd. has lost its separate rate, there is no need to make a determination as to whether Guangdong Sunwin Green Furniture Industry Group Co., Ltd. is entitled to the separate rate that had been assigned to Zhangjiang Sunwin Arts & Crafts Co., Ltd. Therefore, the Department has not conducted a successor-in-interest analysis with respect to Sunwin.

and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Total AFA to the PRC-Wide Entity

In the Initiation Notice, the Department stated that if one of the companies for which this review has been initiated ''does not qualify for a separate rate, all other exporters of wooden bedroom furniture from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity * * *.'' [56] As noted above, not all of the companies for which this review was initiated have qualified for a separate rate; as a result, the PRC-wide entity is now under review.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Specifically, Shanghai Fangjia Industry Co. Ltd., which we are treating as part of the PRC-wide entity, did not respond to the Department's request for Q&V data. We preliminarily determine that the PRC-wide entity has withheld information requested by the Department.

Thus, pursuant to sections 776(a)(2)(A) (withholds requested information) and (C) (significantly impedes a proceeding) of the Act, the Department has preliminarily based the dumping margin of the PRC-wide entity on the facts otherwise available on the record. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown. See *Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*) where the Court of Appeals for the Federal Circuit (''CAFC'') explained that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.*, information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown''). Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of an AFA Rate for the PRC-Wide Entity

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner'' and that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [57] Specifically, the Department's practice in selecting a total AFA rate in administrative reviews is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary infonnation).[58]

The Court of International Trade (''CIT'') and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[59] Therefore, as AFA, the Department has preliminarily assigned the PRC-wide entity a dumping margin of 216.01 percent. This margin, which is from the 2004–2005 new shipper review of wooden bedroom furniture from the PRC, is the highest dumping margin on the record of any segment of this proceeding.[60]

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[61] Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[62] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[63] Independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested

[56] Initiation Notice, 76 FR at 10882 n.10.

[57] See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 (February 23, 1998); see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103, 316, 838, 870 (1994).

[58] See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009) (unchanged in the final results); see *also, Fujian Lianfu Forestry Co., Ltd.* v. *United States,* 638 F. Supp. 2d 1325, 1336 (Ct. Int'l Trade 2009) (''Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.'')

[59] See, *e.g., NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); *Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 683–84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen Int'l Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[60] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi-Annual New Shipper Reviews, 71 FR 70739, 70741 (December 6, 2006) (''2004–2005 New Shipper Review'').

[61] See SAA at 870.

[62] Id.

[63] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final results); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

parties during the particular investigation.[64]

The 216.01 AFA rate that the Department is using in this review is a company-specific rate calculated in the 2004–2005 New Shipper Review of the wooden bedroom furniture order.[65] No additional information has been presented in the current review which calls into question the reliability of the information. Thus, we have determined this information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated).

Because there are no mandatory respondents in this review for which individual margins are calculated, there are no transaction specific margins with which to corroborate the 216.01 rate. Accordingly, the Department must look to secondary information to corroborate this rate.

In the two most recently completed administrative reviews in this proceeding, the Department compared transaction-specific margins calculated for the mandatory respondents with the 216.01 percent rate calculated in the 2004–2005 New Shipper Review and found that the 216.01 percent margin was within the range of the margins calculated for the mandatory respondents.[66] Because the dumping margins used to corroborate the AFA rate in the two most recently completed reviews did not reflect unusually high dumping margins relative to the calculated rates determined for the cooperating respondents in those reviews, the Department was satisfied that the dumping margins used for corroborative purposes reflected commercial reality because they were based upon real transactions that occurred during the POR and were subject to verification by the Department. Since the 216.01 percent margin was within the range of transaction-specific margins on the record of the two prior administrative reviews, the Department determined that the 216.01 percent margin continued to be relevant for use as an AFA rate for the PRC-wide entity in those administrative reviews. As there are no comments or evidence on the record to indicate that there have been significant changes in the industry since the final results of the two most recently completed administrative reviews and there are no comments or evidence on the record of this review that question the relevancy of the 216.01 rate, the Department has determined that the 216.01 percent margin continues to be relevant for use as an AFA rate for the PRC-wide entity.

As the adverse margin is both reliable and relevant, the Department has determined that it has probative value. Accordingly, the Department has determined that this rate meets the corroboration criterion established in section 776(c) of the Act.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period January 1, 2010 through December 31, 2010:

Exporter	Antidumping duty margin (percent)
Tube-Smith Enterprises (ZhangZhou) Co., Ltd.; Tube-Smith Enterprises (Haimen) Co., Ltd.; and Billionworth Enterprises, Ltd	41.75
PRC-Wide Entity	216.01

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than 5 days after the time limit for filing case briefs see 19 CFR 351.309(d). Any 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, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with 19 CFR 351.213(h)(1) unless the time limit is extended.

Assessment

Pursuant to 19 CFR 351.212, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to instruct CBP to liquidate POR entries containing subject merchandise exported by the Tube-Smith group and the PRC-wide entity at the rates assigned to these entities in the final results of this review. The Department intends to issue these assessment instructions, as well as instructions for the companies for which the Department intends to rescind this review, directly to CBP 15 days after publication of the final results of this review.

For the companies for which the Department has rescinded this review (see the companies listed under ''Partial Final Rescission of Review'' above) which had a separate rate granted in a previously completed segment of this

[64] See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627, 35629 (June 16, 2003), unchanged in final determination, 68 FR 62560; Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183–84 (March 11, 2005).

[65] See 2004–2005 New Shipper Review, 71 FR at 70741.

[66] See Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) (''4th Review Final Results'') and 5th Review Results.

proceeding that was in effect during the instant review period, the Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of this preliminary notice in the **Federal Register**. For these companies, antidumping duties shall be assessed on POR entries subject to the separate rates at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

For the companies for which the Department intends to rescind the individual review of the company in the final results, but which are part of the PRC-wide entity during the instant review period (i.e., have not established their eligibility for a separate rate), the Department will issue assessment instructions 15 days after publication of the final results of this review. These companies are as follows:

- Brother Furniture Manufacture Co., Ltd.[67]
- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Champion Sun Industries Limited
- Contact Co., Ltd.
- Denny's Furniture Associates Corp.
- Denny's International Co., Ltd.
- Der Cheng Furniture Co., Ltd.
- Der Cheng Wooden Works
- Dong Guan Golden Fortune Houseware Co., Ltd.[68]
- Dongguan Chunsan Wood Products Co., Ltd.[69]
- Dongguan Hua Ban Furniture Co., Ltd.[70]
- DongGuan Sundart Timber Products Co., Ltd
- Ever Spring Furniture Company Ltd.[71]
- Evershine Enterprise Co.
- Fleetwood Fine Furniture LP
- Fujian Putian Jinggong Furniture Co., Ltd.
- Gainwell Industries Limited
- Green River Wood (Dongguan) Ltd.[72]
- Guangdong Gainwell Industrial Furniture Co., Ltd.
- Hong Kong Jingbi Group
- Huasen Furniture Co., Ltd.
- Jiant Furniture Co., Ltd.
- King Kei Trading Company Limited[73]
- King's Way Furniture Industries Co., Ltd.[74]
- Kingsyear Ltd.[75]
- Longkou Huangshan Furniture Factory
- MoonArt Furniture Group
- MoonArt International Inc.
- Nanjing Jardine Enterprise, Ltd.
- Nanjing Nanmu Furniture Co., Ltd.[76]
- Nantong Wangzhuang Furniture Co., Ltd.
- Ningbo Fubang Furniture Industries Limited
- Ningbo Furniture Industries Company Ltd.
- Ningbo Techniwood Furniture Industries Limited
- Northeast Lumber Co., Ltd.
- Passwell Wood Corporation
- S.Y.C. Family Enterprise Co., Ltd.[77]
- Senyuan Furniture Group
- Shanghai Aosen Furniture Co., Ltd.[78]
- Shanghai Hospitality Product Mfg., Co., Ltd.
- Shanghai Industries Group
- Shanghai Kent Furniture Co., Ltd.
- Shanghai Season Industry & Commerce Co., Ltd.
- Shanghai Zhiyi (Jiashun) Furniture Co., Ltd.
- Shanghai Zhiyi Furniture and Decoration Co., Ltd.
- Shaoxing Mengxing Furniture Co., Ltd.
- Starwood Furniture Manufacturing Co., Ltd.[79]
- Sundart International, Ltd.
- Techniwood (Macao Commercial Offshore) Limited
- Tradewinds International Enterprise Ltd.
- Trendex Industries Ltd.

[67] Brother Furniture Manufacture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). This rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Brother Furniture Manufacture Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[68] Dong Guan Golden Fortune Houseware Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). This rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Dong Guan Golden Fortune Houseware Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[69] Dongguan Chunsan Wood Products Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Dongguan Chunsan Wood Products Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[70] Dongguan Hua Ban Furniture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Dongguan Hua Ban Furniture Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[71] Ever Spring Furniture Company Ltd.; S.Y.C. Family Enterprise Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Ever Spring Furniture Company Ltd.; S.Y.C. Family Enterprise Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries to which the PRC-wide rate applies will not be issued until completion of the instant review.

[72] Green River Wood (Dongguan) Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Green River Wood (Dongguan) Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[73] King Kei Trading Company Limited lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from King Kei Trading Company Limited during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[74] King's Way Furniture Industries Co., Ltd.; Kingsyear Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from King's Way Furniture Industries Co., Ltd.; Kingsyear Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[75] King's Way Furniture Industries Co., Ltd.; Kingsyear Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from King's Way Furniture Industries Co., Ltd.; Kingsyear Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[76] Nanjing Nanmu Furniture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Nanjing Nanmu Furniture Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[77] Ever Spring Furniture Company Ltd.; S.Y.C. Family Enterprise Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Ever Spring Furniture Company Ltd.; S.Y.C. Family Enterprise Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries to which the PRCwide rate applies will not be issued until completion of the instant review.

[78] Shanghai Aosen Furniture Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Shanghai Aosen Furniture Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[79] Starwood Furniture Manufacturing Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Starwood Furniture Manufacturing Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

- Wan Bao Chen Group Hong Kong Co., Ltd.[80]
- World Design International Co., Ltd.
- Xilinmen Furniture Co., Ltd.
- Xingli Arts & Crafts Factory of Yangchun[81]
- Yuexing Group Co., Ltd.
- Zhejiang Shaoxing Huaweimei Furniture Co., Ltd.
- Zhong Shan Heng Fu Furniture Co.
- Zhongshan Fengheng Furniture Co., Ltd.
- Zhongshan Yiming Furniture Co., Ltd.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(1) and (a)(2)(C) of the Act: (1) For all respondents receiving a separate rate, the cash deposit rate will be that rate established in the final results of this review; (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 that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate established in the final results of this review; 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 the non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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.

The Department is issuing and publishing these preliminary results of administrative review in accordance with section 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27280 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–DS–M

[80] Wan Bao Chen Group Hong Kong Co., Ltd. lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Wan Bao Chen Group Hong Kong Co., Ltd. during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

[81] Xingli Arts & Crafts Factory of Yangchun lost its separate rate on August 18, 2010 (see 4th Review Final Results). The separate rate applies only to entries from January 1, 2010 through August 17, 2010. All other entries of subject merchandise from Xingli Arts & Crafts Factory of Yangchun during 2010 are subject to the PRC-wide rate. Assessment instructions for 2010 entries will not be issued until completion of the instant review.

DEPARTMENT OF COMMERCE

International Trade Administration

Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Policy Concerning Assessment of Antidumping Duties.

SUMMARY: After consideration of public comments, the Department of Commerce (''the Department'') is hereby adopting a refinement in its practice with respect to the rate at which it instructs U.S. Customs and Border Protection (''CBP'') to liquidate certain non-reviewed entries. Specifically, the Department is refining its practice to instruct CBP to liquidate such entries at the non-market economy (''NME'')-wide rate.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, Special Assistant, China/NME Unit, Office of Antidumping and Countervailing Operations, Import Administration, U.S. Department of Commerce, at 202–482–1394.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2011, the Department proposed a refinement to its practice regarding the rate at which it instructs CBP to liquidate certain entries from non-reviewed exporters. *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 34046 (June 10, 2011) (''*Proposed Policy*''). As explained in the *Proposed Policy*, in administrative reviews of antidumping duty (''AD'') orders covering merchandise produced in NME countries, importers will sometimes declare in their entry documentation a cash deposit rate that is associated with a company which has a company-specific rate, as opposed to the NME-wide rate, but the sales underlying the particular entry are not reported to or reviewed by the Department in the course of the administrative review covering that company. As a result, there may be suspended entries to which the Department's final review results do not apply. Previously, in such situations, it was the Department's practice to instruct CBP to assess AD duties at the cash deposit rate in effect at the time of entry for such entries of merchandise.

In response to the *Proposed Policy,* the Department received comments from thirteen parties. After careful consideration of these comments, the Department has determined to implement the proposed refinement in practice. The Department will instruct CBP to apply the NME-wide rate to entries suspended at a reviewed exporter's rate, but which are not reported to or reviewed by the Department during the administrative review process. For further detail on what entries this policy affects, *see* the ''Applicability'' section below.

Final Refinement in Practice

In AD proceedings, the Department establishes a cash deposit rate for each company subject to the investigation or review. In NME cases, if an exporter does not receive a separate rate, the NME-wide rate applies as the cash deposit rate at the time of entry to entries of merchandise it exports. Previously, for merchandise entered at the separate rate applicable to a reviewed exporter, but which were not reported to the Department in the review and thus not covered by the final results of the review, the Department instructed CBP to liquidate such entries at the cash deposit rate in effect at the time of entry.

With the publication of this notice, the Department implements a policy refinement regarding the rate at which it will instruct CBP to liquidate such non-reviewed entries. For entries that are not reported in the reviewed company's U.S. sales databases submitted to the Department during an administrative review, or otherwise determined not covered by the review (*i.e.,* the reviewed exporter claims no shipments), the Department will instruct CBP to liquidate such entries at the NME-wide rate as opposed to the company-specific rate declared by the importer at the time of entry.

This practice in NME proceedings will be consistent with the application of the same liquidation practice in market economy (''ME'') proceedings. The goal of this practice in ME proceedings, the accurate assignment of duties based on information obtained in a review, is not unique to ME proceedings but is necessary in all antidumping proceedings. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). Interested parties have the right to request an administrative review of their entries, or to participate in an administrative review, to ensure that the entries are liquidated at the rate the interested party believes is proper. *See* 19 CFR 351.103, *et seq.*

Applicability

The Department intends to apply the policy to all non-reviewed entries from exporters which are selected for individual examination, whether or not the Department is aware of the involvement of a third party. Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate. See *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative review,* 75 FR 56989 (September 17, 2010). This refinement will not apply to entries suspended at the cash deposit rate for exporters for which a review is not initiated. Nor does this refinement apply to entries suspended at the rate of exporters under review but which are not selected for individual examination (*i.e.,* the separate rate companies), except where the Department has determined that the exporter had no shipments covered by the review.

Definition of Exporter

In response to the *Proposed Policy,* certain parties argued that the Department should clarify the term ''exporter'' for this refinement in practice to provide notice to the importers regarding which entity the importer should consider to be the exporter in a multi-leg transaction for the purpose of claiming the correct cash deposit rate and having the entry liquidated in accordance with that expectation. Because of the variances in commercial practice, it is the Department's established practice to evaluate an export transaction on a case-by-case basis within the context of an administrative review or investigation. Within the framework of an administrative review, the Department is able to examine additional documentation to decide which entity was the exporter for purposes of making NME AD determinations.

Because the importer is the party most likely to have the best information and appropriate documentation regarding the transactions relevant to the entries, the Department considers it to be the importer's responsibility to ensure that the documentation of the sales transaction supports the cash deposit rate the importer claims for its entries. In order to facilitate the proper identification of the exporter, the Department will coordinate with CBP to provide guidance to importers. Likewise, as explained above, any interested party can file a notice of appearance with the Department to ensure that its entries are liquidated in accordance with its expectations.

Implementation

As stated in the *Proposed Policy,* the Department intends to apply this policy to all entries for which the anniversary month for requesting an administrative review is the month after the date of publication of this final notice. *See Proposed Policy.* This implementation is consistent with our ME Reseller Practice and with the Federal Circuit's opinion in *Parkdale Int'l* v. *United States,* 475 F.3d 1375, 1378–79 (CAFC 2007) (''the primary effect of the policy is prospective, *i.e.,* it applies to liquidations post-dating its adoption, [accordingly] we conclude that its effect cannot properly be considered impermissibly retroactive''). Therefore, this policy refinement will apply to all relevant entries, regardless of when entered, for which the anniversary month for requesting a review of the order is November, 2011 or later.

Dated: October 17, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27459 Filed 10–21–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Extension of Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is extending the time limit for the final results of the first new shipper review of uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC''). The review covers the period of review (''POR'') of February 1, 2010, through July 31, 2010.

DATES: *Effective Date:* October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, 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) 482–0413.

Background

On August 4, 2011, the Department published in the **Federal Register** the Preliminary Results of the new shipper review of innersprings from the PRC.[1] The respondent in this new shipper review is Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory (''Quan Li''). The final results are currently due no later than October 24, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(i)(1) of the Department's regulations, require the Department to issue the final results in a new shipper review 90 days after the date on which the preliminary results are issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated.[2]

Extension of Time Limit for Final Results of Review

We determine that this case is extraordinarily complicated because the Department requires additional time to analyze interested parties' case and rebuttal briefs concerning the *bona fide* nature of the sale under review. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act, and section 351.214(i)(2) of the Department's regulations, we are extending the time for the completion of the final results of this review until November 22, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

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[1] *See Uncovered Innerspring Units From the People's Republic of China: Preliminary Intent To Rescind New Shipper Review,* 76 FR 47151 (August 4, 2011) (''*Preliminary Results*'').

[2] *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

Dated: October 11, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27449 Filed 10–21–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Battelle Energy Alliance, *et al.;* Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 11–056. *Applicant:* Battelle Energy Alliance, Idaho Falls, ID 83415. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 76 FR 56156, September 12, 2011.

Docket Number: 11–057. *Applicant:* Battelle Energy Alliance, Idaho Falls, ID 83415. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 76 FR 56156, September 12, 2011.

Docket Number: 11–058. *Applicant:* University of Texas at Austin, Austin, TX 78712. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 76 FR 56156, September 12, 2011.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: October 18, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–27456 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Applicants for the Appointment to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In March 2007, the Governments of the United States and Brazil established the U.S.-Brazil CEO Forum. This notice announces membership opportunities for up to three individuals for appointment as American representatives to the current U.S. Section of the Forum. The current U.S. Section term will expire on August 12, 2013.

DATES: Applications should be received no later than November 4, 2011.

ADDRESSES: Please send requests for consideration to Lorrie Fussell, Office of South America, U.S. Department of Commerce, either by e-mail at *lorrie.fussell@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 3203, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lorrie Fussell, Office of South America, U.S. Department of Commerce, *telephone:* (202) 482–4157.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce and the Deputy Assistant to the President and Deputy National Security Advisor for International Economic Affairs, together with the Planalto Casa Civil Minister (Presidential Chief of Staff) and the Brazilian Minister of Development, Industry and Foreign Trade, co-chair the U.S.-Brazil CEO Forum, pursuant to the Terms of Reference signed in March 2007 by the U.S. and Brazilian governments, which set forth the objectives and structure of the Forum. The Terms of Reference may be viewed at: *http://trade.gov/press/press_releases/2007/brazilceo_02.asp.* The Forum, consisting of both private and public sector members, brings together leaders of the respective business communities of the United States and Brazil to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries. The Forum consists of the U.S. and Brazilian co-chairs and a Committee comprised of private sector members. The Committee will be composed of two Sections, each consisting of ten to twelve members from the private sector, representing the views and interests of the private sector business community in the United States and Brazil. Each government appoints the members to its respective Section. The Committee provides recommendations to the two governments that reflect private sector views, needs and concerns regarding the creation of an economic environment in which their respective private sectors can partner, thrive and enhance bilateral commercial ties to expand trade between the United States and Brazil.

Candidates are currently sought to fill up to three current vacancies on the U.S. Section of the Forum. Each candidate must be the Chief Executive Officer or President (or have a comparable level of responsibility) of a U.S.-owned or -controlled company that is incorporated in and has its main headquarters in the United States and that is currently doing business in both Brazil and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and able to travel to Brazil and locations in the United States to attend official Forum meetings as well as independent U.S. Section and Committee meetings. In addition, the candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended. Applicants may not be federally-registered lobbyists, and, if appointed, will not be allowed to continue to serve as members of the U.S. Section of the Committee if the member becomes a federally-registered lobbyist.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

—A demonstrated commitment by the individual's company to the Brazilian market either through exports or investment.

—A demonstrated strong interest in Brazil and its economic development.

—The ability to offer a broad perspective and business experience to the discussions.

—The ability to address cross-cutting issues that affect the entire business community.

—The ability to initiate and be responsible for activities in which the Forum will be active.

Members will be selected on the basis of who will best carry out the objectives of the Forum as stated in the Terms of Reference establishing the U.S.-Brazil CEO Forum. The U.S. Section of the Forum should also include members that represent a diversity of business sectors and geographic locations. To the extent possible, U.S. Section members

also should represent a cross-section of small, medium, and large firms.

U.S. members will receive no compensation for their participation in Forum-related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. U.S. members will normally serve for two year terms, but may be reappointed.

To be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company's headquarters; location for incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in Brazil; an affirmative statement that the applicant is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a member of the U.S. Section of the Forum if the applicant becomes a federally registered lobbyist; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

Dated: October 14, 2011.

Anne Driscoll,

Director for the Office of South America.

[FR Doc. 2011–27115 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA772

Marine Mammals; File No. 16685

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Thomas A. Jefferson, PhD, Clymene Enterprises, 5495 Camino Playa Malaga, San Diego, CA 92124, has applied in due form for a permit to conduct research on nine cetacean species off the California coast.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 23, 2011.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16685 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The proposed permit would authorize research on the population biology and the impacts of Navy training operations on California stocks of nine cetacean species including bottlenose (*Tursiops truncatus*), Risso's (*Grampus griseus*), short-beaked common (*Delphinus delphis*), long-beaked common (*D. capensis*), Pacific white-sided (*Lagenorhynchus obliquidens*), and northern right whale dolphins (*Lissodelphis borealis);* killer whale (*Orcinus orca,* excluding Southern resident stock); Dall's porpoise (*Phocoenoides dalli*) and harbor porpoise (*Phocoena phocoena*). The study would also examine impacts of persistent organic pollutants (POPs) in coastal bottlenose dolphins along the California coast. Research would occur primarily in the waters of the Southern California Bight (San Diego area), Monterey Bay, and San Francisco Bay areas. For each stock, up to 2,400 individuals may be approached annually for photo-identification and behavioral studies and up to 60 individuals may be biopsy sampled over the life of the permit. The permit would be valid for a period of five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 19, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–27472 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA765

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; 2012 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2012 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota (ITQ) allocation holders that they will be required to purchase their fishing year 2012 (January 1, 2012–December 31, 2012) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to: Regional Administrator,

National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 282–8483; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.75(b) authorize the Regional Administrator of the Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, KY, is the authorized vendor of cage tags required for the fishing year 2012 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to ITQ allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: October 19, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27477 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA730

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: NMFS is soliciting public comment on an exempted fishing permit application that would exempt one commercial fishing vessel from the Atlantic surfclam and ocean quahog Georges Bank Closure Area to continue testing the safety and efficacy of harvesting Atlantic surfclams and ocean quahogs from the closure area. This would be a continuation of a research project that has been ongoing since 2006. NMS has made a preliminary determination that the exempted fishing permit application contains all of the required information and warrants further consideration.

DATES: Comments must be received on or before November 8, 2011.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: ''Comments on 2012 GB PSP Closed Area Exemption.''

Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2012 GB PSP Closed Area Exemption.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

Copies of supporting documents referenced in this notice are available from NMFS, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at *http://www.nero.noaa.gov/sfd/clams.*

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, phone 978–281–9177.

SUPPLEMENTARY INFORMATION: The applicant, Wallace & Associates, of Cambridge, MD, requests on behalf of Truex Enterprises a renewal of their current EFP, which is due to expire on December 31, 2011, to allow the catch and retention for sale of Atlantic surfclams and ocean quahog from within the Atlantic surfclam and ocean quahog Georges Bank (GB) Closure Area. The GB Closed Area is located east of 69°00' W. long. and south of 42°20' N. lat and has been closed since May 25, 1990, due to the presence of a toxin (saxotoxins) that cause paralytic shellfish poisoning (PSP). Due, in part, to the inability to test and monitor this area for the presence of PSP, this closure was made permanent through Amendment 12 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan in 1999.

The primary goal of the proposed study is to test the efficacy of a sampling protocol that was developed by state and Federal regulatory agencies to test for presence of saxotoxins in shellfish, and thus has been in a trial period through previous EFPs since 2006. This protocol would facilitate the harvest of shellfish from waters susceptible to harmful algal blooms, which produce the saxotoxins, but that are not currently under rigorous water quality monitoring programs by either state or Federal management agencies. A copy of the sampling protocol is available from the NMFS Northeast Region Web site: *http://www.nero.noaa.gov/sfd/clams.*

This project is a pilot program with the goal of determining if the shellfish harvested from the GB Closure Area are safe for human consumption under the U.S. Food and Drug Administration (FDA) International Shellfish Sanitation Conference (ISSC) guidelines and requirements. The protocol in this pilot program will be presented to the ISSC meeting in October 2011 to adopt the protocol into the National Shellfish Sanitation Program (NSSP) and change it from a pilot program to a permanent part of the U.S. FDA ISSC Shellfish Sanitation Program. If adopted, additional vessel participants would be required to obtain an EFP to participate in this or similar projects.

The proposed project would continue to conduct a trial for the sampling protocol in an exemption zone within the larger 1990 GB Closure Area with one fishing vessel. The exemption zone would not include any Northeast multispecies or essential fish habitat year-round closure areas. This proposed exempted fishing activity would occur during the 2012 calendar year, using surfclam quota allocated to Truex Enterprises under the Federal individual transferable quota program. The applicant has estimated a harvest of 250,000 bushels (8,809,768 L) of surfclams from the exemption area. The exemption area has been tested in cooperation with the FDA from 2006 to the present.

It is expected that harvesting under an EFP would occur on approximately 60–70 days during 2012. Species to be harvested are surfclams and ocean quahogs, utilizing a 170-inch (4.3 m) hydraulic clam dredge. Approximately 30 tows per day would be made for 10 minutes each, at a speed of about 2.5 knots. There are no discards or known interactions with protected species. Harvesting under an EFP is not expected to exceed two trips per week. Harvested clams would be delivered to Sea Watch International in New Bedford, MA. Harvests would be predominantly surfclams from the area known as Cultivator Shoals.

The U.S. FDA would receive samples from each trip for their information and independent analyses in addition to the onboard screening and the dockside testing. Onboard screening is conducted on five samples taken from each corner and the center of each lot to be harvested (not more than 3-square miles (4.8 square kilometers)) by Jellett Rapid Test Kits and Abraxis Kits. Dockside testing would be conducted by the Massachusetts Division of Marine Fisheries laboratory in Gloucester, MA.

State and Federal agencies would be notified of each trip, the place and time of landing, the results of onboard screening, and dockside laboratory results. Federal and state agencies are provided a copy of the Declaration of Harvest form from each trip, which details the location of harvest, cage tag numbers, and results of onboard screening.

The applicant has obtained endorsements for the EFP and the sampling protocol from the states of Rhode Island, New Jersey, Delaware, and Massachusetts, the states in which it intends to land and process the product harvested under the EFP. Each state is responsible for regulating the molluscan shellfish industry within its jurisdiction and ensuring the safety of shellfish harvested within or entering its borders. The sampling protocol and the pilot project that would be authorized by this EFP have also since been endorsed by the Executive Board of the ISSC.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits. The Assistant Regional Administrator has made an initial determination that, based on a preliminary review of the proposed subject research and the criteria provided in section 5.05a-c and section 6.03c.3(a) of NOAA's Administrative Order 216–6, a Categorical Exclusion appears to be justified for this EFP. In accordance with NOAA's Administrative Order 216–6, a Categorical Exclusion, or other appropriate National Environmental Policy Act document, would be completed prior to the issuance of the exempted fishing permit. Further review and consultation may be necessary before a final determination is made to issue the exempted fishing permit.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: October 18, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27479 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA779

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public hearing series.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings regarding Amendments 18A, 20A, and 24 to the Snapper Grouper Fishery Management Plan (FMP) for the South Atlantic Region. See **SUPPLEMENTARY INFORMATION.**

Dates and Location: The series of seven public hearings will be held from November 14, 2011 through December 6, 2011. The hearings will be held from 4 p.m. until 7 p.m. with the exception of two hearings. The hearings on November 15, 2011 in Charleston, SC and the hearing on December 6, 2011 in Raleigh, NC will be conducted from 5:30 p.m.–7:30 p.m. Note that in some cases consecutive hearings will be held on the same date. Council staff will present an overview of the amendments and will be available for informal discussions and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing topics for consideration by the Council. Local Council representatives will attend the meetings and take public comment. Written comments will be accepted from October 21, 2011 until 5 p.m. on November 21, 2011, See **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: Amendment 18A is being developed by the Council to address overcapacity in the commercial black sea bass pot fishery and reduce the rate of harvest for both commercial and recreational sectors. The amendment includes actions to limit participation and effort in the black sea bass pot fishery, limit bycatch in the commercial pot fishery, and modify the current system of accountability measures. Management measures being considered include increases in size limits, decreases in bag limits, a commercial trip limit, and a spawning season closure. The amendment also includes actions to update management parameters based on the 2011 Southeast Data, Assessment and Review (SEDAR) stock assessment for black sea bass, consider modifications to the rebuilding strategy to account for an increasing biomass, and improve the accuracy, timing and quantity of fisheries data.

Amendment 20A addresses the current Individual Transferable Quota (ITQ) program currently in place for the wreckfish fishery. The amendment includes measures to adjust the distribution of wreckfish shares in order to remove inactive effort and allow the commercial sector's Annual Catch Limit (ACL) to be harvested effectively.

Amendment 24 to the Snapper Grouper FMP addresses the implementation of a rebuilding plan for red grouper in the South Atlantic as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The rebuilding plan would specify ACLs, annual catch targets and accountability measures for the red grouper fishery. The amendment also establishes sector allocations.

Public Hearing Schedule:

1. November 14, 2011—Avista Resort, 300 N. Ocean Blvd., North Myrtle Beach, SC 29582; *telephone:* (843) 249–2521;
2. November 14, 2011—Hampton Inn & Suites Savannah/Midtown, 20 Johnson Street, Savannah, GA 31405; *telephone:* (912) 721–3700;
3. November 15, 2011—Charleston Marriott Hotel, 170 Lockwood Blvd., Charleston, SC 29403; *telephone:* (843) 723–3000;
4. November 15, 2011—Jacksonville Marriott, 4670 Salisbury Road, Jacksonville, FL 32256; *telephone:* (904) 296–2222;
5. November 16, 2011—Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920; *telephone:* (321) 784–0000;
6. November 17, 2011—Key Largo Bay Marriott, 103800 Overseas Hwy., Key Largo, FL 33037; *telephone:* (305) 453–0000;
7. December 6, 2011—Holiday Inn Brownstone, 1707 Hillsborough Street, Raleigh, NC 27605; *Phone:* (919) 828–0811.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via e-mail to:

SGAmend18APHcomment@safmc.net for Amendment 18A (black sea bass); *SGAmend20APHcomment@safmc.net* for Amendment 20A (wreckfish); and *SGAmend24PHcomment@safmc.net* for Amendment 24 (red grouper) to the Snapper Grouper FMP. Written comments will be received from October 21, 2011 until 5 p.m. on November 21, 2011.

Copies of the public hearing documents are available by contacting Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366 or toll free at (866) SAFMC–10. Copies will also be available online at www.safmc.net as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366; *fax:* (843) 769–4520; *e-mail address: kim.iverson@safmc.net.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the start of each meeting.

Dated: October 19, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–27390 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA776

Atlantic Highly Migratory Species; Advisory Panel for Atlantic Highly Migratory Species Southeast Data, Assessment, and Review Workshops

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

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Advisory Panel (AP) for Atlantic Highly Migratory Species (HMS) Southeast Data, Assessment, and Review (SEDAR) Workshops (this AP is also called the ''SEDAR Pool''). The SEDAR Pool is comprised of a group of individuals whom may be selected to consider data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Nominations are being sought for a 3-year appointment (2012–2015). Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership on the SEDAR Pool.

DATES: Nominations must be received on or before November 23, 2011.

ADDRESSES: You may submit nominations and request the SEDAR Pool Statement of Organization, Practices, and Procedures by any of the following methods:

- *E-mail: SEDAR.pool@noaa.gov.*
- *Mail:* Karyl Brewster-Geisz, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier: ''SEDAR Pool Nomination.''
- *Fax:* 301–713–1917.

Additional information on SEDAR and the SEDAR guidelines can be found at *http://www.sefsc.noaa.gov/sedar/.* The terms of reference for the SEDAR Pool, along with a list of current members, can be found at *http://www.nmfs.noaa.gov/sfa/hms/SEDAR/SEDAR.htm.*

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz or Karyl Brewster-Geisz, (301) 425–8503.

SUPPLEMENTARY INFORMATION:

Introduction

Section 302(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* states that each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. For the purposes of this section in the Magnuson-Stevens Act, NMFS considers the Council provision to be applicable to the HMS Management Division. As such, NMFS has established the SEDAR Pool under this section. The SEDAR Pool currently consists of 30 individuals who can be selected to review data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. While the SEDAR Pool was created specifically for Atlantic oceanic sharks, it may be expanded to include other HMS, as needed.

The primary purpose of the individuals in the SEDAR Pool is to review, at SEDAR workshops, the scientific information, including but not limited to data and models, used in stock assessments that are used to advise NMFS, as a delegate to the Secretary of Commerce (Secretary), about the conservation and management of the Atlantic HMS, specifically but not limited to, Atlantic sharks. Individuals in the SEDAR Pool, if selected, may participate in the various data, assessment, and review workshops during the SEDAR process of any HMS stock assessment. In order to ensure that the peer review is unbiased, individuals who participated in a data and/or assessment workshop for a particular stock assessment will not be allowed to serve as reviewers for the same stock assessment. However, these individuals may be asked to attend the review workshop to answer specific questions from the reviewers concerning the data and/or assessment workshops. Members of the SEDAR Pool may serve as members of other APs concurrent with, or following, their service on the SEDAR Pool.

Procedures and Guidelines

A. Participants

The SEDAR Pool is comprised of individuals representing the commercial and recreational fishing communities for Atlantic HMS, the environmental community active in the conservation and management of Atlantic HMS, and the academic community that have relevant expertise either with sharks or shark-like species and/or stock assessment methodologies for marine fish species. Members of the SEDAR Pool must have demonstrated experience in the fisheries, related industries, research, teaching, writing, conservation, or management of marine organisms. The distribution of representation among the interested parties is not defined or limited.

Additional members of the SEDAR Pool may also include representatives from each of the five Atlantic Regional Fishery Management Councils, each of the 18 constituent states, both the U.S. Virgin Islands and Puerto Rico, and each of the constituent interstate commissions: the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

If NMFS requires additional members to ensure a diverse pool of individuals to draw from for data or assessment workshops, NMFS may request

individuals to become members of the SEDAR Pool outside of the annual nomination period.

Panel members serve at the discretion of the Secretary. Not all members will attend each SEDAR workshop. Rather, NMFS will invite certain members to participate at specific stock assessment workshops dependent on their ability to participate, discuss, and recommend scientific decisions regarding the species being assessed. If an invited SEDAR Pool member is unable to attend the workshop, the member may send a designee who may represent them and participate in the activities of the workshop. In order to ensure the designee meets the requirements of participating in the data and/or assessment workshop, the designee must receive written approval of the Director of the Office of Sustainable Fisheries at least six weeks in advance of the beginning of the relevant data and/or assessment workshop. Written notification must include the name, address, telephone, e-mail, and position of the individual designated. A designee may not name another designee.

NMFS is not obligated to fulfill any requests (*e.g.,* requests for an assessment of a certain species) that may be made by the SEDAR Pool or its individual members. Members of the SEDAR Pool who are invited to attend stock assessment workshops will not be compensated for their services but may be reimbursed for their travel-related expenses to attend such workshops.

B. Nomination Procedures for Appointments to the SEDAR Pool

Member tenure will be for 3 years. Nominations are sought for terms beginning February 2012 and expiring January 2015. Nomination packages should include:

1. The name, address, phone number, and e-mail of the applicant or nominee;
2. A description of his/her interest in Atlantic shark stock assessments or the Atlantic shark fishery;
3. A statement of background and/or qualifications; and
4. A written commitment that the applicant or nominee shall participate actively and in good faith in the tasks of the SEDAR Pool, as requested.

C. Meeting Schedule

Individual members of the SEDAR Pool meet to participate in stock assessments at the discretion of the Office of Sustainable Fisheries, NMFS. Stock assessment timing, frequency, and relevant species will vary depending on the needs determined by NMFS and SEDAR staff. Meetings and meeting logistics will be determined according to the SEDAR Guidelines. All meetings are open for observation by the public.

Dated: October 19, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27474 Filed 10–21–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

DATES: *Time and Date:* Wednesday, October 26, 2011, 10 a.m.–12 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Public Hearing: Alternative Testing Requirements for Small Batch Manufacturers.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 19, 2011.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2011–27499 Filed 10–20–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 26, 2011; 2 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 19, 2011.

Todd A Stevenson,

Secretariat.

[FR Doc. 2011–27500 Filed 10–20–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–35]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–35 with attached transmittal and policy justification.

Dated: October 18, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH STE 203
ARLINGTON VA 22202-5408

OCT 5 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-35, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $82 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 11–35—Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Iraq.

(ii) *Total Estimated Value:*

	In millions
Major Defense Equipment*	$27
Other	55
Total	82

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 44,608 M107 155mm High Explosive Projectiles and 9,328 M485A2 155mm Illumination projectiles; also included are, M231 Propelling charges, M232A1 155mm Modular Artillery Charge System Propelling charges, M739 Fuzes, M762A1 Electronic Time Fuzes, M82 Percussion primers, M767A1 Electronic Time Fuzes, 20-foot Intermodal Containers for transporting ammunition, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (UEL).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or*

* As defined in Section 47(6) of the Arms Export Control Act.

Defense Services Proposed to be Sold: None.

(viii) *Date Report Delivered to Congress:* 5 October 2011.

Policy Justification—Iraq—Howitzer Ammunition

The Government of Iraq has requested a possible sale of 44,608 M107 155mm High Explosive Projectiles and 9,328 M485A2 155mm Illumination projectiles; also included are, M231 Propelling charges, M232A1 155mm Modular Artillery Charge System Propelling charges, M739 Fuzes, M762A1 Electronic Time Fuzes, M82 Percussion primers, M767A1 Electronic Time Fuzes, 20-foot Intermodal Containers for transporting ammunition, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support. The estimated cost is $82 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale will help Iraq's efforts to develop an integrated ground defense capability, a strong national defense, and dedicated military force. As the drawdown of coalition forces continues, the Iraqi military continues to develop a force capable of assuming the lead in providing for the security of the Iraqi people.

The proposed sale of this ammunition will not alter the basic military balance in the region.

The ammunition will be supplied from U.S. Army stock. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Iraq.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–27354 Filed 10–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

List of Correspondence

AGENCY: Office of Special Education and Rehabilitative Services; Department of Education.

ACTION: List of Correspondence from January 1, 2011 through March 31, 2011.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA. This list and the letters or other Departmental documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *http://www2.ed.gov/policy/speced/guid/idea/index.html*.

FOR FURTHER INFORMATION CONTACT: Jessica Spataro or Mary Louise Dirrigl. *Telephone:* (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other Departmental documents described in this list in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7468.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from January 1, 2011 through March 31, 2011. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Least Restrictive Environment

○ Letter dated January 5, 2011, to Texas West Independent School District Assistant Superintendant Jan Hungate, regarding the least restrictive environment requirements in Part B of the IDEA that apply to children with disabilities who reside in a residential facility located in the district.

○ Letter dated March 7, 2011, to Statewide Parent

Advocacy Network of New Jersey Executive Co-Director Diana Autin, regarding whether certain placements for children with autism may be permissible under Part B of the IDEA.

Topic Addressed: Children in Private Schools

○ Letter dated January 5, 2011, to New York State Education Department Associate Commissioner Rebecca Cort, regarding whether, absent a ruling by a court or hearing officer, a local educational agency (LEA) can reach an agreement to provide tuition reimbursement to a parent who unilaterally places his or her child with a disability at a private school that the State has not approved to provide special education.

Topic Addressed: General Supervisory Authority

○ Letter dated March 2, 2011, to District of Columbia Acting State Superintendent of Education Hosanna Mahaley, reiterating the Office of Special Education Programs' (OSEP's) previous guidance that the IDEA makes no provision for funding special education and related services for individuals with disabilities incarcerated in Federal prisons.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Use of Federal Funds

○ Letter dated January 6, 2011, to Washington Office of Superintendent of Public Instruction Special Education Section Director Douglas Gill, regarding whether there are any restrictions on maintenance of effort reductions that may have been available to LEAs as a result of the increase in Part B of the IDEA funding under the American Recovery and Reinvestment Act of 2009.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations, Parental Consent and Reevaluations

○ Letter dated January 6, 2011, to Lehigh University Professor of Education and Law Perry A. Zirkel, clarifying how LEAs that use a response- to- intervention (RTI) process can determine whether a child enrolled in a private school by his or her parents has a specific learning disability.

○ Letter dated February 10, 2011, to non-attorney advocate Amber Mintz, regarding the review of existing evaluation data on the child.

Topic Addressed: Individualized Education Program

○ Letter dated January 24, 2011, to individual (personally identifiable information redacted), regarding the participation of an individual who can interpret the instructional implications of evaluation results on the individualized education program (IEP) Team.

Section 615—Procedural Safeguards

Topic Addressed: Independent Educational Evaluations

○ Letter dated January 19, 2011, to individual (personally identifiable information redacted), regarding whether States and school districts may establish criteria governing how and when parents must provide the results of a private evaluation if the public agency wishes to schedule an IEP Team meeting to discuss that evaluation.

Part C—Infants and Toddlers With Disabilities

Section 637—State Application and Assurances

Topic Addressed: Early Childhood Transition

Letter dated February 9, 2011, to Infant and Toddler Coordinators Association President Brad Hutton and National Association of State Directors of Special Education Director Bill East, clarifying certain requirements in Parts B and C of the IDEA that were explained in OSEP's Early Childhood Transition Frequently Asked Questions (FAQ) document, which is available on the Technical Assistance Network's Web site at *http://www.nectac.org/~pdfs/topics/transition/ECTransitionFAQs12_01_09.pdf.*

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: October 18, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–27453 Filed 10–21–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''IES Research Training Program Surveys: Predoctoral Survey, Postdoctoral Survey, Special Education Postdoctoral Survey'' (18–13–25).

The Institute of Education Sciences (IES) Research Training Program Surveys: Predoctoral Survey, Postdoctoral Survey, Special Education Postdoctoral Survey system will be used: (1) To assess the satisfaction of fellows who have participated in the Education Research Training programs funded by the IES' National Center for Education Research (IES/NCER) and National Center for Special Education Research (IES/NCSER) in order to determine whether there are program areas that need improvement; and (2) to track the fellows' professional accomplishments both during and following their fellowship years in order to assess how well the individual programs are fulfilling the mission of the IES training programs, which is to increase the supply of young researchers trained and ready to do rigorous research in education. The Pre- and Postdoctoral Fellowship Customer Satisfaction Survey system will contain records containing information such as IES-funded fellows' names, e-mail addresses, and citizenship status.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments about the proposed routine uses for the system of records referenced in this notice on or before November 23, 2011.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 4, 2011. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on November 14, 2011; or (2) November 23, 2011, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this new system of records to Dr. Meredith Larson, Associate Research Scientist, National Center for Education Research, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 618, Washington, DC 20208–5500. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''IES Research Training Program Surveys'' in the subject line of your electronic message.

During and after the comment period, you may inspect all comments about this notice at the National Center for Education Research, Institute of Education Sciences, Department of Education, 6th Floor, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Meredith Larson. Telephone number: (202) 219–2025. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to a record about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to submit, whenever the agency publishes a new system of records or makes a significant change to an established system of records, a report to the Administrator of the Office of Information and Regulatory Affairs, OMB. Each agency is also required to send copies of the report to the Chair of the House Committee on Oversight and Government Reform and to the Chair of the Senate Committee on Homeland Security and Governmental Affairs. These reports are inc1uded to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 18, 2011.

John Q. Easton,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education publishes a notice of a new system of records, to read as follows:

System Number:

18–13–25

SYSTEM NAME:

IES Research Training Program Surveys: Predoctoral Survey, Postdoctoral Survey, Special Education Postdoctoral Survey.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

National Center for Education Research, Program Officer Staff, Institute of Education Sciences (IES), U.S. Department of Education (Department), 555 New Jersey Avenue, NW., Suite 618, Washington, DC 20208–5530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains records on pre- and postdoctoral fellows who have been funded through the IES Pre- and Postdoctoral Education Research Training Grants and the IES Postdoctoral Special Education Research Training Grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records regarding fellows': (1) Names; (2) e-mail addresses; (3) personal characteristics, such as gender, race/ethnicity, and citizenship status; (4) information on the training program attended including the average GRE scores of program participants and fellows per program; (5) responses to survey items regarding the quality of the training program they attended; (6) academic information including past field of study, Ph.D. completion and year of Ph.D., completion of fellowship program, research conducted during and after attending the training program including the number and type of publications and presentations made; and (7) information on positions held and type of research done after completing the training program including plans to or submission of a grant proposal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation is authorized under sections 131 through 134 and section 189 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9531–34 and 9579).

PURPOSE(S):

The information contained in the records maintained in this system is used for the following purposes: (1) To assess the satisfaction of the fellows with their IES training programs in order to determine whether there are program areas that need improvement; and (2) to track the fellows' professional accomplishments both during and following their fellowship years in order to assess how well the individual programs are fulfilling the mission of the IES training programs, which is to increase the supply of young researchers trained and ready to do rigorous research in education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a database on the Department's secure servers. No paper records will be kept as part of this system.

RETRIEVABILITY:

Records are retrieved by the fellows' names.

SAFEGUARDS:

Access to the records is limited to authorized personnel only. All physical access to the Department's site where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the buildings for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need-to-know'' basis, and controls an individual user's ability to access and alter records within the system. All users of this system of records are given a unique user identification. The Department's Information Security Privacy Policy requires the enforcement of a complex password policy. In addition, users are required to change their password at least every 60 to 90 days in accordance with the Department's information technology standards.

RETENTION AND DISPOSAL:

The records associated with predoctoral and postdoctoral fellows' progress will be maintained as long as they are professionally active in education research. Records will be maintained and disposed of in accordance with the Department's Records Disposition Schedules. These records are currently unscheduled. A records retention schedule will be developed and submitted to the National Archives and Records Administration (NARA) for approval. No records will be destroyed until a NARA-approved records retention schedule is in place.

SYSTEM MANAGER(S) AND ADDRESS:

Dr. Meredith Larson is the Program Officer for the IES Research Training Program Surveys, and her address is Institute of Education Sciences, Department of Education, 555 New Jersey Avenue, NW., Suite 618, Washington, DC 20208–5530.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from both the fellows and their training programs. Fellows provide information on their individual characteristics, e-mail addresses, views on the quality of the training program, and information on their dissertation, papers, positions, and follow-on research. The training programs provide information on the programs themselves and the fellows' status within the programs, initial student e-mail addresses at the university (students then provide their preferred e-mail addresses), and information on student dissertations and paper.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

[FR Doc. 2011–27337 Filed 10–21–11; 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, November 14, 2011, 1 p.m.–5 p.m.

Tuesday, November 15, 2011, 8:30 a.m.–4:30 p.m.

ADDRESSES: USC Aiken Convention Center, 471 University Parkway, Aiken, SC 29801.

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, November 14, 2011

1 p.m. Combined Committee Session
5 p.m. Adjourn

Tuesday, November 15, 2011

8:30 a.m. Approval of Minutes, Chair Update
Agency Updates
Public Comment Session
Administrative Committee Report
Nuclear Materials Committee Report
Strategic & Legacy Management Committee Report
Public Comment Session
12 p.m. Lunch Break
1 p.m. Waste Management Committee Report
Facilities Disposition & Site Remediation 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 October 18, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–27435 Filed 10–21–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–032]

Decision and Order Granting a Waiver to LG Electronics, Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–032, which grants LG Electronics, Inc. (LG) a waiver from the existing DOE test procedures applicable to commercial package air-source and water-source central air conditioners and heat pumps. The waiver is specific to the LG Multi V SYNC II and Multi V Water II variable refrigerant flow (VRF) multi-split commercial heat pumps. As a condition of this waiver, LG must use the alternate test procedure set forth in this notice to test and rate its Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps.

DATES: This Decision and Order is effective October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 287–6111; *E-mail: Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4), DOE is providing notice of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants LG a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its Multi V SYNC II and Multi V Water II VRF multi-split commercial equipment. The waiver requires LG to use the alternate test procedure provided in this notice to test and rate the specified models of its Multi V SYNC II and Multi V Water II VRF multi-split commercial equipment line (as identified below).

Today's decision prohibits LG from making any representations concerning the energy efficiency of this equipment unless the equipment has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and the representations fairly disclose the test results. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of this equipment. *Id.*

Issued in Washington, DC, on October 18, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: LG Electronics, Inc. (LG) (Case No. CAC–032).

Background

Title III, part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317, as codified, added by Public Law 95–619, Title IV, 441(a)) established the Energy Conservation Program for Certain Industrial Equipment, a program covering commercial air conditioning and heating equipment, which includes the Multi V SYNC II and Multi V Water II VRF multi-split heat pumps that are the focus of this notice.[1] Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers. 42 U.S.C. 6316. With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for covered commercial equipment if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of this equipment. For small commercial packaged water-source heat pumps with capacities less than 135,000 Btu/h, ISO Standard 13256–1 (1998) is the applicable test procedure. For commercial package air-source equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect

[1] For editorial reasons, upon codification in the U.S. Code, part C was re-designated part A–1.

pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On April 8, 2011, LG filed a petition for waiver from the test procedure at 10 CFR 431.96 applicable to commercial package air-source and water-source central air conditioners and heat pumps, as well as an application for interim waiver. LG's petition requested a waiver for the LG Multi V SYNC II VRF multi-split air-source heat pumps with capacities from 76,400 Btu/h to 310,000 Btu/h. The applicable test procedure for these heat pumps is ARI 340/360–2004. LG's petition also requested a waiver for its LG Multi V Water II water-source heat pumps with capacities ranging from 72,000 Btu/h to 95,900 Btu/h. The applicable test procedure for these products is ISO Standard 13256–1 (1998). Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

LG seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, LG asserts that the two primary factors that prevent testing of this multi-split variable speed equipment are the same factors stated in the waivers that DOE has granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. *See, e.g.,* 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Daikin); 76 FR 19078 (April 6, 2011) (Mitsubishi).

On May 23, 2011, DOE published LG's petition for waiver in the **Federal Register**, seeking public comment pursuant to 10 CFR 431.401(b)(1)(iv), and granted the application for interim waiver. 76 FR 29733. DOE received no comments on the LG petition.

Assertions and Determinations

LG's Petition for Waiver

LG seeks a waiver from the applicable DOE test procedures under 10 CFR 431.96 on the grounds that its Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps contain design characteristics that prevent them from being tested using the current DOE test procedures. As stated above, LG asserts that the two primary factors that prevent testing of multi-split variable speed equipment are the same factors that led DOE to grant waivers to other manufacturers for similar lines of commercial multi-split heat pumps: (1) Testing laboratories cannot test systems with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units to test. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

The Multi V SYNC II and Multi V Water II heat pump systems consist of multiple indoor units connected to an air-cooled outdoor unit. These multi-split systems are used in zoned systems where an outdoor or water-source unit can be connected with up to 16 to 64 separate indoor units, which need not be the same models. According to LG, the various indoor and outdoor models can be connected in a multitude of configurations, with millions of possible combinations. Consequently, LG requested that DOE grant a waiver from the applicable test procedures for its Multi V SYNC II and Multi V Water II VRF equipment designs until a suitable test method can be prescribed.

After DOE granted a waiver for Mitsubishi's R22 multi-split equipment, 69 FR 52660 (Aug. 27, 2004), ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) and the American National Standards Institute (ANSI), ANSI/AHRI 1230—2010: ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment.'' This test procedure has been incorporated into ASHRAE 90.1—2010. DOE is currently assessing ANSI/AHRI 1230–2010 in light of the requirements for test procedures specified by EPCA (42 U.S.C. 6314(a)(4)(B)), and will provide a preliminary determination regarding those test procedures in a future notice of proposed rulemaking.

LG's petition proposed that DOE apply the same alternate test procedure DOE approved in the previous waiver decisions to its Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps as a condition of its requested waiver. As stated above, DOE has not received any comments regarding the LG petition.

DOE issues today's Decision and Order granting LG a test procedure waiver for its commercial Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps. As a condition of this waiver, LG must use the alternate test procedure described below.

Alternate Test Procedure

The alternate test procedure prescribed by DOE in previous multi-split commercial heat pump waivers, including the interim waiver granted to LG in response to the current petition, consists of a definition of a ''tested combination'' and a prescription for representations. ANSI/AHRI 1230–2010 also includes a definition of ''tested combination,'' and the two definitions are identical in all relevant respects.

The alternate test procedure prescribed by DOE in previous multi-split commercial heat pump waivers provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. ANSI/AHRI 1230–2010 requires an additional test and in this respect is similar to the residential test procedure set forth in 10 CFR part 430, subpart B, appendix M. Under AHRI 1230, multi-split manufacturers must test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of

a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

With regard to the laboratory testing of commercial equipment, some of the difficulties associated with the existing DOE test procedure are avoided through the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all the indoor units must be subject to the same minimum external static pressure. This requirement enables the test laboratory to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus, thereby eliminating situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory would have to evaluate the capacity of a subgroup of indoor coils separately and then sum the separate capacities to obtain the overall system capacity. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured. However, that approach would be so time-consuming as to be impractical.

For the reasons discussed above, DOE believes LG's Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps cannot be tested using the procedures prescribed in 10 CFR 431.96. After careful consideration, DOE has decided to prescribe ANSI/AHRI 1230–2010 as the alternate test procedure for LG's commercial multi-split products with cooling capacities less than or equal to 300,000 Btu/hr (the maximum size covered by ANSI/AHRI 1230–2010) and the alternate test procedure specified in LG's interim waiver for its multi-split commercial heat pumps with cooling capacity greater than 300,000 Btu/hr,[2] except that tests of both ducted and non-ducted indoor units must now be conducted.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the LG petition for waiver. The FTC staff did not have any objections to issuing a waiver to LG.

Conclusion

After careful consideration of all the materials submitted by LG, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver filed by LG (Case No. CAC–032) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate its Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pump models listed below according to the test procedures cited in 10 CFR 431.96, which incorporates by reference ARI 340/360–2004 for the Multi V SYNC II air-source equipment and ISO Standard 13256–1 (1998) for the Multi V Water II water-source equipment. Instead, LG shall be required to test and rate such equipment according to the alternate test procedure as set forth in paragraph (3).

Multi V Series Air-Source Heat Pumps Heat Recovery Units:

SYNC II 3Ø 460V 60 Hz models: ARUB076DT2, ARUB096DT2, ARUB115DT2, ARUB134DT2, ARUB154DT2, ARUB173DT2, ARUB192DT2, ARUB211DT2, ARUB230DT2, ARUB250DT2, ARUB270DT2, ARUB290DT2, ARUB310DT2, with normally rated cooling capacities of 76,400, 95,900, 114,700, 133,800, 152,900, 172,000, 191,100, 211,000, 230,000, 250,000, 270,000, 290,000, and 310,000 Btu/h, respectively. The maximum number of connectable indoor units is 13, 16, 20, 23, 26, 29, 32, 35, 39, 42, 49, and 52, respectively.

Multi V Series Water-Source Heat Pumps Water-Source Units:

Water II 3Ø 460V 60 Hz model: ARWN096DA2 with nominally rated cooling capacity of 95,900 Btu/h. The maximum number of connectable indoor units is 16.

Water II 3Ø 208/230V 60 Hz model: ARWN072BA2 with nominally rated cooling capacity of 72,000 Btu/h. The maximum number of connectable indoor units is 16.

Water II Heat Recovery 3Ø 208/230V 60 Hz model: ARWB072BA2 with nominally rated cooling capacity of 72,000 Btu/h. The maximum number of connectable indoor units is 16.

Water II Heat Recovery 3Ø 460V 60 Hz model: ARWB096DA2 with nominally rated cooling capacity of 95,900 Btu/h. The maximum number of connectable indoor units is 16.

Compatible indoor units for the above-listed air-source and water-source units:

Wall Mounted: ARNU073SEL2, ARNU093SEL2, ARNU123SEL2, ARNU153SEL2, ARNU183S5L2, and ARNU243S5L2, with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h, respectively.

Art Cool Mirror: ARNU073SE*2, ARNU093SE*2, ARNU123SE*2, ARNU153SE*2, ARNU183S3*2, and ARNU243S3*2, with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h, respectively.

4 Way Cassette: ARNU073TEC2, ARNU093TEC2, ARNU123TEC2, ARNU153TEC2, ARNU183TEC2, ARNU243TPC2, ARNU283TPC2, ARNU363TNC2, ARNU423TMC2, and ARNU483TMC2, with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, 24,200, 28,000, 36,200, 42,000, and 48,100 Btu/h, respectively.

2 Way Cassette: ARNU183TLC2 and ARNU243TLC2, with nominally rated capacities of 19,100 and 24,200 Btu/h, respectively.

1 Way Cassette: ARNU073TJC2, ARNU093TJC2, and ARNU123TJC2, with nominally rated capacities of 7,500, 9,600, and 12,300 Btu/h, respectively.

Ceiling Concealed Duct—Low Static: ARNU073B1G2, RNU093B1G2, ARNU123B1G2, ARNU153B1G2, ARNU183B2G2, and ARNU243B2G2, with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h, respectively.

Ceiling Concealed Duct—Built-in: ARNU073B3G2, ARNU093B3G2, ARNU123B3G2, ARNU153B3G2, ARNU183B4G2, and ARNU243B4G2, with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h, respectively.

Ceiling Concealed Duct—High Static: ARNU073BHA2, ARNU093BHA2, ARNU123BHA2, ARNU153BHA2, ARNU183BHA2, ARNU243BHA2, ARNU283BGA2, ARNU363BGA2, ARNU423BGA2, ARNU483BRA2, URNU763B8A2, and URNU963B8A2, with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, 24,200, 28,000, 36,200, 42,000, 48,100, 76,400, and 95,500 Btu/h, respectively.

Ceiling & Floor: ARNU093VEA2 and ARNU123VEA2, with nominally rated capacities of 9,600 and 12,300 Btu/h, respectively.

Ceiling Suspended: ARNU183VJA2 and ARNU243VJA2, with nominally rated capacities of 19,100 and 24,200 Btu/h, respectively.

Floor Standing with Case: ARNU073CEA2, ARNU093CEA2, ARNU123CEA2, ARNU153CEA2, ARNU183CFA2, and ARNU243CFA2, with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h, respectively.

Floor Standing without Case: ARNU073CEU2, ARNU093CEU2, ARNU123CEU2, ARNU153CEU2,

[2] There is no technical justification for the 300,000 Btu/hr limit, which was simply the largest multi-split capacity at the time ANSI/AHRI 1230 was drafted.

ARNU183CFU2, and ARNU243CFU2, with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h, respectively.

Vertical Air Handler: ARNU183NJA2, ARNU243NJA2, ARNU303NJA2, ARNU363NJA2, ARNU423NKA2, ARNU483NKA2, and ARNU543NKA2, with nominally rated capacities of 18,000, 24,000, 30,000, 36,000, 42,100, 48,000 and 54,000 Btu/h, respectively.

(3) *Alternate test procedure.*

(A) LG shall be required to test the equipment with cooling capacities of 300,000 Btu/h and below listed in paragraph (2) above according to the test procedure prescribed in ANSI/AHRI 1230–2010.

(B) LG shall be required to test the equipment listed in paragraph (2) above with cooling capacities above 300,000 Btu/h according to the test procedures for commercial central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that LG shall test each model of outdoor unit with two or more combinations of indoor units. The first system combination shall be tested using only non-ducted indoor units that meet the definition of a tested combination, as set forth in paragraph C. The second system combination shall be tested using only ducted indoor units that meet the definition of a tested combination, as set forth in paragraph C. LG shall make representations concerning the Multi V SYNC II and Multi V Water II VRF multi-split heat pump equipment covered in this waiver according to the provisions of subparagraph (D).

(C) Tested combination. The term tested combination means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between two and five indoor units. (For systems with nominal cooling capacities greater than 150,000 Btu/h, as many as eight indoor units may be used, so as to be able to test non-ducted indoor unit combinations). For multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, subpart B, appendix M.

(D) *Representations.* In making representations about the energy efficiency of its Multi V SYNC II and Multi V Water II VRF multi-split commercial heat pumps, for compliance, marketing, or other purposes, LG must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For Multi V SYNC II and Multi V Water II VRF multi-split combinations tested in accordance with this alternate test procedure, LG may make representations based on those test results.

(ii) For Multi V SYNC II and Multi V Water II VRF multi-split combinations that are not tested, LG may make representations based on the testing results for the tested combination and that are consistent with one of the following methods:

(a) Rating of non-tested combinations according to an alternative rating method approved by DOE.

(b) Rating of non-tested combinations having the same outdoor unit and all non-ducted indoor units shall be set equal to the rating of the tested system having all non-ducted indoor units.

(c) Rating of non-tested combinations having the same outdoor unit and all ducted indoor units shall be set equal to the rating of the tested system having all ducted indoor units. To be considered a ducted unit, the indoor unit must be intended to be connected with ductwork and have a rated external static pressure capability greater than zero (0).

(d) Rating of non-tested combinations having the same outdoor unit and a mix of non-ducted and ducted indoor units shall be set equal to the average of the ratings for the two required tested combinations.

(4) This waiver shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(6) This waiver applies only to those basic models set out in LG's petition for waiver.

(7) Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on October 18, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27409 Filed 10–21–11; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–037]

Decision and Order Amending Waivers Granted to Mitsubishi Electric & Electronics USA, Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–037, which amends the current waivers applicable to Mitsubishi's S&L Class and WR2 and WY Series products to require the use of Air-conditioning, Heating and Refrigeration Institute 1230 (AHRI) as the alternative test procedure.

DATES: This Decision and Order is effective October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION: DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE amends the current waivers applicable to Mitsubishi's S&L Class and WR2 and WY Series products to require the use of AHRI 1230 as the alternative test procedure. Amendment is appropriate in this specific circumstance because DOE has recently issued waivers to other manufacturers using AHRI 1230 as the alternate test procedure for the same types of equipment, and AHRI 1230 is very similar to the alternate test procedure previously prescribed to Mitsubishi, but will provide a more conservative estimate of the energy consumed by this equipment. The waiver requires Mitsubishi use AHRI 1230 to test and rate specified models from its CITY MULTI WR2 and WY Series and CITY MULTI S&L Class multi-split equipment line.

Today's decision requires Mitsubishi to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment. *Id.*

Issued in Washington, DC, on October 18, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) (Case No. CAC–037).

Background

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6311–6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial air conditioning equipment, the focus of this decision and order.[1]

Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), if the industry test procedure for commercial package air-conditioning and heating equipment is amended, EPCA directs the Secretary to amend the corresponding DOE test procedure unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of this equipment. For small commercial packaged water-source heat pumps with capacities less than 135,000 Btu/h, ISO Standard 13256–1 (1998) is the applicable test procedure. For commercial package air-source equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

On December 15, 2009, DOE granted Mitsubishi waivers from the DOE commercial air conditioner and heat pump test procedures for Mitsubishi's CITY MULTI WR2 and WY Series equipment and its CITY MULTI S&L Class equipment. 74 FR 66311; 74 FR 66315. On July 11, 2011, DOE granted Mitsubishi a waiver for additional indoor units. 76 FR 40714. On August 11, 2011, Mitsubishi requested that DOE amend its orders granting test procedure waivers for these products to allow Mitsubishi to test and rate its WR2 and WY Series products, and those S&L Class systems that have capacities less than or equal to 300,000 Btu/h, according to the American National Standards Institute (ANSI)/Air-conditioning, Heating and Refrigeration Institute (AHRI) Standard 1230–2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment (AHRI 1230). Mitsubishi also requested that DOE amend the definition of ''tested combination'' in the current alternate test procedure to allow for the use of up to 12 indoor units in the configuration of a basic model. The alternate test procedure Mitsubishi is currently permitted to use specifies a maximum of eight indoor units for testing.

Assertions and Determinations

Mitsubishi's Petition for Waiver Amendment

Mitsubishi's S&L Class and WR2 and WY Series products are part of Mitsubishi's CITY MULTI Variable Refrigerant Flow (VRF) line of multi-split central air conditioners and heat pumps. As explained in Mitsubishi's waivers for the WR2 and WY Series and the S&L Class products, these systems cannot be tested according to the prescribed test procedures for commercial products. Specifically, they contain one or more design characteristic that prevents testing according to the test procedures.

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

According to DOE's grant of the December 2009 and July 2011 waivers, Mitsubishi is not required to test or rate the products listed in the waivers based on the current DOE test procedure. Instead, Mitsubishi is required to test and rate these products according to the alternate test procedure set forth in the waivers.

The alternate test procedure prescribed in the December 2009 and July 2011 waivers was first prescribed in 2007, in response to two other petitions for waiver from Mitsubishi. DOE specified alternate test procedures for representing the energy efficiency of Mitsubishi's R410A and R22 CITY MULTI multi-split products. The alternate test procedure was published on April 9, 2007. 72 FR 17528, 72 FR 17533. Since then, DOE has prescribed the same alternate test procedure for other manufacturers of multi-split products.

After DOE granted a waiver to Mitsubishi's CITY MULTI products, the Air-Conditioning and Refrigeration Institute (ARI) (now AHRI) formed a committee to develop a general testing protocol for VRF systems. The committee developed AHRI 1230, which has been incorporated into ASHRAE 90.1–2010. AHRI 1230 establishes a test procedure for VRF multi-split air conditioners and heat pumps. The test procedure covers matched VRF systems with cooling and heating capacities for outdoor units between 12,000 Btu/h and 300,000 Btu/h. DOE is assessing AHRI 1230 with respect to the requirements EPCA specifies for test procedures, and will make a preliminary determination regarding AHRI 1230 in a future rulemaking.

AHRI 1230 is very similar to the alternate test procedure in the commercial multi-split waivers that DOE previously granted to Mitsubishi and other manufacturers, but contains minor differences in the definition of tested combination, the testing of ducted versus non-ducted indoor units, and the line lengths. These differences are discussed below.

First, the definition of ''tested combination'' in AHRI 1230 and the alternate test procedure prescribed by DOE in the earlier multi-split waivers are identical in all relevant respects, except that AHRI 1230 allows the use of up to 12 indoor units, as opposed to eight in the earlier alternate test procedure.

Second, ANSI/AHRI 1230–2010 requires an additional test. The earlier alternate test procedure provides for efficiency rating of a non-tested combination in one of two ways: (1) at an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. In AHRI 1230, similar to the residential test procedure set forth in 10 CFR part 430, subpart B, appendix M, multi-split manufacturers must also test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

Third, the alternate test procedure and AHRI 1230 require the use of different line lengths for the cooling refrigerant line when performing efficiency testing. AHRI 1230 requires longer line lengths depending on the type and capacity of the connected indoor units.

As DOE continues to evaluate AHRI 1230, DOE has granted manufacturers' request to use AHRI 1230 as the alternate test procedure for testing and rating their commercial multi-split products subject to a waiver of DOE's test procedures. DOE prescribed AHRI 1230 as the alternate test procedure for those Daikin AC (Americas) Inc. (''Daikin'') commercial multi-split products that have cooling capacities less than or equal to 300,000 Btu/h, and for Carrier Corporation's (''Carrier'') commercial multi-split products. 76 FR 34685 (June 14, 2011); 76 FR 31951 (June 2, 2011).

Consistent with the requests of these other manufacturers, Mitsubishi requested that DOE permit it to use AHRI 1230 as the alternate test procedure to test and rate its WR2 and WY Series units and those S&L Class systems that have capacities less than or equal to 300,000 Btu/h. AHRI 1230 covers multi-split products with cooling and heating capacities for outdoor units from 12,000 Btu/h to 300,000 Btu/h. The outdoor units of Mitsubishi's WR2 and WY Series products fall within that range. Thus, similar to DOE's decision in the Daikin and Carrier waivers, Mitsubishi requested that DOE prescribe AHRI 1230 as the alternate test procedure for Mitsubishi's WR2 and WY Series products.

Mitsubishi's S&L Class product line includes outdoor units with individual capacities from 65,000 to 144,000 Btu/h, which can be combined into systems with capacities from 130,000 to 480,000 Btu/h. Although the individual capacities of these outdoor units fall within AHRI 1230's capacity range, some of the combinations of outdoor units have capacities that are greater than the capacity range for AHRI 1230. Thus, similar to DOE's decision in the Daikin waiver, Mitsubishi requested that DOE prescribe AHRI 1230 as the alternate test procedure for those S&L Class products that have capacities less than or equal to 300,000 Btu/h. For those S&L Class system that have capacities greater than 300,000 Btu/h, Mitsubishi will continue to use the alternate test procedure specified in the S&L Class waiver.

DOE has determined that use of AHRI 1230 is appropriate for Mitsubishi's WR2 and WY Series products and its S&L Class products for the reasons set forth below.

As discussed above, AHRI 1230 requires longer line lengths for the cooling refrigerant line during testing, depending on the type and capacity of the connected indoor units. This difference affects the resulting energy efficiency determination. Testing according to AHRI 1230's requirements provides a more conservative estimate of energy consumption because it results in a slightly lower efficiency rating than testing according to the alternate test procedure.

In addition, the definition of ''tested combination'' in AHRI 1230 is more appropriate for these Mitsubishi products than the definition in the current alternate test procedure. As defined in the current alternate test procedures for Mitsubishi's products, the ''tested combination'' of a VRF system is defined as one outdoor unit matched with between two and eight indoor units. The indoor units must represent the highest sales model family, and, together, must have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit. Due to the relative size of some of Mitsubishi's outdoor units and indoor units, permitting the matching of up to only eight indoor units may not be sufficient to comply with the requirement that the indoor units must have a combined capacity that is

between 95% and 105% of the nominal cooling capacity of the outdoor unit. AHRI 1230, as revised in March 2011, permits the use of up to twelve indoor units. For consistency purposes, DOE also agrees with Mitsubishi's request that DOE amend the definition of ''tested combination'' in the current alternate test procedure to make it identical to the definition in AHRI 1230 for those units with capacities greater than 300,000 Btu/h that are outside the scope of AHRI 1230.

For the reasons discussed above, and because DOE's prescribed AHRI 1230 as the alternate test procedure in waivers granted to Carrier and Daikin, DOE determined that allowing Mitsubishi to use AHRI 1230 instead of the alternate test procedure provided in the WR2 and WY Series Waiver and the S&L Class Waiver is in the public interest.

Conclusion

After careful consideration of all the materials submitted by Mitsubishi, it is ordered that:

(A)(1) Mitsubishi is not required to test the following equipment with cooling capacities of 300,000 Btu/h and below according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)-(3)), but instead shall use as the alternate test procedure ANSI/AHRI 1230–2010:

(a) Equipment listed in the WR2 and WY Series waiver granted December 15, 2009 (74 FR 66311);

(b) Equipment listed in the S&L Class waiver granted December 15, 2009 (74 FR 66315); and

(c) Basic models of CITY MULTI WR2 and WY Series and CITY MULTI S&L Class equipment listed in the waiver granted July 11, 2011 (76 FR 40714).

(2) Mitsubishi shall be required to test the following equipment with cooling capacities above 300,000 Btu/h according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Mitsubishi shall test each model of outdoor unit with two or more combinations of indoor units. The first system combination shall be tested using only non-ducted indoor units that meet the definition of a tested combination as set forth in subparagraph (B). The second system combination shall be tested using only ducted indoor units that meet the definition of a tested combination as set forth in subparagraph (B). Mitsubishi shall make representations concerning the products covered in this waiver according to the provisions of subparagraph (C):

(a) Equipment listed in the WR2 and WY Series waiver granted December 15, 2009 (74 FR 66311);

(b) Equipment listed in the S&L Class waiver granted December 15, 2009 (74 FR 66315); and

(c) Basic models of CITY MULTI WR2 and WY Series and CITY MULTI S&L Class equipment listed in the waiver granted July 11, 2011 (76 FR 40714).

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features: The basic model of a variable refrigerant flow system (''VRF system'') used as a tested combination shall consist of an outdoor unit (an outdoor unit can include multiple outdoor units that have been manifolded into a single refrigeration system, with a specific model number) that is matched with between 2 and 12 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(C) *Representations.* In making representations about the energy efficiency of its S&L Class and WR2 and WY Series multi-split products, for compliance, marketing, or other purposes, Mitsubishi must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For multi-split combinations tested in accordance with this alternate test procedure, Mitsubishi may make representations based on those test results.

(ii) For multi-split combinations that are not tested, Mitsubishi may make representations based on the testing results for the tested combination and that are consistent with one of the following methods:

(a) Rating of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Rating of non-tested combinations having the same outdoor unit and all non-ducted indoor units shall be set equal to the rating of the tested system having all non-ducted indoor units.

(c) Rating of non-tested combinations having the same outdoor unit and all ducted indoor units shall be set equal to the rating of the tested system having all ducted indoor units. To be considered a ducted unit, the indoor unit must be intended to be connected with ductwork and have a rated external static pressure capability greater than zero (0).

(d) Rating of non-tested combinations having the same outdoor unit and a mix of non-ducted and ducted indoor units shall be set equal to the average of the ratings for the two required tested combinations.

(D) This waiver amendment shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

Issued in Washington, DC, on October 18, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27431 Filed 10–21–11; 8:45 am]

BILLING CODE 6450–01–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: EC12–8–000.

Applicants: Plymouth Rock Energy, LLC.

Description: Application for Approval Under Section 203 of Plymouth Rock Energy, LLC.

Filed Date: 10/13/2011.

Accession Number: 20111013–5161.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1577–001.

Applicants: Dogwood Energy LLC.

Description: Notification of Change in Status of Dogwood Energy LLC.

Filed Date: 10/13/2011.

Accession Number: 20111013–5124.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER11–4330–001.

Applicants: ISO New England Inc., Vermont Electric Cooperative, Inc.

Description: ISO New England Inc. submits tariff filing per 35.17(b): Supplemental Filing to Schedule 21–VEC Revisions to be effective 4/1/2011.

Filed Date: 10/13/2011.

Accession Number: 20111013–5033.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER11–4673–002.

Applicants: Air Liquide Large Industries U.S. LP.

Description: Air Liquide Large Industries U.S. LP submits tariff filing

per 35: MBR Tariff to be effective 10/12/2011.

Filed Date: 10/13/2011.

Accession Number: 20111013–5125.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER12–71–000.

Applicants: ISO New England Inc., The United Illuminating Company.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: United Illuminating Company Schedule 21 Tariff Revisions to be effective 12/1/2011.

Filed Date: 10/13/2011.

Accession Number: 20111013–5038.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER12–72–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(2)(iii: PNM Revised NITSA and Revised NOA with Navopache Electric Cooperative to be effective 11/14/2011.

Filed Date: 10/13/2011.

Accession Number: 20111013–5137.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER12–73–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Section 205 Filing to Recover Abandonment Costs and TO Tariff Modification to be effective 12/13/2011.

Filed Date: 10/13/2011.

Accession Number: 20111013–5146.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER12–74–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Incorporate Formulaic Process to Update Transmission Owner Formula Rates to be effective 12/13/2011.

Filed Date: 10/13/2011.

Accession Number: 20111013–5151.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER12–75–000.

Applicants: Public Power & Utility, Inc.

Description: Public Power & Utility, Inc. submits tariff filing per 35.1: Market Based Rate Tariff Baseline to be effective 10/13/2011.

Filed Date: 10/14/2011.

Accession Number: 20111014–5000.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–75–001.

Applicants: Public Power & Utility, Inc.

Description: Public Power & Utility, Inc. submits tariff filing per 35: Revised Tariff to be effective 10/13/2011.

Filed Date: 10/14/2011.

Accession Number: 20111014–5002.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–76–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Balancing Account Update 2012 (TRBAA, RSBAA, and ECRBAA) to be effective 1/1/2012.

Filed Date: 10/14/2011.

Accession Number: 20111014–5005.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–77–000.

Applicants: California Independent System Operator Corporation.

Description: Petition for Approval of Disposition of Proceeds of Penalty Assessment of the California Independent System Operator Corporation.

Filed Date: 10/13/2011.

Accession Number: 20111013–5164.

Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER12–78–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii: Rate Schedule No. 134 of Carolina Power and Light Company to be effective 12/13/2011.

Filed Date: 10/14/2011.

Accession Number: 20111014–5030.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–79–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii: Revised Rate Schedule No. 173 of Carolina Power and Light Company to be effective 12/13/2011.

Filed Date: 10/14/2011.

Accession Number: 20111014–5031.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–80–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii: Revised Rate Schedule No. 182 of Carolina Power and Light Company to be effective 12/13/2011.

Filed Date: 10/14/2011.

Accession Number: 20111014–5033.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–81–000.

Applicants: Public Service Company of Colorado.

Description: Notice of Termination of Service Agreement 280–PSCo bewteen PSCo and TSGT.

Filed Date: 10/14/2011.

Accession Number: 20111014–5072.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–82–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii: 2011–10–14_PSCo_WAPA Malta SS Maint Agrmt 319 to be effective 10/15/2011.

Filed Date: 10/14/2011.

Accession Number: 20111014–5076.

Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–48–000.

Applicants: Kentucky Utilities Company.

Description: Amendment to Application of Kentucky Utilities Company.

Filed Date: 10/05/2011.

Accession Number: 20111005–5115.

Comment Date: 5 p.m. Eastern Time on Monday, October 24, 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: October 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27315 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3246–001; ER11–2044–003; ER11–3876–002; ER10–2605–001.
Applicants: MidAmerican Energy Company, Cordova Energy Company, LLC, PacifiCorp, Yuma Cogeneration Associates.
Description: Supplement to Notice of Change in Status.
Filed Date: 10/07/2011.
Accession Number: 20111007–5046.
Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–70–000.
Applicants: Cleco Power LLC, Cleco Evangeline LLC.
Description: Cleco Power *et al.* submits joint application for a short-term power purchase agreement.
Filed Date: 10/07/2011.
Accession Number: 20111013–0203.
Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–83–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii): Errata to SDG&E and Cogentrix Energy E&P Agreement to be effective 10/14/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5083.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 2011.

Docket Numbers: ER12–84–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2011–10–14 Transition Agreement with Valley Electric to be effective 12/15/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5084.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 2011.

Docket Numbers: ER12–85–000.
Applicants: Owens Corning Sales, LLC.
Description: Owens Corning Sales, LLC submits tariff filing per 35.12: Owens Corning Rate Schedule FERC No. 1 Baseline Filing to be effective 10/14/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5085.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 2011.

Docket Numbers: ER12–86–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Financial Assurance Pol. Related to Submittal of Fin. Statements to be effective 11/23/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5086.
Comment Date: 5 p.m. Eastern Time on Friday, October 21, 2011.

Docket Numbers: ER12–87–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–001; Original Service Agreement No. 3075 to be effective 9/19/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5087.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 2011.

Docket Numbers: ER12–88–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–171; Original Service Agreement No. 3079 to be effective 9/19/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5115.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 2011.

Docket Numbers: ER12–89–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO filing of revised Operating Cost Allocations to be effective 1/1/2012.
Filed Date: 10/14/2011.
Accession Number: 20111014–5116.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 2011.

Docket Numbers: ER12–90–000.
Applicants: Nordic Energy Services.
Description: Nordic Energy Services submits tariff filing per 35.1: FERC Electric MBR Baseline Tariff Filing to be effective 10/14/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5136.
Comment Date: 5 p.m. Eastern Time on Friday, November 4, 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: October 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27316 Filed 10–21–11; 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: RP12–18–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Non-Conforming Agreements—Patriots Energy Group—PSFT to be effective 9/3/2011.
Filed Date: 10/13/2011.
Accession Number: 20111013–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: RP12–19–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Update to List of Non-Conforming Service Agreements (PSFT) to be effective 11/13/2011.
Filed Date: 10/13/2011.
Accession Number: 20111013–5148.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: RP12–20–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Millennium Pipeline Company, LLC submits tariff filing per 154.204: Negotiated Rate Service Agreements Filing to be effective 11/1/2011.
Filed Date: 10/13/2011.
Accession Number: 20111013–5153.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: RP12–21–000.
Applicants: Centra Pipelines Minnesota Inc.
Description: Centra Pipelines Minnesota Inc. submits tariff filing per 154.204: Revised Index of Shippers, to be effective 12/1/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5032.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 26, 2011.

Docket Numbers: RP12–22–000.
Applicants: Alliance Pipeline L.P.
Description: Alliance Pipeline L.P. submits tariff filing per 154.204: Auction October 2011 to be effective 11/1/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5080.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 26, 2011.

Docket Numbers: RP12–23–000.
Applicants: Liberty Gas Storage, LLC.
Description: Liberty Gas Storage, LLC submits tariff filing per 154.602: Liberty Gas Storage, LLC, Cancellation of FERC Gas Tariff to be effective 10/14/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5108.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 26, 2011.

Docket Numbers: RP12–24–000.
Applicants: Midwestern Gas Transmission Company.
Description: 2010–2011 Cashout Report of Midwestern Gas Transmission Company.
Filed Date: 10/14/2011.
Accession Number: 20111014–5117.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 26, 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: October 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27384 Filed 10–21–11; 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: ER11–4019–000.
Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.
Description: International Transmission Company submits tariff filing per 35.19a(b): ITC–Harvest E&P Refund Report to be effective N/A.
Filed Date: 10/11/2011.
Accession Number: 20111011–5115.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER11–4119–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.19a(b): Filing of Refund Report to be effective N/A.
Filed Date: 10/13/2011.
Accession Number: 20111013–5077.
Comment Date: 5 p.m. Eastern Time on Thursday, November 03, 2011.

Docket Numbers: ER11–4438–001.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35.17(b): Errata to SDG&E and Cogentrix Energy E&P Agreement to be effective 10/17/2011.
Filed Date: 10/14/2011.
Accession Number: 20111014–5140.
Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–91–000.
Applicants: Duke Energy Kentucky, Inc., PJM Interconnection, LLC, Duke Energy Ohio, Inc.
Description: Duke Energy Kentucky, Inc. submits tariff filing per 35.13(a)(2)(iii: Duke submits revisions to the PJM OATT, OA, RAA and TOA re the DEOK Integration to be effective 1/1/2012.
Filed Date: 10/14/2011.
Accession Number: 20111014–5138.
Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–92–000.
Applicants: Duke Energy Kentucky, Inc., PJM Interconnection, LLC, Duke Energy Ohio, Inc.
Description: Duke Energy Kentucky, Inc. submits tariff filing per 35.13(a)(2)(iii: Duke submits revisions to the PJM OATT, OA, RAA and TOA re the DEOK Integration to be effective 1/1/2012.
Filed Date: 10/14/2011.
Accession Number: 20111014–5139.
Comment Date: 5 p.m. Eastern Time on Friday, November 04, 2011.

Docket Numbers: ER12–93–000.
Applicants: Commonwealth Edison Company.
Description: Commonwealth Edison Co. submits Notices of Cancellation.
Filed Date: 10/14/2011.
Accession Number: 20111014–5149.
Comment Date: 5 p.m. Eastern Time on Friday, November 04, 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: October 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27383 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket No.
Michigan Wind 2, LLC	EG11–100–000
Bishop Hill Energy LLC	EG11–101–000
Bishop Hill Energy III LLC	EG11–102–000

	Docket No.
Bishop Hill Energy II LLC	EG11–103–000
CSOLAR IV South, LLC	EG11–104–000
Gratiot County Wind LLC	EG11–105–000
Invenergy Wind Development Michigan LLC	EG11–106–000
Trinity Hills Wind Farm LLC	EG11–107–000
High Plains Ranch II, LLC	EG11–108–000
Double "C" Limited	EG11–109–000
High Sierra Limited	EG11–110–000
Kern Front Limited	EG11–111–000
Cogentrix of Alamosa, LLC	EG11–112–000
Hudson Ranch Power I LLC	EG11–113–000
TPW Petersburg, LLC	EG11–114–000

Take notice that during the month of September 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: October 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27318 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2713–082–New York]

Erie Boulevard Hydropower, L.P.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the multi-development Oswegatchie River Hydroelectric Project, located along a 90-mile stretch of the Oswegatchie River in St. Lawrence County, New York, and has prepared an Environmental Assessment (EA) for the project. The project does not occupy any federal land.

The EA contains the staff's analysis of the potential environmental impacts of 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 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.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For further information contact John Baummer at (202) 502–6837.

Dated: October 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27429 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–001]

City of Broken Bow, OK; 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) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an Original Major License for the Broken Bow Re-Regulation Dam Hydropower Project (FERC Project No. 12470–001). The Broken Bow Re-Regulation Dam Project is proposed to be located on the Mountain Fork River in McCurtain County, Oklahoma, at the U.S. Army Corps of Engineers' Broken Bow Re-Regulation Dam. The project would occupy a total of 8.21 acres of federal lands administered by the Tulsa District of the Corps and 2.32 acres of federal lands within the Ouachita National Forest.

Staff prepared a 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, please contact Aaron Liberty at 202–502–6862, or at *aaron.liberty@ferc.gov.*

Dated: October 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27425 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF11–14–000]

Western Area Power Administration; Notice of Filing

Take notice that on September 23, 2011, Western Area Power Administration submitted its Rate Order No. WAPA–151 concerning rate and repayment data for Network Integration Transmission Service and Western Area Lower Colorado Balancing Authority Ancillary Services, for confirmation and approval on a final basis, effective October 1, 2011, and ending September 30, 2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 25, 2011.

Dated: October 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27427 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–60–000]

Tenaska Power Management, 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 Tenaska Power Management, 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 November 1, 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: October 17, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27317 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–85–000]

Owings Corning Sales, 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 Owings Corning Sales, 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 November 1, 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: October 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27386 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–96–000]

South Chesnut, 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 South Chesnut, 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 November 1, 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: October 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27387 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14263–000]

Wyco Power and Water, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Wyco Power and Water, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Regional Watershed Supply Project. The project would consist of hydropower development along a proposed 501-mile-long buried water supply pipeline that would extend from two points of diversion in Wyoming (one from the Green River and one from Flaming Gorge Reservoir) to a storage terminus near Pueblo, Colorado. The pipeline would be located in Adams, Arapahoe, Elbert, El Paso, Larimer, Pueblo, and Weld Counties in Colorado; and Albany, Carbon, Laramie, and Sweetwater Counties in Wyoming.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application for its proposed hydroelectric facilities during the permit term. Because the Commission would only have jurisdiction with regard to the proposed hydroelectric development, only one component of the proposed 501-mile-long water supply pipeline project, construction of substantial parts of this proposed pipeline may require permits from other federal agencies.

A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would direct water obtained from the Green River basin to southeastern Wyoming and the Front Range of Colorado for use by municipalities, agriculture, and hydropower. Along the pipeline route, the project would include two pumped storage hydroelectric developments and five conventional hydropower developments, with a total installed capacity of about 550 megawatts (MW). The project would consist of the following: (1) A water withdrawal facility on Flaming Gorge reservoir and a second facility on the Green River; (2) about nine natural-gas-powered pump stations; (3) about 501 miles of buried pipeline (between 72 and 120 inches in diameter); (4) the 240–MW Lake Hattie Pumped Storage Hydroelectric Development, using a new reservoir on Sheep Mountain as the upper reservoir and the existing Lake Hattie reservoir as the lower reservoir; (5) the 240–MW Wild Horse Canyon Pumped Storage Hydroelectric Development, with a new 10,300 acre-foot upper reservoir and a new lower reservoir; (6) five conventional 14–MW in-line hydroelectric developments; and (7) seven proposed transmission lines, about 30.59 miles in length, extending

from the switchyards near the seven proposed powerhouses to the interconnected system.

For water distribution purposes, the project would also include four reservoirs: (1) The proposed Cactus Hill Reservoir (185,000 acre-feet in capacity), near Fort Collins, Colorado; (2) the proposed T–Cross Reservoir (25,000 acre-feet in capacity) in El Paso County, Colorado; (3) a new reservoir along the western part of the pipeline system to manage withdrawals from the Green River; and (4) a terminus reservoir near Pueblo, Colorado.

Applicant Contact: Aaron Million, Wyco Power and Water, Inc., 1436 West Oak, Fort Collins, CO 80521, phone (970) 215–2603.

FERC Contact: Jim Fargo; *phone:* (202) 502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14263–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27428 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14136–000; Project No. 14139–000]

Lock+ Hydro Friends Fund XXXV, Riverbank Hydro No. 4, LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two competing preliminary permit applications deemed filed at the same time for proposed hydropower projects at the U.S. Army Corps of Engineers' Lock and Dam No. 5, located on the Mississippi River near Minnesota City, Minnesota, in Winona County, Minnesota, and Buffalo County, Wisconsin.[1] The applications were filed by Lock+ Hydro Friends Fund XXXV for Project No. 14136 and Riverbank Hydro No. 4, LLC, for Project No. 14139.

On October 27, 2011, at 2 p.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications, as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: October 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27385 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

[1] The applications were received after Commission business hours on March 31, 2011. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011). Therefore, the applications are deemed filed at 8:30 a.m. on April 1, 2011.

[2] 18 CFR 4.37 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–3–000]

Kern River Gas Transmission Company; Notice of Request Under Blanket Authorization

Take notice that on October 6, 2011, Kern River Gas Transmission Company (Kern River) filed a prior notice application pursuant to sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and Kern River's blanket certificate issued in Docket No. CP89–2048, to relocate approximately 1.2 mile segments of each of Kern River's 36-inch-diameter mainlines in Salt Lake County, Utah. Kern River proposed the relocation to accommodate construction of the Mountain View Corridor highway, a project of the Utah Department of Transportation. Kern River States that the replacement facilities will have the same throughput capacity as the current facilities, all as more fully set forth in the application, which is open to the public for 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 Michael Loeffler, Senior Director, Certificates, Kern River Gas Transmission Company, 1111 South 103 Street, Omaha, Nebraska 68124, at (402) 398–7103, or to Sheldon Byde, Senior Regulatory Analyst, Kern River Gas Transmission Company, 2755 E. Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, at (801) 937–6163.

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: October 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27426 Filed 10–21–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0085; FRL–9482–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption From the Phaseout of Methyl Bromide (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 23, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0085, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9055; *fax number:* (202) 343–2338; *e-mail address: arling.jeremy@epa.gov.* You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 2, 2011 (76 FR 11447), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0085, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Protection of Stratospheric Ozone: Critical Use Exemption from the Phaseout of Methyl Bromide (Renewal).

ICR numbers: EPA ICR No. 2031.06, OMB Control No. 2060–0482.

ICR status: This ICR is scheduled to expire on October 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is seeking to renew this ICR, which allows EPA to collect methyl bromide Critical Use Exemption (CUE) applications from regulated entities on an annual basis, and which requires the submission of data from regulated industries to the EPA and recordkeeping of key documents to ensure compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and the CAA.

Entities applying for this exemption are asked to submit to EPA applications with necessary data to evaluate the need for a critical use exemption. This information collection is conducted to

meet U.S. obligations under Article 2H of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The information collection request is required to obtain a benefit under Section 604(d)(6) of the CAA, added by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277; October 21, 1998).

Since 2002, entities have applied to EPA for a critical use exemption that would allow for the continued production and import of methyl bromide after the phaseout in January 2005. These exemptions are for consumption only in those agricultural sectors that have demonstrated that there are no technically or economically feasible alternatives to methyl bromide. The applications are rigorously assessed and analyzed by EPA staff, including experts from the Office of Pesticide Programs. On an annual basis, EPA uses the data submitted by end users to create a nomination of critical uses, which the U.S. Government submits to the Protocol's Ozone Secretariat for review by an international panel of experts and advisory bodies. These advisory bodies include the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The uses authorized internationally by the Parties to the Protocol are made available in the U.S. on an annual basis.

The applications will enable EPA to: (1) Maintain consistency with the Protocol by supporting critical use nominations to the Parties to the Protocol, in accordance with paragraph 2 of Decision IX/6 of the Protocol; (2) ensure that critical use exemptions comply with Section 604(d)(6); and (3) provide EPA with necessary data to evaluate the technical and economic feasibility of methyl bromide alternatives in the circumstance of the specific use, as presented in an application for a critical use exemption.

The reported data will enable EPA to: (1) Ensure that critical use exemptions comply with Section 604(d)(6); (2) maintain compliance with the Protocol requirements for annual data submission on the production of ozone depleting substances; and (3) analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual allocation rulemakings.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed to be confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). Individual reporting data may be claimed as sensitive and will be treated as confidential information in accordance with procedures outlined in 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Producers, importers, distributors, and custom applicators of methyl bromide, organizations, consortia, and associations of methyl bromide users, as well as individual methyl bromide users.

Estimated Number of Respondents: 1,919.

Frequency of Response: Quarterly, Annually, Occasionally.

Estimated Total Annual Hour Burden: 3,258.

Estimated Total Annual Cost: $988,840 in labor costs.

Change in Estimates: There is a decrease of 1,660 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The primary reason for the decrease in burden hours is a decrease in the number of applicants and a related decline in the number of end users. Stakeholders are also more familiar with the critical use exemption program and have already organized associations to apply on behalf of multiple growers. Other reasons for burden reduction include the encouragement of electronic submission of applications and other data and frequent EPA communication with methyl bromide stakeholders.

Dated: October 18, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–27438 Filed 10–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9482–7]

Notification of Two Public Teleconferences; Clean Air Scientific Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the chartered Clean Air Scientific Advisory Committee (CASAC) to discuss its draft review of EPA's Integrated Science Assessment for Lead (First External Review Draft, May 2011) and EPA's draft Near-Road NO_2 Monitoring Technical Assistance Document.

DATES: A public teleconference call will be held on November 28, 2011 from 10 a.m. to 12 p.m. (Eastern Time). Another teleconference will be held on January 27, 2012 from 10 a.m. to 12 p.m.

ADDRESSES: The public teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2073; by fax at (202) 565–2098 or via e-mail at *stallworth.holly@epa.gov.* General information concerning the EPA CASAC can be found at the EPA CASAC Web site at *http://www.epa.gov/casac.* Any inquiry regarding EPA's Integrated Science Assessment for Lead (First External Review Draft, May 2011) should be directed to Dr. Ellen Kirrane, EPA Office of Research and Development, at *kirrane.ellen@epa.gov* or 919–541–1340. Any inquiry regarding EPA's draft Near-Road NO_2 Monitoring Technical Assistance Document should be directed to Mr. Nealson Watkins, EPA Office of Air Quality Planning and Standards (OAQPS) at *watkins.nealson@epa.gov* or 919–541–5522.

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the under the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the chartered CASAC will hold a public teleconference call to review draft letters on Integrated Science Assessment for Lead (First External Review Draft, May 2011) and EPA's draft Near-Road NO_2 Monitoring Technical Assistance Document and EPA's.

The Office of Research and Development has requested CASAC review of the Integrated Science Assessment supporting EPA's review of the National Ambient Air Quality Standards for lead. The CASAC Lead Review Panel reviewed the EPA's Integrated Science Assessment for Lead (First External Review Draft, May 2011) and is preparing a draft report for review by the chartered CASAC. The chartered CASAC will review the draft review of the CASAC Lead Review Panel on November 28, 2011 from 10 a.m. to 12 p.m. More information about this advisory activity can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Lead%20ISA?OpenDocument.*

EPA's Office of Air and Radiation (OAR) requested CASAC review of a draft technical document entitled ''Near-Road NO_2 Monitoring Technical Assistance Document'' (Draft, August 11, 2011) to provide state and local air monitoring agencies with recommendations and ideas on how to successfully implement near-road NO_2 monitors required by the 2010 revisions to the NO_2 minimum monitoring requirements. The CASAC Air Monitoring and Methods Subcommittee is preparing a draft report for review by the chartered CASAC. The chartered CASAC will review the draft letter on January 27, 2012 from 10 a.m. to 12 p.m. More information about this advisory activity can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Near-road%20Network%20Design?OpenDocument.*

Availability of Meeting Materials: The agendas and other materials in support of these teleconferences will be placed on the EPA CASAC Web site at *http://www.epa.gov/casac* in advance of the each teleconference.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment on this advisory activity should contact the Designated Federal Officer for the relevant advisory committee directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public teleconference will be limited to three minutes per speaker. Interested parties should contact Dr. Holly Stallworth, DFO, in writing (preferably via e-mail), at the contact information noted above, at least one week prior to each teleconference. To be placed on the public speaker list for the November 28, 2011 teleconference, please contact Dr. Stallworth by November 21, 2011. Likewise, to be placed on the public speaker list for the January 27, 2012 teleconference, please contact Dr. Stallworth by January 20, 2012.

Written Statements: Written statements should be received in the SAB Staff Office by the same deadlines enumerated above (one week prior) so that the information may be made available to the Panel for their consideration. Written statements should be supplied to the DFO in electronic format via e-mail (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 17, 2011

Vanessa T.

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–27433 Filed 10–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9482–4]

Proposed Reissuance of the NPDES General Permit for Facilities Related to Oil and Gas Extraction in the Territorial Seas of Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability for comment.

SUMMARY: The Director of the Water Quality Protection Division, EPA Region 6 today proposes to issue the National Pollutant Discharge Elimination System (NPDES) general permit for the Territorial Seas of Texas (No. TXG260000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act, 33 U.S.C. 1342. The permit will supersede the previous general permit (TXG260000) issued on September 6, 2005 and published in the **Federal Register** at 70 FR 171. This permit renewal authorizes discharges from exploration, development, and production facilities located in and discharging to the territorial seas off Texas.

DATES: Comments must be received by December 8, 2011.

ADDRESSES: Comments should be sent to: Ms. Diane Smith (6WQ–NP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Comments may also be submitted via e-mail to the following address: *smith.diane@epa.gov.*

Public Meeting Information

EPA Region 6 will be holding an informal public meeting which will include a presentation on the proposed general permit and a question and answer session. Advance notice of the time and date for this meeting was provided in the Houston Chronicle, Corpus Christi Caller Times, and Beaumont Enterprise newspapers on September 30, 2011, and via EPA's Web site at *http://www.epa.gov/region6/water/npdes/genpermit/index.htm.* Because informal public meetings accommodate group discussion and question and answer sessions, public meetings have been used for many general permits and appear to be more valuable than formalized public hearings in helping the public understand a proposed general permit and in identifying the issues of concern. Written, but not oral, comments for the administrative record will be accepted at the public meetings. Written comments generated from what was learned at a public meeting may also be submitted any time up to the end of the comment period. The public meeting will be held at South Regional Branch Library, First Floor Lobby Meeting Room, 2101 Lake Robbins Drive, The Woodlands, TX 77380; Time: 6 p.m.–8:30 p.m.; and Date: Tuesday, November 8, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

A complete draft permit and a fact sheet more fully explaining the proposal may be obtained from Ms. Smith. In addition, the Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advance notice. Additionally, a copy of the proposed permit, fact sheet, and this **Federal Register** Notice may be found on the EPA Region 6 Web site at: *http://www.epa.gov/region6/water/npdes/genpermit/index.htm.*

SUPPLEMENTARY INFORMATION: EPA intends to use the proposed reissued permit to regulate oil and gas extraction facilities located in the territorial seas off Texas. To obtain discharge authorization, operators of such facilities must submit a new Notice of Intent (NOI). To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of the permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The proposed permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitation Guidelines at 40 CFR part 435 and additional requirements assuring that regulated discharges will not cause unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Limitations and conditions are also included to ensure compliance with State Water Quality Standards. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Specifically, the draft permit proposes to prohibit the discharge of drilling fluids, drill cuttings and produced sand. Produced water discharges are limited for oil and grease, 7-day chronic toxicity, and 24-hour acute end-of-pipe toxicity. In addition to limits on oil and grease, the proposed permit includes a prohibition of the discharge of priority pollutants except in trace amounts in well treatment, completion, and workover fluids. A limit of ''No Free Oil'' is proposed for miscellaneous discharges, such as non-contact cooling water and ballast water, and on deck drainage discharges. Discharges of seawater and freshwater which have been used to pressure test existing pipelines and piping, to which treatment chemicals have been added, are proposed to be subject to limitations on free oil, concentration of treatment chemicals, and acute toxicity. New facilities withdrawing water greater than 2 million gallons per day (MGD) are required to have the best technology available for minimizing fish/shellfish impingement mortality and entrainment caused by cooling water intake structures. EPA also proposes to require produced water effluent characteristics study and sediment monitoring in order to collect information on how produced water discharged to the Texas territorial seas may impact water quality and the marine environment. EPA will then evaluate the data with respect to further action in order to minimize potential adverse impacts caused by produced water on aquatic life and/or human health. EPA is also soliciting comments on whether or not to prohibit the discharge of produced water from new production wells or even to apply ''no discharge'' of produced water to all facilities.

Other Legal Requirements

Oil Spill Requirements

Section 311 of the CWA, ''the Act'', prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits under normal operational conditions are excluded from the provisions of Section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act. This general permit does not authorize discharges beyond normal exploration, development, and production of oil and gas extraction activities. For instance, an oil spill caused by explosion, like the Deepwater Horizon event that extended from April 20, 2010 to September 19, 2010, when oil flowed from a well in the outer continental shelf portion of the Gulf of Mexico, or any potential gas spill is not covered by this general permit.

Endangered Species Act

The Environmental Protection Agency evaluated the potential effects of issuance of this permit reissuance upon listed threatened or endangered species. Based on that evaluation, EPA has determined that authorization of the discharges is not likely to adversely affect any listed threatened or endangered species. EPA has initiated section 7 consultations in accordance with the Endangered Species Act with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). The FWS concurred with EPA's determination (Consultation No. 21410–2004–I–0051) on July 15, 2011. EPA is still working with the NMFS on its concurrence.

National Environmental Policy Act

EPA issued a final Environmental Impact Statement (EIS) which was published in the **Federal Register** at 69 FR 15829 on March 26, 2004, to evaluate the potential environmental consequences of this Federal (general permit) action, pursuant to its responsibilities under the National Environmental Policy Act of 1969 (NEPA). EPA responded to all issues raised on the Final EIS and issued a Record of Decision on January 11, 2005. EPA has prepared a Supplemental Information Report (SIR) to the 2005 issued final EIS. The SIR is posted on the Internet at: *http://www.epa.gov/region6/water/npdes/genpermit/index.htm.*

Ocean Discharge Criteria Evaluation

For discharges into waters of the territorial sea, contiguous zone, or oceans, CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment in issuance of NPDES permits. These Ocean Discharge Criteria (40 CFR 125, Subpart M) are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). EPA prepared a report on ''Ocean Discharge Criteria Evaluation for the NPDES General Permit for the Territorial Seas of the State of Texas'' dated October 25, 2002, when EPA proposed the reissuance of the general permit in 2004, and concluded that reissuance of the Oil and Gas General Permit for the Territorial Seas of Texas would not result in unreasonable degradation of the marine environment. EPA has reevaluated the ten (10) criteria in the SIR mentioned above.

Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has not designated any marine sanctuaries within the area covered under the permit. The proposed permit also prohibits discharges to marine sanctuary areas.

Magnuson-Stevens Fishery Management and Conservation Act

EPA has determined that reissuance of this general permit is not likely to adversely affect Essential Fish Habitat established under the 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act. In the letter of June 17, 2011, National Marine Fisheries Service (NMFS) concurred with the determination that issuance of the permit has no adverse effect to Essential Fish Habitat.

Coastal Zone Management Act

EPA has determined that the activities which are proposed to be authorized by this permit are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination will be submitted to the State of Texas for interagency review during the comment period of the public notice. It should be noted that decisions to allow oil and gas exploration and production in the territorial seas are made by the State of Texas and not the EPA.

State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with Texas Water Quality Standards and the corresponding implementation guidance. The Region will solicit the 401 certification from the Texas Railroad Commission.

Paperwork Reduction Act

The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

This reissued permit requires reporting and application requirements for new facilities to comply with cooling water intake structure requirements and therefore it requires more reporting burdens for new facilities from those under the previous general permit. Since this permit is very similar in reporting and application requirements in discharges which are required to be monitored as the Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) which also has cooling water intake structure requirements, the paperwork burdens are expected to be nearly identical. EPA estimated it would take an affected facility 3 hours to prepare the request for coverage and 3 hours per month to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for this permit will be the same. A new facility may need more time to prepare information for cooling water intake structure requirements. This proposal requires electronic reporting for discharge monitoring reports, and it will save some reporting time.

However, the alternative to obtaining authorization to discharge under this general permit is to obtain an individual permit. The burden of obtaining authorization to discharge under the general permit is expected to be significantly less than the burden of obtaining an individual permit.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. The permit renewal proposed today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis has shown that issuance of this permit would not have a significant impact on a substantial number of small entities.

Dated: October 14, 2011.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–27421 Filed 10–21–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–076]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Used Equipment Questionnaire (EIB 11–03).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The collection will provide information needed to determine

compliance and creditworthiness for transaction requests submitted to Ex-Im Bank under its insurance, guarantee, and direct loan programs. Information presented in this form will be considered in the overall evaluation of the transaction, including Export-Import Bank's determination of the appropriate term for the transaction.

The form can be view at: *http://www.exim.gov/pub/pending/eib11-03.pdf.*

DATES: Comments should be received on or before December 23, 2011 to be assured of consideration.

ADDRESSESES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Ms. Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 11–03 Used Equipment Questionnaire.

OMB Number: 3048–xxxx.

Type of Review: New.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 1,000.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 250 hours.

Frequency of Reporting or Use: On Occasion.

Total Cost to the Government: $9,680.00.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–27246 Filed 10–21–11; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–1708]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (''Committee''). The purpose of the Committee is to make recommendations to the Commission regarding matters within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on November 4, 2011, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW–C305.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice or TTY), or e-mail *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 11–1708 released October 14, 2011, announcing the agenda, date and time of the Committee's next meeting.

Meeting Date, Time and Agenda

The next meeting of the Consumer Advisory Committee will take place on November 4, 2011, from 9 a.m. to 4 p.m. at the Commission's headquarters building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554.

At its November 4, 2011 meeting, it is expected that the Committee will consider a recommendation from its USF Working Group regarding the Lifeline Linkup programs and a recommendation from its Consumer Empowerment Working Group regarding cramming. The Committee may also consider other recommendations from its working groups.

A limited amount of time will be available on the agenda for comments from the public. Alternatively, Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at the address provided above.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Meetings are also broadcast live with open captioning over the Internet from the FCC Live web page at *http://www.fcc.gov/live/.*

Simultaneous with the webcast, the meeting will be available through Accessible Event, a service that works with your web browser to make presentations accessible to people with disabilities. You can listen to the audio and use a screen reader to read displayed documents. You can also watch the video with open captioning. The website to access Accessible Event is *http://accessibleevent.com.* The web page prompts for an Event Code which is, 005202376. To learn about the features of Accessible Event, consult its User's Guide at: *http://accessibleevent.com/doc/user_guide/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

William D. Freedman,

Acting Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–27103 Filed 10–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: October 17, 2011.

Federal Deposit Insurance Corporation,
Pamela Johnson,
Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION
[In alphabetical order]

FDIC Ref. No.	Bank Name	City	State	Date Closed
10401	Blue Ridge Savings Bank, Inc.	Asheville	NC	10/14/2011
10402	Country Bank	Aledo	IL	10/14/2011
10403	First State Bank	Cranford	NJ	10/14/2011
10404	Piedmont Community Bank	Gray	GA	10/14/2011

[FR Doc. 2011–27330 Filed 10–21–11; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

October 12, 2011.

TIME AND DATE: 10 a.m., Wednesday, October 19, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *White Buck Coal Co.,* Docket No. WEVA 2011–1361; *H & K Materials, Inc.,* Docket No. PENN 2011–308–M; and *Graymont (PA) Inc.,* Docket No. PENN 2011–258–M. (Issues include whether motions to reopen each of the cases should be granted.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,
Administrative Assistant.
[FR Doc. 2011–27590 Filed 10–20–11; 4:15 pm]
BILLING CODE 6735–01–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 November 8, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Mark E. Davis,* St. Peter, Minnesota; to acquire voting shares of Riverland Bancorporation, and thereby indirectly acquire control of Riverland Bank, both in Jordan, Minnesota.

Board of Governors of the Federal Reserve System, October 19, 2011.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 2011–27437 Filed 10–21–11; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Happy Bancshares, Inc.,* Canyon, Texas, and SBI Acquisition Corp., Amarillo, Texas; to acquire 100 percent of the voting shares of Signature Bancshares, Inc., and thereby indirectly acquire voting shares of Signature Bank, both in Dallas, Texas. In addition, SBI Acquisition Corp., also has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, October 18, 2011.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 2011–27325 Filed 10–21–11; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

ACTION: Oral argument.

DATES: October 28, 2011 at 2 p.m.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public:

(1) Oral Argument in The North Carolina Board of Dental Examiners, Docket 9343

Portion Closed to the Public:

(2) Executive Session to follow Oral Argument in The North Carolina Board of Dental Examiners, Docket 9343.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz, FTC, Office of Public Affairs, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2180; Recorded Message: (202) 326–2711

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–27261 Filed 10–21–11; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0163; Docket 2011–0079; Sequence 5]

Submission for OMB Review; General Services Administration; Information Specific to a Contract or Contracting Action; (Not Required by Regulation)

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat 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 regarding information specific to a contract or contracting action (not required by regulation). A notice was published in the **Federal Register** at 76 FR 38396, on June 30, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary 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; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: November 23, 2011.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, Acquisition Policy Division, at telephone (202) 219–1813 or e-mail *william.clark@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation),'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation).'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation),'' 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 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation).

Instructions: Please submit comments only and cite Information Collection 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), 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.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of supplies, transportation, information technology, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting special program objectives.

B. Annual Reporting Burden

Respondents: 126,870.
Responses per Respondent: 1.35.
Total Responses: 171,275.
Hours per Response: .40.
Total Burden Hours: 68,510.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

Dated: October 18, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

[FR Doc. 2011–27440 Filed 10–21–11; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

Correction: This notice was published in the **Federal Register** on October 6, 2011, Volume 76, Number 194, page 62071. Contact information changed to delete Nikki Walker's name and telephone number and replaced with Tiffany Turner's name and telephone number.

CONTACT PERSONS FOR MORE INFORMATION: Claudine Johnson, Program Operation Assistant or Tiffany Turner, Healthy Homes and Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, NCEH, CDC, 4770 Buford Highway, NE., Mailstop F–60, Atlanta, Georgia 30341, telephone (770) 488–3629; Tiffany Turner (770) 488–0554; fax (770) 488–3635.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: October 17, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–27396 Filed 10–21–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Dates: 8:30 a.m.–3:15 p.m., November 15, 2011.

Place: Patriots Plaza I, 395 E Street, SW., Room 9000, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. This meeting is available by teleconference. Please dial (877) 328–2816 and enter code 6558291.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards; (2) address current, relevant needs; and (3) produce intended results.

Matters To Be Discussed: The agenda will include the following: (1) Director Update; (2) Implementation of the National Academies Program Recommendations for Respiratory Diseases, Hearing Loss Prevention, Personal Protective Technologies, and Health Hazard Evaluations; (3) Occupational Safety and Health Workforce Needs Assessment; (4) and Future Directions for Extramural Research. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Designated Federal Officer, BSC, NIOSH, CDC, 395 E Street, SW., Suite 9200, Patriots Plaza Building, Washington, DC 20201, telephone (202) 245–0655, fax (202) 245–0664.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 17, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–27403 Filed 10–21–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0264]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Request for Designation as Country Not Subject to the Restrictions Applicable to Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Request for Designation as Country Not Subject to the Restrictions Applicable to Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On June 28, 2011, the Agency submitted a proposed collection of information entitled ''Request for Designation as Country Not Subject to the Restrictions Applicable to Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0623. The approval expires on September 30, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27388 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0424]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Temporary Marketing Permit Applications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On August 23, 2011, the Agency submitted a proposed collection of information entitled ''Temporary Marketing Permit Applications'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0133. The approval expires on September 30, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27391 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0742]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

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 requirements governing the registration of producers of drugs and listing of drugs in commercial distribution.

DATES: Submit either electronic or written comments on the collection of information by December 23, 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: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@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.

Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—21 CFR Part 207—(OMB Control Number 0910–0045)—Extension

Requirements for drug establishment registration and drug listing are set forth in section 510 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360) and section 351 of the Public Health Service Act, and part 207 (21 CFR part 207). Fundamental to FDA's mission to protect the public health is the collection of this information, which is used for important activities such as postmarket surveillance for serious adverse drug reactions, inspection of drug manufacturing and processing facilities, and monitoring of drug products imported into the United States. Comprehensive, accurate, and up-to-date information is critical to conducting these activities with efficiency and effectiveness.

Under section 510 of the FD&C Act, FDA is authorized to establish a system for registration of producers of drugs and for listing of drugs in commercial distribution. To implement section 510 of the FD&C Act, FDA issued part 207.[1] Under current § 207.20, manufacturers, repackers, and relabelers that engage in the manufacture, preparation, propagation, compounding, or processing of human or veterinary drugs and biological products, including bulk drug substances and bulk drug substances for prescription compounding, and drug premixes as well as finished dosage forms, whether prescription or over-the-counter, are required to register their establishment. In addition, manufacturers, repackers, and relabelers are required to submit a listing of every drug or biological product in commercial distribution. Owners or operators of establishments that distribute under their own label or trade name a drug product manufactured by a registered establishment are not required either to register or list. However, distributors may elect to submit drug listing information in lieu of the registered establishment that manufactures the drug product. Foreign drug establishments must also comply with the establishment registration and product listing requirements if they import or offer for import their products into the United States.

Under current § 207.21, establishments, both domestic and foreign, must register with FDA within 5 days after beginning the manufacture of drugs or biologicals, or within 5 days after the submission of a drug application or biological license application. In addition, establishments must register annually. Changes in individual ownership, corporate or partnership structure, location, or drug-handling activity must be submitted as amendments to registration under current § 207.26 within 5 days of such changes. Under § 207.20(b), private label distributors may request their own labeler code and elect to submit drug listing information to FDA. In such instances, at the time of submitting or

[1] This document addresses the information collection in current part 207. In the **Federal Register** of August 29, 2006 (71 FR 51276), FDA proposed to revise part 207. The proposed revisions would reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list, and describes when and how to register and list, and what information must be submitted for registration and listing. In addition, the proposal would make certain changes to the National Drug Code (NDC) system and would require the appropriate NDC number to appear on the labels for drugs subject to the listing requirements. The proposed regulations generally also require the electronic submission of all registration and most listing information. The August 29, 2006, proposed rule requested comments on the information collection for revised part 207. When the proposal is finalized, the information collection for revised part 207 will replace the information collection in this document.

updating drug listing information, private label distributors must certify to the registered establishment that manufactured, prepared, propagated, compounded, or processed (which includes, among other things, repackaging and relabeling) the listed drug that the drug listing submission was made. Establishments must, within 5 days of beginning the manufacture of drugs or biologicals, submit to FDA a listing for every drug or biological product in commercial distribution at that time. Private label distributors may elect to submit to FDA a listing of every drug product they place in commercial distribution. Registered establishments must submit to FDA drug product listing for those private label distributors who do not elect to submit listing information.

Under § 207.25, product listing information submitted to FDA by domestic and foreign manufacturers must, depending on the type of product being listed, include any new drug application number or biological establishment license number, copies of current labeling and a sampling of advertisements, a quantitative listing of the active ingredient for each drug or biological product not subject to an approved application or license, the NDC number, and any drug imprinting information.

In addition to the product listing information required, FDA may also require, under § 207.31, a copy of all advertisements and a quantitative listing of all ingredients for each listed drug or biological product not subject to an approved application or license; the basis for a determination, by the establishment, that a listed drug or biological product is not subject to marketing or licensing approval requirements; and a list of certain drugs or biological products containing a particular ingredient. FDA may also request, but not require, the submission of a qualitative listing of the inactive ingredients for all listed drugs or biological products, and a quantitative listing of the active ingredients for all listed drugs or biological products subject to an approved application or license.

Under § 207.30, establishments must update their product listing information every June and December or, at the discretion of the establishment, when any change occurs. These updates must include the following information: (1) A listing of all drug or biological products introduced for commercial distribution that have not been included in any previously submitted list; (2) all drug or biological products formerly listed for which commercial distribution has been discontinued; (3) all drug or biological products for which a notice of discontinuance was submitted and for which commercial distribution has been resumed; and (4) any material change in any information previously submitted. No update is required if no changes have occurred since the previously submitted list.

Historically, drug establishment registration and drug listing information have been submitted in paper form using FDA Form 2656 (Registration of Drug Establishment/Labeler Code Assignment), FDA Form 2657 (Drug Product Listing), and FDA Form 2658 (Registered Establishments' Report of Private Label Distributors) (collectively referred to as FDA Forms).

Changes in the FD&C Act resulting from enactment of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) (FDAAA) require that drug establishment registration and drug listing information be submitted electronically unless a waiver is granted. Before the enactment of FDAAA, section 510(p) of the FD&C Act expressly provided for electronic submission of drug establishment registration information upon a finding that electronic receipt was feasible, and section 510(j) of the FD&C Act provided that drug listing information be submitted in the form and manner prescribed by FDA. Section 224 of FDAAA, which amends section 510(p) of the FD&C Act, now expressly requires electronic drug listing in addition to drug establishment registration.

In certain cases, if it is unreasonable to expect a person to submit registration and listing information electronically, FDA may grant a waiver from the electronic format requirement.

In the **Federal Register** of June 1, 2009 (74 FR 26248), FDA announced the availability of a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.'' The document provides guidance to industry on the statutory requirement to submit electronically drug establishment registration and drug listing information. The guidance describes the types of information to include for purposes of drug establishment registration and drug listing and how to prepare and submit the information in an electronic format (Structured Product Labeling (SPL) files) that FDA can process, review, and archive.

In addition to the information that previously was collected by the FDA Forms, the guidance addresses electronic submission of other required information as follows:

- For registered foreign drug establishments, the name, address, and telephone number of its U.S. agent (§ 207.40(c));
- The name of each importer that is known to the establishment (the U.S. company or individual in the United States that is an owner, consignee, or recipient of the foreign establishment's drug that is imported into the United States. An importer does not include the consumer or patient who ultimately purchases, receives, or is administered the drug, unless the foreign establishment ships the drug directly to the consumer or the patient) (section 510(i)(1)(A) of the FD&C Act); and
- The name of each person who imports or offers for import (the name of each agent, broker, or other entity, other than a carrier, that the foreign drug establishment uses to facilitate the import of their drug into the United States) (section 510(i)(1)(A) of the FD&C Act).

FDA also recommends the voluntary submission of the following additional information, when applicable:

- To facilitate correspondence between foreign establishments and FDA, the email address for the U.S. agent, and the telephone number(s) and email address for the importer and person who imports or offers for import their drug;
- A site-specific Data Universal Numbering System number for each entity (*e.g.,* the registrant, establishments, U.S. agent, importer);
- The NDC product code for the source drug that is repacked or relabeled;
- Distinctive characteristics of certain listed drugs, *i.e.,* the flavor, the color, and image of the actual solid dosage form; and
- Registrants may indicate that they view as confidential the registrant's business relationship with an establishment, or an inactive ingredient.

In addition to the collection of information, there is additional burden for the following activities:

- Preparing a standard operating procedure (SOP) for the electronic submission of drug establishment registration and drug listing information;
- Creating the SPL file, including accessing and reviewing the technical specifications and instructional documents provided by FDA (accessible at *http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm);*
- Reviewing and selecting appropriate terms and codes used to create the SPL file (accessible at *http://*

www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm);

• Obtaining the digital certificate used with FDA's electronic submission gateway and uploading the SPL file for submission (accessible at *http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm*); and

• Requests for waivers from the electronic submission process as described in the draft guidance.

When FDA published the 2009 guidance on submitting establishment registration and drug listing information in electronic format, the Agency also amended its burden estimates for OMB control number 0910–0045 to include the additional burden for collection of information that had not been submitted using the FDA Forms, and to create and upload the SPL file. The amended burden estimates included the one-time preparation of an SOP for creating and uploading the SPL file. Although most firms will already have prepared an SOP for the electronic submission of drug establishment registration and drug listing information, each year additional firms will need to create an SOP. As provided in table 2 of this document, FDA estimates that approximately 1,000 firms will have to expend a one-time burden to prepare, review, and approve an SOP, and the Agency estimates that it will take 40 hours per recordkeeper to create 1,000 new SOPs for a total of 40,000 hours.

The information collection requirements of the drug listing and establishment registration regulations have been grouped according to the information collection areas of the regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
New registrations, including new labeler codes requests	39	14.72	574	4.5	2,583
Annual updates of registration information	3,256	2.99	9,735	4.5	43,808
New drug listings	1,567	6.57	10,295	4.5	46,328
New listings for private label distributor	146	10.06	1,469	4.5	6,611
June and December updates of all drug listing information	1,677	11.21	18,799	4.5	84,596
Waiver requests	1	1	1	1	1
Total					183,927

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity resulting from section 510(p) of the FD&C act as amended by FDAAA	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
One-time preparation of SOP	1,000	1	1,000	40	40,000
SOP maintenance	3,295	1	3,295	1	3,295
Total					43,295

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27389 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0001]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Health and Diet Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Health and Diet Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On May 27, 2011, the Agency submitted a proposed collection of information entitled ''Health and Diet Survey'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0545. The approval expires on September 30, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 18, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–27397 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0747]

Agency Information Collection Activities; Proposed Collection; Comment Request; Waiver of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles

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 current burden hours on regulated industry of complying with the guidance underlying this collection of information.

DATES: Submit either electronic or written comments on the collection of information by December 23, 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: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, PI50–400B, 1350 Piccard Dr., Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@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.

Agency Information Collection Activities; Proposed Collection; Comment Request; Waiver of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles—21 CFR 514.1(b)(7) and (b)(8) (OMB Control Number 0910–0575)—Extension

The Center for Veterinary Medicine has written this guidance to address a perceived need for Agency guidance in its work with the animal health industry. This guidance describes the procedures that the Agency recommends for the review of requests for waiver of in vivo demonstration of bioequivalence for generic soluble powder oral dosage form products and Type A medicated articles.

The Generic Animal Drug and Patent Term Registration Act of 1988 (Pub. L. 100–670) permitted generic drug manufacturers to copy those pioneer drug products that were no longer subject to patent or other marketing exclusivity protection. The approval for marketing these generic products is based, in part, upon a demonstration of bioequivalence between the generic product and pioneer product. This guidance clarifies circumstances under which FDA believes the demonstration of bioequivalence required by the statute does not need to be established on the basis of in vivo studies for soluble powder oral dosage form products and Type A medicated articles. The data submitted in support of the waiver request are necessary to validate the waiver decision. The requirement to establish bioequivalence through in vivo studies (blood level bioequivalence or clinical endpoint bioequivalence) may be waived for soluble powder oral dosage form products or Type A medicated articles in either of two alternative ways. A biowaiver may be granted if it can be shown that the generic soluble powder oral dosage form product or Type A medicated article contains the same active and inactive ingredient(s) and is produced using the same manufacturing processes as the approved comparator product or article. Alternatively, a biowaiver may be granted without direct comparison to the pioneer product's formulation and manufacturing process if it can be shown that the active pharmaceutical ingredient(s) (API) is the same as the pioneer product, is soluble, and that there are no ingredients in the formulation likely to cause adverse pharmacologic effects. For the purpose of evaluating soluble powder oral dosage form products and Type A medicated articles, solubility can be demonstrated in one of two ways: ''USP definition'' approach or ''Dosage adjusted'' approach. The respondents for this collection of information are pharmaceutical companies manufacturing animal drugs. FDA estimates the burden for this collection of information as follows in tables 1 and 2 of this document. The source of the above data is records of generic drug applications over the past 10 years.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR WATER SOLUBLE POWDERS [1]

	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
Same Formulation/Manufacturing Process Approach	1	1	1	5	5
Same API/Solubility Approach	5	5	5	10	50
Total Burden Hours					55

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR TYPE A MEDICATED ARTICLES [1]

	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
Same Formulation/Manufacturing Process Approach	2	2	2	5	10
Same API/Solubility Approach	10	10	10	20	200
Total Burden Hours					210

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27392 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0733]

Guidance for Industry on Evaluating the Safety of Flood-Affected Food Crops for Human Consumption; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Industry: Evaluating the Safety of Flood-Affected Food Crops for Human Consumption.'' Flooding events can present a potentially hazardous public health risk. Flood waters may have been exposed to sewage, chemicals, heavy metals, pathogenic microorganisms, or other contaminants. The growers are responsible to ensure the safety of the flood-affected food crops. The guidance is intended to provide growers information on how to evaluate the safety of flood-affected food crops for human consumption.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Plant and Dairy Food Safety, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Yinqing Ma, Center for Food Safety and Applied Nutrition/Office of Food Safety, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 240–402–2479.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Evaluating the Safety of Flood-affected Food Crops for Human Consumption'' This guidance is being issued consistent with FDA's good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). The Agency made this determination because the guidance deals with highly time-sensitive issues and requires immediate implementation for public health reasons. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's GGPs regulation.

The guidance is intended to provide growers information on how to evaluate the safety of flood-affected food crops for human consumption. The recommendations in this guidance are consistent with existing FDA's positions on the safety of flood-affected food crops. This guidance reiterates FDA's positions and includes additional information to help growers assess the safety of food from flood-affected crops for human consumption. Specifically, the guidance addresses: (1) Safety of food crops when flood waters contacted the edible portions of the crops, (2) safety of food crops when flood waters did not contact the edible portions of the crops, (3) assessment of flood-affected fields before replanting, and (4) additional controls to avoid cross-contamination after flooding.

The guidance represents the Agency's current thinking on the safety of flood-affected food crops for human consumption. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received

comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.* Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: October 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27382 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0722]

Draft Guidance for Industry: Implementation of Acceptable Abbreviated Donor History Questionnaire and Accompanying Materials for Use in Screening Frequent Donors of Blood and Blood Components; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Implementation of Acceptable Abbreviated Donor History Questionnaire and Accompanying Materials for Use in Screening Frequent Donors of Blood and Blood Components'' dated October 2011. The draft guidance document recognizes the abbreviated donor history questionnaire and accompanying materials (aDHQ documents), version 1.3 dated August 2011, as an acceptable mechanism for collecting blood donor history information from frequent donors of blood and blood components that is consistent with FDA's requirements and recommendations for collecting donor history information. The aDHQ documents will provide blood establishments that collect blood and blood components with a specific process for administering questions to frequent donors of blood and blood components to determine their eligibility to donate.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 23, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Implementation of Acceptable Abbreviated Donor History Questionnaire and Accompanying Materials for Use in Screening Frequent Donors of Blood and Blood Components'' dated October 2011. The draft guidance document recognizes the aDHQ documents, version 1.3 dated August 2011, prepared by the AABB Donor History Task Force, as an acceptable mechanism for collecting blood donor history information from frequent donors of blood and blood components that is consistent with FDA's requirements and recommendations. The aDHQ documents will provide blood establishments that collect blood and blood components with a specific process for administering questions to frequent donors of blood and blood components to determine their eligibility to donate. The guidance also advises licensed manufacturers who choose to implement the acceptable aDHQ documents on how to report the manufacturing change consisting of the implementation of the aDHQ documents under 21 CFR 601.12.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 601.12 have been approved under OMB Control No. 0910–0338; the collections of information in 21 CFR 606.171 have been approved under OMB Control No. 0910–0458; and the collections of information in 21 CFR 640.3 have been approved under OMB Control No. 0910–0116.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27381 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs 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 December 7, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 7, 2011, during the morning session, the committee will discuss new drug application (NDA) 202324, with the proposed trade name Inlyta (axitinib) tablets, application submitted by Pfizer, Inc. The proposed indication (use) for this product is for the treatment of patients with advanced renal cell carcinoma (kidney cancer).

During the afternoon session, the committee will discuss new drug application (NDA) 202799, with the established name peginesatide injection, application submitted by Affymax, Inc. The proposed indication (use) for this product is for the treatment of anemia associated with chronic renal failure in adult patients on dialysis.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 22, 2011. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 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 14, 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 15, 2011.

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 Yvette Waples 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: October 18, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–27327 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs 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 December 12, 2011, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College (UMUC), The Ballroom, 3501 University Blvd. East, Adelphi, MD 20783. The conference center's telephone number is 301–985–7300.

Contact Person: Philip Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: PDAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the

prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss safety and efficacy issues with new drug application (NDA) 022549, ADASUVE (loxapine) inhalation powder, Alexza Pharmaceuticals, Inc., for the acute treatment of agitation associated with schizophrenia or bipolar I disorder in adults. Particular issues for discussion are concerns regarding pulmonary safety.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 28, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 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 17, 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 18, 2011.

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 Philip Bautista 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: October 18, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–27326 Filed 10–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Trials Grant Review.

Date: November 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles H. Washabaugh, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, Plaza Suite 800, Bethesda, MD 20817, 301–594–4952, *washabac@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Multidisciplinary Clinical Research Centers Review (P60).

Date: November 29–30, 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: Kan Ma, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, Plaza Suite 800, Bethesda, MD 20892–4872, 301–451–4838, *mak2@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Malignant Hyperthermia Grant Review.

Date: November 30, 2011.

Time: 1 p.m. to 4 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: Michael L. Bloom, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, Plaza Suite 800, Bethesda, MD 20892–487, 301–594–4953, *bloomm2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27412 Filed 10–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Application (P01).

Date: November 16, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3145, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27414 Filed 10–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: AIDS/HIV Innovative Research Applications.

Date: November 1–2, 2011.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation Grant Applications.

Date: November 3, 2011.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27418 Filed 10–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, CDRC Conflicts.

Date: November 8, 2011.

Time: 10:30 a.m. to 11:30 a.m.

Agenda Place: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Clinical Trials.

Date: November 11, 2011.

Time: 1 p.m. to 2:30 p.m.

Agenda Place: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, M.P.H., Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/sep/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27417 Filed 10–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Human Genome Research Institute Special Emphasis Panel, November 29, 2011, 8 a.m. to November 29, 2011, 5 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal**

Register on October 14, 2011, 76FR63932.

The meeting notice is amended to change the meeting end date from November 29, 2011 to November 30, 2011. The meeting is closed to the public.

Dated: October 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27415 Filed 10–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of the National Resource for Mass Spectrometry of Biological Macromolecules

Date: November 13–15, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bentley Hotel, 500 East 62nd Street, New York, NY 10065.

Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Macromolecular Insights on Nucleic Acids Optimized by Scattering.

Date: November 15–16, 2011.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kathryn M Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Discovery, Design, and Development of Phosphonic Acid Antibiotics.

Date: November 16–17, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: William A. Greenberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Area Project: Topics in Bioengineering, Computation, and Biological Modeling #2.

Date: November 16–18, 2011.

Time: 6 p.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: November 17–18, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nuria E Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301)451–1323, *assamunu@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: October 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27420 Filed 10–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3340–EM; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Pennsylvania (FEMA–3340–EM), dated September 8, 2011, and related determinations.

DATES: *Effective Date:* October 15, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 15, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27471 Filed 10–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1998–DR; Docket ID FEMA–2011–0001]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1998–DR), dated June 27, 2011, and related determinations.

DATES: *Effective Date:* October 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the Individual Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 27, 2011.

Fremont, Harrison, Mills, Monona, and Pottawattamie Counties for Individual Assistance (already designated for Public Assistance, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27473 Filed 10–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4030–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4030–DR), dated September 12, 2011, and related determinations.

DATES: *Effective Date:* October 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 12, 2011.

Bedford, Huntingdon, Tioga, and Wayne Counties for Public Assistance.

Bucks, Montgomery, Northumberland, Perry, Union, and York Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

October 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27467 Filed 10–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4030–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4030–DR), dated September 12, 2011, and related determinations.

DATES: *Effective Date:* October 15, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 15, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Dated: October 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27466 Filed 10–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Employment Standards

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0006, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on August 10, 2011, 76 FR 49503. The collection involves the requirement for airport and aircraft operators to maintain records of compliance with

certain provisions of 49 CFR parts 1542 and 1544 related to employment standards. The collection also requires airport operators to comply with a security directive by maintaining records for those employees with unescorted access privileges to secured areas, security identification display areas, sterile areas, and air operations areas of the airport.

DATES: Send your comments by November 23, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; e-mail *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Employment Standards.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0006.

Forms(s): NA.

Affected Public: Airport operators regulated under 49 CFR part 1542 and aircraft operators regulated under 49 CFR part 1544.

Abstract: The purpose of this information collection is to maintain certain records relating to employment standards needed to determine compliance with certain provisions of 49 CFR parts 1542 and 1544. TSA requires that airport operators maintain records of criminal history records checks and security threat assessments in compliance with 49 CFR part 1542 and a related security directive for those employees with unescorted access privileges to secured areas, security identification display areas, sterile areas, and air operations areas of the airport. TSA also requires that aircraft operators maintain records of compliance with 49 CFR part 1544 for selected flight crew and security employees. TSA Transportation Security Inspectors (TSIs) review these records to ensure that the safety and security of the public is not compromised, to include using this information to take corrective action when necessary. These regulations establish procedures that airport and aircraft operators must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities.

Number of Respondents: 1,337.

Estimated Annual Burden Hours: An estimated 35,898 hours annually.

Issued in Arlington, Virginia, on October 18, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–27463 Filed 10–21–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Customs Brokers User Fee Payment for 2012

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: This document provides notice to customs brokers that the annual fee of $138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by January 20, 2012. U.S. Customs and Border Protection announces this date of payment for 2012 in accordance with the Tax Reform Act of 1986.

DATES: Payment of the 2012 Customs Broker User Fee is due January 20, 2012.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Compliance Branch, Trade Policy and Programs, (202) 863–6543.

SUPPLEMENTARY INFORMATION:

Background

CBP Dec. 07–01 amended section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007, an annual user fee of $138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

U.S. Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. See 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, ''Geographical Boundaries of Customs Brokerage, Cartage and Lighterage Districts'' published in the Federal Register on September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* (Pub. L. 107–296) and Treasury Department Order No. 100–16 (see Appendix to19 CFR Part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2012, the due date for payment of the user fee is January 20, 2012. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on or about the twentieth of January of each year.

Dated: October 17, 2011.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–27413 Filed 10–21–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51(b)), the following Customs broker licenses and all associated permits are revoked with prejudice.

Name	License No.	Issuing port
Antonio Gonzalez	14309	San Diego.
A. Gonzalez, Inc ...	16076	San Diego.

Dated: October 17, 2011.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–27410 Filed 10–21–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–17]

Notice of Proposed Information Collection for Public Comment; Inspector Candidate Assessment Questionnaire

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 23, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Inspector Candidate Assessment Questionnaire.

OMB Control Number: 2577–0243.

Description of the need for the information and proposed use: To meet the requirements of the Uniform Physical Condition Standards (UPCS) and the Public Housing Assessment System (PHAS) rules, the Department conducts physical condition inspections of approximately 14,000 multifamily and public housing properties annually. To conduct these inspections, HUD uses contract inspectors that are trained in the Uniform Physical Condition Standards protocol and certified by HUD. Individuals who wish to be trained and certified by HUD are requested to electronically submit the questionnaire via the Internet. The questionnaire provides HUD with basic knowledge of an individual's inspection skills and abilities.

Agency form number: Form HUD 50002.

Members of affected public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 800 individuals that submit one questionnaire. The average time for each individual response is 1 hour, for a total reporting burden of 800 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 18, 2011.

Merrie Nichols-Dixon,

Deputy Director, for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2011–27447 Filed 10–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5482–N–04]

Notice of Submission of Proposed Information Collection to OMB; Limited English Proficiency Initiative (LEPI) Program Grant Application

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 23, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be

received within 60 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, e-mail *OIRA_Submission@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Pamela Walsh, Director, Office of Policy, Legislative Initiatives, and Outreach, Office of Fair Housing and Equal Opportunity, e-mail to *Pamela.D.Walsh@HUD.gov;* telephone number (202) 708–1145 (this is not a toll-free number). Persons with hearing and speech challenges may access the above numbers via TTY (text telephone) by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting this proposed information collection requirement to OMB for processing, as described below.

This notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the proposed collection of information; (3) Enhance the quality, utility and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* electronic transmission of data.

Title of Proposal: Limited English Proficiency Initiative Program Reporting.

OMB Control Number, if applicable: 2529–0051.

Description of Information Collection: The proposed information collection is intended to enhance the dissemination of LEP materials, and the delivery of workshops and training sessions concerning HUD programs and services to LEP populations. LEPI grant recipients must submit quarterly reports to HUD containing information required by the LEPI program NOFA and the General Section. As part of the required report to HUD, award recipients must include a completed Logic Model (HUD96010).

Agency form number(s), if applicable: HUD forms have been identified in the Department's General Section.

Members of affected public: Qualified non-profit or faith-based community organizations that have engaged in providing LEP services to diverse populations and communities.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: On an annual basis approximately 30 respondents (applicants) will submit one (1) application to HUD with a burden hour per response of 70 hrs. It is estimated that 2 hrs for the quarterly reporting period will be required of the recipients to fulfill HUD reporting requirements, for a total of 2,132 burden hours.

Status of the proposed Information Collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 18, 2011.

Pamela D. Walsh,

Director, Office of Policy, Legislative Initiatives, and Outreach, Fair Housing and Equal Opportunity.

[FR Doc. 2011–27448 Filed 10–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5500–FA–05]

Announcement of Funding Awards; Capital Fund Education and Training Community Facilities (CFCF) Program; Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for 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 Fiscal Year 2011 (FY 2011) Notice of Funding Availability (NOFA) for the Capital Fund Education and Training Community Facilities (CFCF) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the CFCF program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the CFCF Program awards, contact Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410, telephone 202–402–7378. 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 CFCF program provides grants to Public Housing Agencies (PHAs) to develop facilities to provide early childhood education, adult education, and/or job training programs for public housing residents. More specifically, in accordance with Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (1937 Act), and the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10, approved April 15, 2011), the CFCF program provides grants to PHAs to (1) Construct new community facilities; (2) purchase or acquire facilities; or (3) rehabilitate existing facilities to be used as education and training community facilities by PHA residents. The facilities are for the predominant use of PHA residents; however, non-public housing residents may participate.

The FY 2011 awards announced in this Notice were selected for funding in a competition posted on HUD's Web site on May 24, 2011. Applications were scored and selected for funding based on the selection criteria in that NOFA.

The amount appropriated in FY 2011 to fund the CFCF program was $15,000,000.

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 5 awards made under the competition in Appendix A to this document.

Dated: October 14, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Appendix A

CAPITAL FUND EDUCATION AND TRAINING COMMUNITY FACILITIES (CFCF) PROGRAM AWARD FROM FY 2011 NOTICE OF FUNDING AVAILABILITY

Name/address of applicant	Amount funded	Activity funded	Project description
Newark Housing Authority, 500 Broad Street, Newark, NJ 07102–3112.	$5,000,000	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education, early childhood education, and job training.
White Plains Housing Authority, 223 Dr. Martin Luther King, Jr. Boulevard, White Plains, NY 10601–4105.	3,500,000	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education and job training.
Brewer Housing Authority, 15 Colonial Circle, Brewer, ME 04412.	2,491,690	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education and job training.
Housing Authority of the City of Tacoma, 902 South L Street, Tacoma, WA 98405–4037.	1,881,652	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education, early childhood education, and job training.
Northwest Georgia Housing Authority, 800 North Fifth Avenue, PO Box 1428, Rome, GA 30162–1428.	1,662,643	Construction of a New Facility.	Development of a facility at which the PHA will provide adult education, early childhood education, and job training.

[FR Doc. 2011–27444 Filed 10–21–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2011–N142; 20124–1112–0000–F2]

Draft Environmental Assessment and Draft Habitat Conservation Plan for Lower Colorado River Authority Transmission Services Corporation in Central Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents and announcement of public hearings.

SUMMARY: The Lower Colorado River Authority Transmission Services Corporation (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit under the Endangered Species Act of 1973, as amended. The applicant has completed a draft Habitat Conservation Plan (DHCP) as part of the application package. A draft Environmental Assessment (DEA) that evaluates the permit application in accordance with the requirements of the National Environmental Policy Act of 1969 has also been prepared. We are making the permit application package, including the application, DHCP, and DEA, available for public review and comment.

DATES: *Comment Period:* To ensure consideration of your written comments, we must receive them on or before close of business (4:30 p.m. C.S.T.) December 23, 2011.

Public Meetings: Two public meetings will be held in the transmission line development area during the public comment period. The dates, times, and locations of these meetings will be announced in local newspapers at least 2 weeks before each meeting and will also be posted on the following Web sites: *http://www.fws.gov/southwest/es/AustinTexas/; http://www.lcra.org/energy/trans/crez/fed_envrio_compliance.html.*

ADDRESSES: To find out how to obtain documents for review and where to submit comments, see Reviewing Documents in **SUPPLEMENTARY INFORMATION**. To submit comments, please use one of the following methods, and note that your comment is in reference to permit number TE–46542A–0:

- *E-mail: fw2_aues_consult@fws.gov.*
- *U.S. Mail:* Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460.
- *Fax:* 512/490–0974.
- We will also accept written and oral comments at both of the public meetings (see **DATES**).

When submitting comments, please reference permit number TE–46542A–0.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758, or by phone at 512/490–0057.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act (NEPA), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the draft Environmental Assessment (DEA) related to the potential issuance of an incidental take permit (ITP) to Lower Colorado River Authority Transmission Services Corporation (LCRA; applicant); and

2. LCRA has developed a draft habitat conservation plan (DHCP) as part of the application for an ITP, which describes the measures LCRA has agreed to undertake to minimize and mitigate the effects of incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act).

LCRA has applied for an ITP (TE–46542A–0) under section 10(a)(1)(B) of the Act. The requested ITP, which would be in effect for a period of 30 years if granted, would authorize incidental take of two federally listed species (covered species), golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). As described in the DHCP, the proposed incidental take would occur in Gillespie, Kendall, Kerr, Kimble, Mason, Menard, Schleicher, Sutton, and Tom Green Counties, Texas (Permit Area), and would result from activities associated with construction, maintenance, operation, and repair (both routine and emergency) of two Competitive Renewable Energy Zone (CREZ) transmission lines and their associated access roads (Covered Activities), which are required to be constructed by the Public Utility Commission of Texas (PUC).

The DEA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable.

Background

We initially prepared a notice of intent (NOI) to prepare an Environmental Impact Statement and

held public scoping meetings in connection with the applicant's requested permit. The NOI was published in the Federal Register on March 19, 2010 (75 FR 13299), and opened a comment period which lasted until June 17, 2010. A summary of comments provided during the 2010 scoping period, which included public meetings held April 19, 2010, in San Angelo, Texas; April 21, 2010, in Comfort, Texas; April 22, 2010, in Junction, Texas; April 26, 2010, in Lampasas, Texas; and April 27, 2010, in Fredericksburg, Texas, is available on the U.S. Fish and Wildlife Service's (Service) Web site at *http://www.fws.gov/southwest/es/AustinTexas/* and on the applicant's Web site at *http://www.lcra.org/energy/trans/crez/fed_envrio_compliance.html.*

Prior to the applicant filing its formal application with the Service for an incidental take permit, the scope of the anticipated covered activities was reduced significantly. Specifically, what was once to be an application covering take associated with construction, operation, maintenance, and repair of four 345-killivolt (kV) transmission lines, whose routes were unknown and which could touch all or a portion of 14 counties, is now an application for a permit authorizing potential take of listed species in connection with two 345-kV transmission lines and their associated access roads whose routes are known. Potential impacts to species have been reduced substantially, and mitigation for those impacts meets or exceeds mitigation levels accepted by the Service in HCPs covering the same species.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for the Covered Activities in the Permit Area, pursuant to section 10(a)(1)(B) of the Act. The ITP would cover ''take'' of the Covered Species associated with the construction, maintenance, operation, and repair of the transmission lines and associated access roads occurring within the Permit Area.

The requested term of the permit is 30 years. To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed and proposes to implement its DHCP, which describes the conservation measures LCRA has agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the Covered Species to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

Other Alternatives Considered

We considered two alternatives to the proposed action. However, alternative route selection was not considered as part of any alternatives, as neither the applicant nor the Service had the authority to select alternative routes. Route selection is solely within the legal authority and discretion of the PUC.

1. No Action—No ITP would be issued. Under this alternative, the applicant examined whether it was possible to construct transmission lines along the routes selected by the PUC without the likelihood of causing take of listed species. LCRA examined the options for minimizing clearing of potential habitat (including that occurring within the rights-of-way) and conducting all clearing and construction activities outside of the breeding seasons of the Covered Species. While this would reduce the impacts to Covered Species, it still resulted in ''take,'' since their habitat occurs within the alignments for both transmission lines. In addition to the inability to avoid ''take,'' this alternative would also result in increased costs, increased safety and reliability concerns, and no conservation benefit from mitigation for the Covered Species.

2. Maximum Take Avoidance Alternative—Under this alternative, the applicant would employ the avoidance and minimization measures described under the No Action alternative, but they would pursue an ITP for less take than under the Proposed Alternative. This alternative would also result in increased costs, increased safety and reliability concerns, and less conservation benefit for the Covered Species than under the Proposed Alternative.

Reviewing Documents

You may obtain copies of the DEA and DHCP by going to the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/* or LCRA's Web site at *http://www.lcra.org/energy/trans/crez/fed_envrio_compliance.html.* Alternatively, you may obtain CD–ROMs with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling 512/490–0057; or faxing 512/490–0974. A limited number of printed copies of the DEA and DHCP are also available, by request, from Mr. Zerrenner. Copies of the DEA and DHCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:

- Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Section 9 of the Act and its implementing regulations prohibit ''take'' of fish and wildlife species listed as threatened or endangered under section 4 of the Act. However, section 10(a) of the ESA authorizes us to issue permits to take listed wildlife species where such take is incidental to, and not the purpose of, otherwise lawful activities and where the applicant meets certain statutory requirements.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2011–27395 Filed 10–21–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49698, CACA 51204, LLCAD07000, L51010000.FX0000, LVRWB10B3810, LVRWB10B3800]

Notice of Availability of Joint Final Environmental Impact Statement/Final Environmental Impact Report for the Tule Wind Project, California, and Notice of Intent To Segregate Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) have prepared a Final Environmental Impact Statement (EIS) and Final Environmental Impact Report (EIR) as a joint environmental analysis document for Tule Wind, LLC's Tule Wind Project (Tule Project) and the San Diego Gas and Electric's (SDG&E) East County Substation Project (ECO Project) and by this notice are announcing the availability of the Final EIS/EIR. By this Notice the BLM is also segregating the public lands within the Tule Project application area from appropriation under the public land laws including the Mining Law, but not the Mineral Leasing or Material Sales Act, for a period of 2 years.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the Environmental Protection Agency publishes its notice in the **Federal Register**. This notice initiates the 2-year segregation period for the public lands within the Tule Project application area, effective as of October 24, 2011. The segregation will terminate as described below (see **SUPPLEMENTARY INFORMATION** section).

ADDRESSES: Copies of the EIS/EIR are available for public inspection at the BLM El Centro Field Office, 1661 S. 4th Street, El Centro, California 92243, and the BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553. Interested persons may also review the Final EIS/EIR at the following Web site: *http://www.ca.blm.gov/elcentro.*

FOR FURTHER INFORMATION CONTACT: Greg Thomsen, Project Manager, telephone (951) 697–5237; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail: *catulewind@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 BLM has received applications for rights-of-way (ROW) for two separate, but related, proposed projects in eastern San Diego County. Tule Wind, LLC (Tule) has submitted an application to construct, operate, maintain, and decommission a 201 megawatt (MW) wind energy generation facility known as the Tule Project. The proposed project site is located on approximately 15,477 acres of land under multiple jurisdictions summarized as follows: Private land—1,040 acres; California State Lands Commission land—619 acres; BLM land—12,200 acres; and Tribal land belonging to the Campo Band of Mission Indians—8 acres for access roads only, the Ewiiaapaayp Band of Kumayaay Indians—1,598 acres, and the Manzanita Band of Mission Indians—12 acres for access roads only. The project site is located in the In-Ko-Pah Mountains near the McCain Valley in San Diego County, north of the unincorporated community of Boulevard. The project will consist of up to 128 wind turbines (1.5 to 3.0 MW each) with a generating capacity of up to 201 MW, an overhead and underground 34.5 kilovolt (kV) collector system leading to a collector substation, an operations and maintenance facility, and a 138 kV transmission line as the generation tie-in to the existing Boulevard Substation.

SDG&E has submitted an application to construct the ECO Project, including a 138 kV transmission line that would traverse approximately 1.5 miles of public land managed by the BLM. The ECO Project includes the construction of a 500/230/138 kV substation on private land near the community of Jacumba, a short loop-in to the Southwest Power Link, the 138 kV transmission line mentioned above, a rebuild of the existing Boulevard Substation, and a rebuild of the existing White Star Communication Facility.

The BLM's purpose and need for the Tule and ECO Projects is to respond to Tule's and SDG&E's respective applications under Title V of FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission an energy generation project and a 138 kV transmission line on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws and regulations. The BLM will decide whether to approve, approve with modification, or deny issuance of ROW grants to Tule and SDG&E for the proposed Tule and ECO Projects, respectively. The BLM will take into consideration the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283 *Enhancing Renewable Energy Development on the Public Lands* and 3285 *Renewable Energy Development by the Department of the Interior* in responding to the Tule and SDG&E applications.

The proposed action analyzed in the EIS/EIR is to approve the Tule Project and the ECO Project in response to the applications received from Tule and SDG&E, respectively. The BLM analyzed the following alternatives for the ECO project: The Proposed Action, an Alternative Substation Site, a Partial Undergrounding alternative for the 138 kV Transmission line, the Highway 80 138 kV route alternative, the Highway 80 138 kV undergrounding alternative, and No Action alternatives. The BLM also analyzed the following alternatives for the Tule Wind Project: the Proposed Action, four alternate Gen-tie routes with the substation and the O&M facilities on private lands or public lands, a reduced turbine alternative, and a No Action alternative.

The BLM has used the NEPA process to satisfy the public involvement requirement for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided in 36 CFR 800.2(d)(3). Separately, Native American Tribal consultations are being conducted in accordance with BLM and Department of the Interior policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. The BLM has entered into a Memorandum of Understanding (MOU) with the CPUC to conduct a joint environmental review of the Tule/ECO Projects on Federal land managed by the BLM. The CPUC is the lead agency under the California Environmental Quality Act (CEQA), and is responsible for preparing the EIR. Under NEPA, the BLM is the lead agency preparing the EIS. The BLM and CPUC have agreed through the MOU to conduct joint environmental review of the project in a single combined NEPA/CEQA process and document. The Final EIS/EIR is such a document. It evaluates the potential impacts of the proposed Tule and ECO Projects' impacts on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise,

paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, and other resources. A Notice of Intent to Prepare an EIS/EIR for the Tule and ECO Projects in San Diego County, California was published in the **Federal Register** on December 29, 2009 [74 FR 68860]. The BLM held two public scoping meetings in Jacumba and Boulevard, California, on January 27 and 28, 2010, respectively. The formal scoping period ended on February 15, 2010. A Notice of Availability of the Draft EIS/EIR was published in the **Federal Register** on December 23, 2010 [75 FR 80807], and the BLM along with the CPUC held two public meetings on the Draft EIS/EIR on January 26, 2011, in Jacumba, and on February 2, 2011, in Boulevard.

In connection with its processing of Tule's application, the BLM is also segregating the public lands within the Project application area for the Tule Project from appropriation under public land laws, including the Mineral Law of 1872, as amended, but not the Mineral Leasing or the Material Sales Acts, for a period of 2 years from the date of publication of this notice. This is done under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e), and is subject to valid existing rights. The public lands contained within this temporary segregation total approximately 12,200 acres and are described as follows:

San Bernardino Meridian

T. 15 S., R. 6 E.,
Sec. 34; and
Sec. 35.
T. 16 S., R. 6 E.,
Sec. 2, Lot 3 and 4, S½NW¼, SW¼;
Sec. 3;
Sec. 4;
Sec. 9;
Sec. 10;
Sec. 11, S½NE¼, W½, SE¼;
Sec. 12 S½N½, S½;
Sec. 13;
Sec. 14; and
Sec. 15, W½NE¼, W½, S½SE¼.
T. 16 S., R. 7 E.,
Sec. 17, SW¼;
Sec. 18, Lots 2, 3 and 4, E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, Lots 1, 2 and 4, NE¼NE¼, W½E½, E½W½;
Sec. 20, NE¼, E½NW¼, NW¼NW¼, W½SE¼, SE¼SE¼, SE¼SW¼;
Sec. 28, W½SW¼;
Sec. 29, E½, E½NW¼, SW¼NW¼, NE¼SW¼;
Sec. 30, Lot 1, E½NW¼, NW¼NE¼;
Sec. 32, E½, E½W½; and
Sec. 33, W½.
T. 17 S., R. 7 E.,
Sec. 3, Lots 3, 4, S½NW¼, SW¼ ;
Sec. 4, Lots 1, 2, 5, 6, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 5, Lots 5, 6, 7, S½NE¼, S½NW¼, E½SW¼, SE¼;
Sec. 8, E½NW¼, SW¼SE¼;
Sec. 9, Lots 4, 5 and 6;
Sec. 10, W½W½;
Sec. 15, NE¼, E½NW¼, NW¼NW¼;
Sec. 17, NW¼NE¼; and
Sec. 21, NE¼, NE¼NW¼.

The areas described above aggregate approximately 12,200 acres of public lands in San Diego County.

The BLM has determined that this temporary segregation is necessary to ensure the orderly administration of the public lands by maintaining the status quo while it processes Tule's ROW application for the above described lands. The temporary segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the Mining Law, if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying Tule's ROW authorization request; (2) Publication in the **Federal Register** of a notice terminating this segregation; or (3) No further administrative action occurs at the end of this segregation. Any segregation made under this authority is effective only for a period of up to 2 years.

Comments on the Draft EIR/EIS received from the public and internal BLM review were considered and incorporated as appropriate into the Final EIR/EIS. Public comments resulted in the addition of clarifying text, but did not significantly change the analysis.

Authority: 40 CFR 1506.6 and 1506.10.

James Keeler,

Acting Deputy State Director, Natural Resources.

[FR Doc. 2011–27514 Filed 10–20–11; 11:15 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF00000 L13110000.XH0000]

Notice of Public Meeting, Farmington District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Farmington District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting date is November 16, 2011, at the BLM Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401, from 10 a.m.–4:30 p.m. The public may send written comments to the RAC at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Papich, BLM Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401, 505–599–6324. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 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 10-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico.

Planned agenda items include a welcome and introduction of new Council members, election of a chairperson, discussion of charter and operating procedures, discussion of issues and concerns related to the BLM Farmington District, and discussion of future project work for the Farmington District RAC.

A half-hour public comment period during which the public may address the RAC is scheduled to begin at 2:30 p.m. on November 16, 2011. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Dave Evans,

District Manager, Farmington.

[FR Doc. 2011–27405 Filed 10–21–11; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000–L13100000.PP0000–L.X.SS.052L0000]

Notice of Public Meeting, BLM-Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held November 29 and 30, 2011, at the Fairbanks Princess Riverside Lodge, 4477 Pikes Landing Road, Fairbanks, Alaska 99709–4619. On November 29, the meeting starts at 9 a.m. in the Jade meeting room. On November 30, the meeting begins in the same location, also at 9 a.m. and the council will accept public comment from 11 a.m.–noon.

FOR FURTHER INFORMATION CONTACT: Thom Jennings, RAC Coordinator; BLM-Alaska State Office; 222 W. 7th Avenue #13; Anchorage, AK 99513. Telephone 907–271–3335 or 907–271–4418 or e-mail *tjenning@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, seven 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 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- Manager reports
- Lands with Wilderness Characteristics Policy update
- Resource management planning
- Other topics of interest to the RAC

All meetings are open to the public. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited, so be prepared to submit written comments if necessary. 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: October 17, 2011.

Julia Dougan,

Acting State Director.

[FR Doc. 2011–27394 Filed 10–21–11; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 532–534, and 536 (Third Review)]

Certain Pipe and Tube From Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey; Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on welded carbon steel pipe and tube from Turkey, the antidumping duty orders on welded carbon steel pipe and tube from India, Thailand, and Turkey, the antidumping duty orders on circular welded nonalloy steel pipe from Brazil, Korea, Mexico, and Taiwan, and the antidumping duty order on small diameter carbon steel pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission;s Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 4, 2011, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (76 FR 38691, July 1, 2011) was adequate and that the respondent interested party group responses with respect to Mexico, Thailand, and Turkey were adequate, and decided to conduct full reviews with respect to the countervailing duty order on welded carbon steel pipe and tube from Turkey and the antidumping duty orders on welded carbon steel pipe and tube from Thailand and Turkey and circular welded nonalloy steel pipe from Mexico. The Commission found that the respondent interested party group responses with respect to Brazil, India, Korea, and Taiwan were inadequate. However, the Commission determined to conduct full reviews concerning the antidumping duty orders on welded carbon steel pipe and tube from India, circular welded nonalloy steel pipe from Brazil, Korea, and Taiwan, and small diameter carbon steel pipe and tube from Taiwan to promote administrative efficiency in light of its decision to conduct full reviews with respect to certain pipe and tube orders concerning Mexico, Thailand, and Turkey. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–27355 Filed 10–21–11; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Committee on Civil Rules

AGENCY: Judicial Conference of the United States, Advisory Committee on Civil Rules.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Civil Procedure has been canceled: Civil Rules Hearing, November 7, 2011, in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: October 18, 2011.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2011–27419 Filed 10–21–11; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on August 26, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NEC USA, Inc., New York, NY; Chicovery Co., Ltd., San Chung City, Taipei, Taiwan; Meiloon Industrial Co., Ltd., Taoyuan City, Taiwan; MIT Technology Co., Ltd., Dongguan, Guangdong, People's Republic of China; and IMS International Media Service S.p.A., Varese, Italy, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on June 23, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2011 (76 FR 43348).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–27215 Filed 10–21–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—TAI and Southwest Research Institute

Notice is hereby given that, on August 24, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TAI and SwRI Consortium for Advanced Research for the Development of Telecommunication and Security Tools (''TAISR'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Southwest Research Institute, San Antonio, TX, and Tridex Associates, Inc., Woodbridge, VA.

The general area of TAISR's planned activities is to advance the field of security and telecommunications tools research and development by organizing and implementing joint engineering and scientific research activities. These activities will encompass the development of sophisticated telecommunication tools and or components in the engineering and scientific areas of electronic systems, hardware design, packaging and rapid prototyping.

Membership in this research group is closed, and the participants intend to file additional written notification disclosing all changes in planned activities.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–27114 Filed 10–21–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 9, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51399, Aptuit, 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Poppy Straw Concentrate (9670)	II

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form for packaging for a clinical trial study. In addition, the company also plans to import an ointment for the treatment of wounds which contains trace amounts of the controlled substances normally found in poppy straw concentrate for packaging and labeling for clinical trials.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Aptuit to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Aptuit to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of

the basic classes of controlled substances listed.

Dated: October 3, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–27430 Filed 10–21–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35243, American Radiolabeled Chemicals, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Dimethyltryptamine (7435)	I
1-[1-(2-Thienyl) cyclohexyl] piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Heroin (9200)	II
Meperidine (9230)	II
Metazocine (9240)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances as radiolabeled compounds for biochemical research.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of American Radiolabeled Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 3, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–27424 Filed 10–21–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m. to 4:30 p.m. on Wednesday, November 2, 2011, 8 a.m. to 4:30 p.m. on Thursday, November 3, 2011.

Place: Stanford University Law School, 550 Nathan Abbott Way, Stanford, California, (650) 724–6258.

Matters To Be Considered: Organizational culture and change in the correctional environment; Performance Based Outcomes; Director's report; Presentations.

Contact Person for More Information: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 2011–27157 Filed 10–21–11; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11 a.m., on Thursday, September 8, 2011, at the U.S. Parole Commission, 90 K Street, NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss four original jurisdiction cases pursuant to 28 CFR 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell, Patricia Cushwa and J. Patricia Wilson Smoot.

(Pub. L. 94–409) (5 U.S.C. 552b)

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: September 15, 2011.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2011–27571 Filed 10–20–11; 4:15 pm]

BILLING CODE 4410–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–105)]

Aerospace Safety Advisory Panel; Charter Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal and amendment of the charter of the NASA Aerospace Safety Advisory Panel.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that a renewal and amendment of the charter of the NASA Aerospace Safety Advisory Panel is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed charter is for a two-year period ending October 13, 2013. It is identical to the previous charter in all respects except it removes references to areas of responsibility that are no longer applicable, updates legal citations, and conforms the text to the most recent Congressional reauthorization for this Federal advisory committee (Pub. L. 111–314 on December 18, 2010).

FOR FURTHER INFORMATION CONTACT: Ms. Susan M. Burch, Advisory Committee Management Division, Office of International and Interagency Relations, (202) 358–0550, National Aeronautics and Space Administration, Washington, DC 20546–0001.

October 18, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–27407 Filed 10–21–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–102]

Notice of intent to grant exclusive license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in MFS–32870–1 ''Greener Electro-Mechanical Slide Valve'' to QM Power, Inc, having its principal place of business in Lee's Summit, MO. The intellectual property rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Office/ED10, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Dated: October 18, 2011.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2011–27465 Filed 10–21–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–103)]

Notice of intent to grant exclusive license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent No. 7,341,883 B2 entitled ''Silicon Germanium Semiconductive Alloy and Method of Fabricating Same,'' U.S. Patent No. 7,514,726 B2 entitled ''Graded Index Silicon Germanium on Lattice Matched Silicon Germanium Semiconductive Alloy,'' U.S. Patent No. 7,558,371 B2 entitled ''Method of Generating X–Ray Diffraction Data for Integral Detection of Twin Defects in Super-Hetero-Epitaxial Materials,'' U.S. Patent No. 7,906,358 B2 entitled ''Epitaxial Growth of Cubic Crystalline Semiconductor Alloys on Basal Plane of Trigonal or Hexagonal Crystal,'' U.S. Patent Application No. 12/254,134 entitled ''Hybrid Bandgap Engineering for Super-Hetero-Epitaxial Semiconductor Materials, and Products Thereof,'' U.S. Patent Application No. 12/288,379 entitled ''Rhombohedral Cubic Semiconductor Materials on Trigonal Substrate with Single Crystal Properties and Devices Based on Such Materials,'' U.S. Patent No. 7,769,135 B2 entitled ''X-ray Diffraction Wafer Mapping Method for Rhombohedral Super-Hetero-Epitaxy; and U.S. Patent Application No. 12/254,016 entitled ''Thermoelectric Materials and Devices,'' to innoEpi Incorporated having its principal place of business in Santa Clara, California. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–5057 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Thomas K. McBride Jr., Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–5057; *Fax:* (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Dated: October 18, 2011.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2011–27464 Filed 10–21–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–104)]

International Space Station (ISS) National Laboratory Advisory Committee; Charter Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal and amendment of the charter of the NASA ISS National Laboratory Advisory Committee.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that renewal and amendment of the charter of the NASA ISS National Laboratory Advisory Committee is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed charter is for a two-year period ending October 6, 2013. It is identical to the previous charter in all respects except it updates the legal citation and the name of the NASA organizational element with responsibility for management of this Federal advisory committee.

FOR FURTHER INFORMATION CONTACT: Ms. Susan M. Burch, Advisory Committee Management Division, Office of International and Interagency Relations, (202) 358–0550, National Aeronautics and Space Administration, Washington, DC 20546–0001.

October 18, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–27416 Filed 10–21–11; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, October 27, 2011

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

Matters To Be Considered

1. Final Rule—Part 705 of NCUA's Rules and Regulations, Community Development Revolving Loan Fund Access for Credit Unions.

2. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, October 27, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matters To Be Considered

1. Consideration of Supervisory Activities (4). Closed pursuant to some or all of the following: exemptions (8), (9)(A)(ii) and 9(B).

2. Merger Request Pursuant to Part 708b of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–27614 Filed 10–20–11; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 17, 2011, the National Science Foundation published a notice in the **Federal Register** of waste permit application received. The permit was issued on October 3, 2011 to:

Sebastian Copeland, Permit No. 2012 WM–003

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–27324 Filed 10–21–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modifications issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 17, 2011 to:

Paul Morin, Permit No. 2012–007

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–27323 Filed 10–21–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modifications issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 8, 2011, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 12, 2011 to: George Watters, Permit No. 2012–005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–27322 Filed 10–21–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0212]

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; extension of comment period.

SUMMARY: On September 6, 2011 (76 FR 55137), the U.S. Nuclear Regulatory Commission (NRC) re-issued Draft Regulatory Guide, DG–1278, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' in the **Federal Register** for a 60 day public comment period. The NRC is extending the public comment period for DG–1278 from October 31, 2011 to November 11, 2011. This guide endorses Revision 4A to Nuclear Management and Resources Council (NUMARC) 93–01, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' which provides methods that are acceptable to the NRC staff for complying with the provisions of Section 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' of Title 10 of the Code of Federal Regulations, part 50, ''Domestic Licensing of Production and Utilization Facilities.''

DATES: Submit comments by November 11, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0212 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0212. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically under ADAMS Accession Number ML111640267.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0212.

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7483 or e-mail *Robert.Carpenter@nrc.gov.*

SUPPLEMENTARY INFORMATION: On September 6, 2011 (76 FR 55137), the NRC published a notice of issuance and availability of DG–1278. By e-mail dated October 11, 2011, the Nuclear Energy Institute (ADAMS Accession No. ML11286A027) requested an extension of the stated comment period for the purpose of providing sufficient review while attending planned public meetings related to the subject matter of the proposed guide. It is the desire of the NRC to receive comments of a high quality from all stakeholders. Several factors have been considered in granting an extension. The requested comment period extension is reasonable and does not affect NRC deadlines. The additional time will allow stakeholders to discuss the proposed guide during related meetings. Therefore the comment submittal period is extended from the original date of October 31, 2011 to November 11, 2011.

Dated at Rockville, Maryland, this 17th day of October, 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–27442 Filed 10–21–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0036; NRC–2009–0278]

Environmental Assessment and Finding of No Significant Impact Related to Exemption of Material for Proposed Disposal Procedures for the Westinghouse Electric Company, LLC, Hematite Decommissioning Project, License No. SNM–33, Festus, MO

AGENCY: Nuclear Regulatory Commission

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: John J. Hayes, Senior Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–415–5928; e-mail: *John.Hayes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated May 21, 2009, the U.S. Nuclear Regulatory Commission (NRC) received a license amendment application from Westinghouse Electric Company LLC (WEC or the licensee), pertaining to its planned disposal of NRC-licensed source, byproduct, and special nuclear materials. Regarding this material, WEC seeks approval, pursuant

to Title 10 of the Code of Federal Regulations (10 CFR) 20.2002, of proposed disposal procedures which are not otherwise authorized by NRC regulations. WEC holds NRC License No. SNM–33, which authorizes the licensee to conduct decommissioning activities at its former fuel cycle facility located in Festus, Missouri. Since the fuel cycle facility operations have ceased, the Hematite site is undergoing preparation for decommissioning of the site. The facility is now referred to as the Hematite Decommissioning Project (HDP). The amendment request seeks authorization allowing WEC to transfer decommissioning waste to U.S. Ecology Idaho, Inc. (USEI), a Resource Conservation and Recovery Act Subtitle C disposal facility located near Grand View, Idaho. This facility is regulated by the Idaho Department of Environmental Quality, and is not an NRC-licensed facility. Pursuant to 10 CFR 30.11 and 70.17, WEC's application also requested exemptions from the licensing requirements of 10 CFR 30.3 and 70.3 for the byproduct and special nuclear material it seeks to transfer. These exemptions are necessary because the disposal of byproduct and special nuclear material must occur at a facility licensed to possess such material, and the USEI facility has no NRC license.

On July 6, 2009, the NRC issued a Notice of Opportunity for Hearing (Agencywide Documents Access and Management System (ADAMS) No. ML091740733) on the May 21, 2009, WEC license amendment request (ADAMS No. ML091480071). The original notice of opportunity was extended to October 5, 2009, by Order dated September 4, 2009 (ADAMS No. ML092470425). On July 28, 2009, the NRC held a public meeting in the community of Grand View, Idaho, to inform the public and to provide an opportunity for the public to provide comments and ask questions of the NRC staff. On August 12, 2009, WEC submitted a Decommissioning Plan (DP) [ADAMS Nos. ML092330123, ML092330125, ML092330127, ML092330129, ML092330131, and ML092330132] and supporting documents. This DP superseded all previous DPs for the HDP. An Environmental Report (ADAMS Nos. ML092870403 and ML092870405) was included among the supporting documents for the DP. The NRC relied upon the information provided in the May 21, 2009, license amendment request, the July 28, 2009, public meeting, the July 2009 WEC Environmental Report, and other sources as noted in the EA's references section, in preparing the EA. For this action, a Notice of Availability containing a draft EA and draft Finding of No Significant Impact (ADAMS No. ML110870992) was prepared and published in the **Federal Register** on April 25, 2011. No comments were received.

II. EA Summary

Under 10 CFR 20.2002, WEC proposes to dispose of about 23,000 m^3 (30,000 yd^3) of low level waste (LLW) from the HDP that contains byproduct and special nuclear material at the USEI hazardous waste disposal facility near Grand View, Idaho. The LLW will be generated as part of decommissioning activities, which will include exhumation of existing burial pits, as described in the Hematite DP. There are 40 unlined pits, each of which is approximately 12 meters (40 feet) long, 6 meters (20 feet) wide, and 3.6 meters (12 feet) deep. The pits were used to dispose of waste generated by the former owners of the facility from 1965 to 1971. In addition, there are an estimated 20–25 burials for which there are no records. These burials are believed to be in the area between the documented Burial Pits and the site buildings, under roadways in the eastern portion of the central tract area of the HDP site. Additionally impacted material may come from underneath the site buildings.

In 2002, Westinghouse and the Missouri Department of Natural Resources (MDNR) entered into a Letter Agreement, which, among other things, provided for MDNR oversight of certain studies and response actions in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) under the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* Subsequently, Missouri and Westinghouse entered into a Consent Decree, and the Letter Agreement was terminated. The Consent Decree provides for MDNR oversight of those portions of the investigation and selection of the remedy for Operable Units at the site that are not preempted by the Atomic Energy Act of 1954, as amended.

The no-action alternative was considered for the site. The no-action alternative involves discontinuing ongoing decommissioning activities at the HDP and leaving decommissioning waste, including waste buried in over 40 documented onsite trenches, at the HDP site. This action would require an exemption from the requirement in 70.38(d) of 10 CFR part 70 that decommissioning of facilities specifically licensed for possession and use of special nuclear material (SNM) be completed and approved by the NRC after licensed activities cease. The no action alternative would cause WEC to continue environmental monitoring and surveillance, and to maintain administrative and engineered controls that are required to ensure facility safety and security. Environmental impacts of the no-action alternative would be bounded by impacts associated with normal operation of the facility prior to decommissioning.

Another alternative considered to the proposed action for disposal of LLW generated by decommissioning activities at the HDP is disposal of LLW in facilities specifically licensed by NRC Agreement States for storage or disposal of LLW. For the EA, the NRC evaluated an alternative licensed facility available to HDP—the Energy*Solutions,* LLC (Energy*Solutions*) hazardous and radioactive waste disposal facility near Clive, Utah.

The Energy*Solutions* LLW facility routinely manages amounts of LLW above ground that contain low concentrations of SNM, but in total quantities in excess of the critical mass limits in 10 CFR part 150. Part 150 provides that Agreement States may only license possession of quantities of SNM up to the critical mass limits (*e.g.,* 350 g U–235, 200 g Pu-239). Above these limits, persons need a license from the NRC, in addition to the Agreement State license. Energy*Solutions* has an NRC exemption from the requirements for an NRC license, provided certain conditions, as specified by an NRC Order, are met. At Clive, the NRC has specified SNM concentration limits, in lieu of mass limits, to ensure criticality safety. The NRC staff determined that there is no significant difference in the environmental impacts that result from WEC decision to utilize the USEI site for disposal of its waste as opposed to the Energy*Solutions* site.

III. Finding of No Significant Impact

The NRC has concluded that the proposed action to grant a license amendment to WEC HDP, and an exemption to USEI from the requirements for a license under 10 CFR 30.3 and 70.3 with respect to HDP's disposal of approximately 23,000 m^3 (30,000 yd^3) of soil and debris containing low concentrations of byproduct material and SNM, is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts and the issuance of a license amendment does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the letter requesting the amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession numbers for the documents related to this notice are:

(1) Hematite Decommissioning Project Environmental Report (ML092870403 and ML092870405);

(2) Hematite Decommissioning Plan (ML092330123, ML092330125, ML092330127, ML092330129, ML092330131, and ML092330132);

(3) Hematite Supplemental Characterization Report—Books 1 and 2 (ML092870496 and ML092870506);

(4) Environmental Assessment (ML110870992); and

(5) Notice of Opportunity for Hearing (ML091740733).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 13th day of October, 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–27402 Filed 10–21–11; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Intent to Request Extension of OMB approval of Information Collection.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information that is not contained in a regulation (OMB control number 1212–0030; expires March 31, 2012). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The American Council of Life Insurers conducts this survey for PBGC. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 23, 2011.

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

Federal eRulemaking Portal: http://www.regulations.gov. Follow the Web site instructions for submitting comments.

E-mail: paperwork.comments@pbgc.gov.

Fax: 202–326–4224.

Mail or Hand Delivery: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. PBGC will make all comments available on its Web site at *http://www.pbgc.gov.*

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address, visiting the Disclosure Division, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the annuity markets. To determine these interest rates, PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly ''Survey of Nonparticipating Single Premium Group Annuity Rates.'' The American Council of Life Insurers distributes the survey and provides PBGC with ''blind'' data (*i.e.,* PBGC is unable to match responses with the companies that submitted them). PBGC also uses the information from the survey in determining the interest rates it uses to value benefits payable to participants and beneficiaries in PBGC-trusteed plans for purposes of PBGC's financial statements.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurers. The survey is conducted quarterly and will be sent to approximately 22 insurance companies. Based on experience under the current approval, PBGC estimates that 6 insurance companies will complete and return the survey. PBGC further estimates that the average annual burden of this collection of information is 12 hours and $360.

OMB has approved this collection of information under control number 1212–0030 through March 31, 2012. PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is soliciting public comments to—

- Evaluate 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;

- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC, this 18th day of October, 2011.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–27411 Filed 10–21–11; 8:45 am]

BILLING CODE 7700–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.™

ACTION: Notice of modification to existing systems of records.

SUMMARY: The United States Postal Service® is proposing to modify seventeen of its General Privacy Act Systems of Records. These modifications reflect the title and address changes resulting from an organizational re-design of the Postal Service.

DATES: The revision will become effective without further notice on October 24, 2011 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 4541, Washington, DC 20260–2201. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre, Manager, Records Office, 202–268–2608.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service™ has reviewed its systems of records and has determined that these seventeen General Privacy Act Systems of Records should be revised to modify the system manager(s) and address and notification procedure.

I. Background

In 2011, the Postal Service under went a significant management and organizational re-design. Many executive titles were updated to reflect the new responsibilities of the leadership teams. These changes are proposed for the reasons discussed below.

II. Rationale for Changes to USPS Privacy Act Systems of Records

On January 14, 2011, Patrick Donahoe was sworn in as the 73rd Postmaster General of the United States. Under his leadership, some officer titles were changed to meet the new structure of the revised organization.

III. Description of Changes to Systems of Records

The Postal Service is modifying seventeen systems of records: USPS 200.000, Labor Relations Records; USPS 500.200, Controlled Correspondence, FOIA, and Privacy Act Disclosure Records; USPS 600.000, Legal Records Related to Mail; USPS 600.100, General Legal Records; USPS 600.200, Privacy Act and FOIA Appeal and Litigation Records; USPS 600.300, Public and Confidential Financial Disclosure Reports; USPS 600.400, Administrative Litigation Records; USPS 810.100, *http://www.usps.com* Registration; USPS 810.300, Offline Registration, Payment, and Fulfillment; USPS 820.100, Mailer Services—Applications and Approvals; USPS 820.200, Mail Management and Tracking Activity; USPS 870.100, Trust Funds and Transaction Records; USPS 870.200, Postage Meter and PC Postage Customer Data and Transaction Records; USPS 880.000, Post Office and Retail Services; USPS 890.000, Sales, Marketing, Events, and Publications; USPS 900.000, International Services; and USPS 910.000, Identity and Document Verification Services. Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modification has been sent to Congress and to the Office of Management and Budget for their evaluation. The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights. The Postal Service proposes amending the systems as shown below:

USPS 200.000

SYSTEM NAME:

Labor Relations Records.

USPS 500.200

SYSTEM NAME:

Controlled Correspondence, FOIA, and Privacy Act Disclosure Records

USPS 600.000

SYSTEM NAME:

Legal Records Related to Mail

USPS 600.100

SYSTEM NAME:

General Legal Records

USPS 600.200

SYSTEM NAME:

Privacy Act and FOIA Appeal and Litigation Records

USPS 600.300

SYSTEM NAME:

Public and Confidential Financial Disclosure Reports

USPS 600.400

SYSTEM NAME:

Administrative Litigation Records

USPS 810.100

SYSTEM NAME:

http://www.usps.com Registration

USPS 810.300

SYSTEM NAME:

Offline Registration, Payment, and Fulfillment

USPS 820.100

SYSTEM NAME:

Mailer Services—Applications and Approvals

USPS 820.200

SYSTEM NAME:

Mail Management and Tracking Activity

USPS 870.100

SYSTEM NAME:

Trust Funds and Transaction Records

USPS 870.200

SYSTEM NAME:

Postage Meter and PC Postage Customer Data and Transaction Records

USPS 880.000

SYSTEM NAME:

Post Office and Retail Services

USPS 890.000

SYSTEM NAME:

Sales, Marketing, Events, and Publications

USPS 900.000

SYSTEM NAME:

International Services

USPS 910.000

SYSTEM NAME:

Identity and Document Verification Services

USPS 200.000

SYSTEM NAME:

Labor Relations Records.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[CHANGE TO READ]

For records of non-REDRESS ADR staff providers: General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 500.200

SYSTEM NAME:

Controlled Correspondence, FOIA, and Privacy Act Disclosure Records.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[CHANGE TO READ]

For other correspondence in this system: Vice President, Government Relations and Public Policy, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

For FOIA and Privacy Act requests: General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 600.000

SYSTEM NAME:

Legal Records Related to Mail.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 600.100

SYSTEM NAME:

General Legal Records.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 600.200

SYSTEM NAME:

Privacy Act and FOIA Appeal and Litigation Records.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 600.300

SYSTEM NAME:

Public and Confidential Financial Disclosure Reports.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 600.400

SYSTEM NAME:

Administrative Litigation Records.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[CHANGE TO READ]

General Counsel and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 810.100

SYSTEM NAME:

http://www.usps.com Registration.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 810.300

SYSTEM NAME:

Offline Registration, Payment, and Fulfillment.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 820.100

SYSTEM NAME:

Mailer Services—Applications and Approvals.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 820.200

SYSTEM NAME:

Mail Management and Tracking Activity.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 870.100

SYSTEM NAME:

Trust Funds and Transaction Records.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 870.200

SYSTEM NAME:

Postage Meter and PC Postage Customer Data and Transaction Records.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

Vice President, Mail Entry and Payment Technology, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 880.000

SYSTEM NAME:

Post Office and Retail Services.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Vice President, Delivery and Post Office Operations, United States Postal

Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Vice President, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 890.000

SYSTEM NAME:

Sales, Marketing, Events, and Publications.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

[ADD TEXT]

Vice President, Consumer and Industry Affairs, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

NOTIFICATION PROCEDURE:

* * * * *

[CHANGE TO READ]

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the President and Chief Marketing/Sales Officer, and include their name and address.

* * * * *

USPS 900.000

SYSTEM NAME:

International Services.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

Vice President, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

USPS 910.000

SYSTEM NAME:

Identity and Document Verification Services.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President and Chief Marketing/Sales Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

NOTIFICATION PROCEDURE:

[DELETE TEXT]

For authentication services, electronic postmarks, and digital certificates, inquiries should be addressed to: Manager, Business Development and Identity Protection Services, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5806, Washington, DC 20260.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–27362 Filed 10–21–11; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, October 26, 2011 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to adopt a rule requiring advisers to hedge funds and other private funds to report information for use by the Financial Stability Oversight Council in monitoring risk to the U.S. financial system. The new Advisers Act rule would implement sections 404 and 406 of the Dodd-Frank Act.

Commissioner Paredes, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting item.

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: October 20, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27562 Filed 10–20–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, October 26, 2011 at 1 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 matter at the Closed Meeting.

Commissioner Paredes, 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 Wednesday, October 26, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

A litigation matter; 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.

October 19, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27518 Filed 10–20–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65585; File No. SR–FINRA–2011–057]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt New FINRA Rule 5123 (Private Placements of Securities)

October 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 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, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by FINRA. 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 FINRA Rule 5123, which as described further below, would require that members and associated persons that offer or sell applicable private placements (as described in the Rule), or participate in the preparation of private placement memoranda (''PPM''), term sheets or other disclosure documents in connection with such private placements, provide relevant disclosures to each investor prior to sale describing the anticipated use of offering proceeds, and the amount and type of offering expenses and offering compensation. FINRA Rule 5123 also would require that the PPM, term sheet or other disclosure document, and any exhibits thereto, be filed with FINRA no later than 15 calendar days after the date of the first sale, and any material amendments to such document, or any amendments to the disclosures mandated by the Rule, be filed no later than 15 calendar days after the date such document is provided to any investor or prospective investor, as discussed further below.

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 for Web site viewing and printing 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

FINRA is proposing to adopt new Rule 5123 (Private Placements of Securities) to ensure that investors in private placements are provided detailed information about the intended use of offering proceeds, the offering expenses and offering compensation. In addition, new Rule 5123 would provide FINRA, through a member ''notice'' filing requirement, with more timely and detailed information about the private placement activities of member firms.

Rule 5123(a) would prohibit a member or person associated with a member from offering or selling any security conducted in reliance on an available exemption from registration under the Securities Act of 1933 (''Securities Act'') (''private placement''), or participating in the preparation of a PPM, term sheet or other disclosure document for such private placement, unless certain conditions are met. In particular, the member or associated person must provide a PPM or term sheet to each investor prior to sale that describes the anticipated use of offering proceeds, the amount and type of offering expenses, and the amount and type of compensation provided or to be provided to sponsors, finders, consultants, and members and their associated persons in connection with the offering. In addition, in a private placement without a PPM or term sheet, a member or person associated with a member must prepare a document that contains these disclosures and must provide the document to each investor prior to sale.

Proposed Rule 5123(b) would require ''notice'' filings of members' private placement activities. Specifically, the proposed Rule would require participating members to file the PPM, term sheet or other disclosure document (including exhibits) with FINRA no later than 15 calendar days after the date of first sale, and to file any material amendments to such document, or any amendments to the disclosures mandated by the Rule, with FINRA no later than 15 calendar days after the date such document is provided to any investor or prospective investor.

Proposed Rule 5123(c) would exempt from the requirements of the Rule several types of private placements. Exemptions include offerings sold only to any one or more of the following purchasers:

- Institutional accounts, as defined in NASD Rule 3110(c)(4); [3]
- Qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;
- Qualified institutional buyers, as defined in Securities Act Rule 144A;
- Investment companies, as defined in Section 3 of the Investment Company Act;
- An entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A;
- Banks, as defined in Section 3(a)(2) of the Securities Act; and
- Employees and affiliates of the issuer.

In addition, the Rule would exempt the following types of offerings:

- Offerings of exempted securities, as defined by Section 3(a)(12) of the Exchange Act;
- Offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;
- Offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act;
- Offerings of subordinated loans under Exchange Act Rule 15c3–1, Appendix D (see NASD *Notice to Members* 02–32 (June 2002));
- Offerings of ''variable contracts'' as defined in Rule 2320(b)(2);
- Offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(b)(8)(E);
- Offerings of non-convertible debt or preferred securities by issuers that meet the eligibility criteria for incorporation by reference in Forms S–3 and F–3; [4]
- Offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;
- Offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(11) of the Commodity Exchange Act; and
- Offerings filed with FINRA under Rules 2310, 5110, 5121 and 5122.

These proposed exemptions are very similar to the exemptions in existing Rule 5122 (Member Private Offerings), upon which proposed Rule 5123 is

[3] The SEC approved SR–FINRA–2010–052, which, when it becomes effective on December 5, 2011, will transfer the definition of ''institutional accounts'' currently found in NASD Rule 3110(c)(4) to FINRA Rule 4512(c). *See* Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Approving SR–FINRA–2010–052); *Regulatory Notice* 11–19 (April 2011) (SEC Approves Consolidated FINRA Rules Governing Books and Records). The text of proposed Rule 5123 will be amended to reflect this change after SR–FINRA–2010–052 becomes effective.

[4] FINRA notes that the Commission recently adopted amendments to remove any references to credit ratings from its rules and forms promulgated under the Securities Act and the Exchange Act. *See, e.g., Security Ratings,* Securities Act Release No. 9245 (July 27, 2011), 76 FR 46603 (August 3, 2011). FINRA is proposing to use the references described therein in the proposed rule change.

based. The only differences in the exemptions are that the current proposed Rule would not exempt (1) Offerings in which a member acts in a wholesaling capacity and (2) offerings of certain credit derivatives, both of which are exempted from Rule 5122.[5] Wholesaling is typically engaged in by broker-dealers affiliated with the issuer, and for reasons described in Section 5 below, FINRA does not intend to incorporate that exemption into proposed Rule 5123. The exemption for offerings of equity and credit derivatives was intended to avoid attributing certain derivative products on unaffiliated issuers as a ''member private offering.'' However, since proposed Rule 5123 would apply to all offerings in which a member participates, that distinction is not relevant to Rule 5123.

Proposed Rule 5123 contains provisions identical to those in current Rule 5122 regarding confidential treatment and application for exemption. Pursuant to proposed paragraph 5123(d), FINRA would accord confidential treatment to all documents and information filed pursuant to the Rule, and would use such documents and information solely for the purpose of determining compliance with FINRA rules or other applicable regulatory purposes. Proposed paragraph 5123(e) would provide members a method for application for an exemption from the provisions of the Rule for good cause pursuant to the Rule 9600 Series.

FINRA will announce the implementation date of the proposed rule change no later than 90 days following Commission approval. The implementation date will be no more than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will provide investors in private placements with detailed information about the intended use of offering proceeds, the offering expenses and offering compensation. In addition, the proposed rule change will provide FINRA with more timely and detailed information about the private placement activities of member firms. As a result, FINRA believes that ensuring that investors have information about private placements will provide important investor protections in connection with private placements without unduly restricting capital formation through the private placement offering process. In addition, FINRA believes that the proposed rule change will assist its efforts to identify problematic terms and conditions in private placements, thereby helping to detect and prevent fraud in connection with private placements.

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 Exchange Act. The proposed rule change requires that members and associated persons provide relevant disclosures to each investor prior to the sale of applicable private placements, and file disclosure documents with FINRA no later than 15 calendar days after the date of the first sale (or, in the case of material amendments, the date provided to an investor or prospective investor). As noted above, FINRA does not believe that the proposed rule change will unduly restrict capital formation through the private placement offering process. FINRA believes that the relatively modest ''burden'' of the proposed rule change is both necessary and appropriate in helping 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In January 2011, FINRA published *Regulatory Notice* 11–04 requesting comment on proposed amendments to expand Rule 5122 (the ''11–04 Proposal''). A copy of the *Notice* is available on FINRA's Web site at *http://www.finra.org.* The comment period expired on March 14, 2011. FINRA received 35 comments in response to the *Notice.* A list of the commenters and abbreviations that were received in response to the *Notice* are attached as Exhibit A, and copies of the comment letters received in response to the *Notice* are available on FINRA's Web site at *http://www.finra.org.* A summary of the comments and FINRA's response is provided below.

The 11–04 Proposal

The 11–04 Proposal would have extended virtually all of the existing requirements of Rule 5122, *i.e.,* those requiring disclosure, filing and limitations on the use of offering proceeds, to all private placements in which a member participates (subject to the listed exemptions). While many commenters expressed support for the 11–04 Proposal,[7] many, as discussed below, were critical of various provisions. Most criticisms concerned proposed requirements regarding the use of offering proceeds and filing. FINRA has considered the comments received in response to the 11–04 Proposal. The proposed rule change balances the goals of ensuring investors and FINRA receive key information about private placements while maintaining the flexibility and expediency offered by private placements. Based on these considerations, the current proposed rule change differs in several key respects from the 11–04 Proposal.

Comments Regarding Use of Offering Proceeds

The issue generating the most comment was the proposed use of proceeds limitation (*i.e.,* the proposed requirement that 85 percent of the proceeds raised be used for the business purposes described in the disclosure document). Many commenters expressed concerns about the ability of members to monitor an issuer's use of proceeds and the Rule's potential for additional liability if the use of proceeds deviates from that provided in the required disclosure document.[8] Some raised concerns that, as written, the proposed Rule would impose burdens on or attempt to regulate non-FINRA members.[9]

Some commenters asserted the proposed 85 percent limitation was an arbitrary ''one size fits all'' approach and could be a barrier to capital formation, especially for smaller offerings or other specific types of offerings.[10] Commenters suggested that the fixed costs of smaller offerings, or higher cost of specific types of offerings,

[5] The proposed rule change also would, as noted *supra* at note 4, replace references to credit ratings with alternative language.

[6] 15 U.S.C. 78o–3(b)(6).

[7] *See, e.g.,* letters from Cornell, FSI, Intellivest Securities, Mick & Associates, NIBA and WSI.

[8] *See* letters from 3PM, ABA, AOG, George, IPA, NYC Bar, NY State Bar, NIBA, Secore & Waller, SIFMA and Sullivan & Cromwell.

[9] *See* letters from ABA, NYC Bar, Patrick, Saxony, SIFMA and Sullivan & Cromwell.

[10] *See* letters from ABA, AOG, BFS, FSI, George, IMS, IPA, NY State Bar, Patrick, Rothwell Consulting, Saxony, Schulten Ward, Secore & Waller, WSI and Weinstein Smith.

could make this limitation unworkable. A few commenters feared that constraints on the allowable expenses for such offerings could force issuers to explore alternative means of raising capital without the assistance of member firms, including the use of finders and unregistered persons.[11] In addition, commenters raised interpretive questions regarding whether certain expenses—including, among other things, costs relating to due diligence, legal, travel, blue sky, stock grants, warrants, tail fees, rights of first refusal, conference expenses, trail fees, management fees and appraisals and valuations—would be required to be treated as ''offering expenses'' or would constitute proceeds used for business purposes.[12]

Some commenters recommended that FINRA simply require greater disclosures about the various uses of proceeds, offering expenses, and compensation as an alternative to adopting a use of offering proceeds limitation.[13] Based in large part on these comments, as discussed above, FINRA has amended the proposal such that it no longer includes the substantive requirement that at least 85 percent of offering proceeds must be used for the disclosed business purposes and has instead chosen to reorient the Rule towards disclosure.

While FINRA continues to believe that the manner in which offering proceeds are used is critically important in a private placement—and that offerings in which a large percentage of offering proceeds are for other than business purposes raise regulatory concerns—FINRA believes that these concerns can be addressed through the obligations of broker-dealers, under the suitability and anti-fraud provisions of the securities laws and FINRA rules, to conduct a reasonable inquiry of an issuer.[14] FINRA appreciates the importance of raising capital in the private placement market for certain issuers and recognizes commenters' concerns that an across-the-board application of the 85 percent requirement may impose unnecessary burdens on some offerings, especially smaller private placements. FINRA's expectation is that the reasonable inquiry obligations of broker-dealers will encourage reasonable limits on the use of offering proceeds for purposes other than generating a return on investment.[15] If the rigorous application of the reasonable inquiry obligations outlined in *Regulatory Notice* 10–22 does not achieve this result, FINRA will reconsider the imposition of numerical limitations. In addition, eliminating the 85 percent requirement will simplify the administration of the Rule by removing the need for members to determine whether various expenses would have been classified as ''offering expenses,'' ''compensation,'' or ''business purposes'' under the Rule. In the public offering context, FINRA's Corporate Financing Department staff's review process in connection with issuing a ''no-objections'' opinion ensures consistent and accurate treatment of various expenses. Since only a ''notice'' filing is required in proposed Rule 5123, the lack of staff review and comment could raise interpretive questions regarding the application of the 85 percent requirement if the provision remained in the Rule. Lastly, eliminating the 85 percent requirement would eliminate any implication, as indicated by some comments, that the 11–04 Proposal would create an independent, continuing obligation for members to monitor an unaffiliated issuer's use of proceeds after the closing of an offering.

Comments Regarding Filing Requirements

The 11–04 Proposal would have required a member to file information with FINRA by the time an offering document is provided to any investor. While the 11–04 Proposal states that offerings would not be held in abeyance pending FINRA staff review and that filings would not be ''approved'' nor would the staff issue ''no-objections'' opinions, commenters raised concerns about potential slowdowns of offerings due to the filing requirement. Several commenters believed that the 11–04 Proposal's filing requirement could delay the offering process as firms would be reluctant to proceed with an offering without assurances or clearances from FINRA.[16] Commenters also raised technical concerns about the proposed filing process, including concerns regarding who must file (*e.g.,* each selling dealer in a private placement), how members of a selling group would know if an offering memorandum had been previously filed, and who bears the responsibility to file amendments.[17] A few commenters, including the NYC Bar, suggested that the application of the filing requirement would result in offerings structured to avoid application of the Rule, either by limiting the offering to exempted investors or moving the transaction offshore.

In response to these comments, FINRA now proposes to require that a member file ''no later than 15 calendar days after the date of first sale.'' This timing requirement is the same as the filing requirement for Form D; synchronizing these timing requirements may allow some filers to utilize operational efficiencies. Moreover, by requiring a ''notice'' filing, FINRA will remove any implication that the FINRA staff will provide comments on a filing; that such filing with FINRA could be a precondition to commencing an offering; or that members should expect to receive any FINRA staff input before proceeding with an offering. The proposed filing requirement would nevertheless provide FINRA staff with timely access to information about the private placement business of FINRA members.

The proposal would require that each member that participates in a private placement make the requisite filing. FINRA had considered requiring only one member to file, but determined that such a requirement would limit its ability to gain timely access to information about the private placement business of FINRA members that might not file. Moreover, as the comment letters indicate, requiring only one member to file would complicate the ability of the other members to

[11] *See* letters from ABA, Krieger & Prager and REISA.

[12] *See* letters from ABA, IMS, Locke Lord, Mick & Associates, Network 1, Patrick, REISA, Saxony, Secore & Waller, SIFMA, Sullivan & Cromwell and Weinstein Smith.

[13] *See* letters from FSI, IPA, NIBA, REISA and WSI.

[14] *See Regulatory Notice* 10–22 (April 2010) (Regulation D Offerings).

[15] Members have an obligation to conduct a reasonable inquiry regarding the use of proceeds prior to making a recommendation in that security. *See, e.g., Regulatory Notice* 10–22 (regarding private placements). Such a recommendation would not comply with the requirements of FINRA's suitability rule if the description of the use of proceeds in the disclosure document is inconsistent with the information obtained in the course of this inquiry. *See* NASD Rule 2310 (Recommendations to Customers (Suitability)). FINRA notes that the SEC has approved new FINRA Rule 2111 (Suitability). *See Regulatory Notice* 11–02 (January 2011) (SEC Approves Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations). *See also* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (File No. SR–FINRA–2010–039; Order Granting Accelerated Approval, As Modified by Amendment, to Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook); Securities Exchange Act Release No. 64260 (April 8, 2011), 76 FR 20759 (April 13, 2011) (File No. SR–FINRA–2011–016; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Implementation Date of FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability)).

[16] *See* letters from ABA, Achates, IMS, Intellivest, IPA, George, LeGaye, Network 1, NIBA, NYC Bar, NY State Bar, Patrick, REISA, Saxony, Secore & Waller and Sullivan & Cromwell.

[17] *See* letters from Achates, FSI and Moloney.

participate, since they would have to determine whether another member had filed and whether the filing complies with FINRA's requirements. If one member engaged in the private placement under different compensation terms than another member, then it could further complicate such a single-filer regime. Therefore, it is more practical, and more helpful to FINRA's need for timely access to information about the private placement business of members, to require every member that participates in a particular private placement to make the notice filing.

Other Comments

Comments regarding disclosure ranged from support [18] to requests for clarification or guidance regarding what would constitute adequate disclosure [19] to claims that disclosure would be duplicative of that provided to the SEC pursuant to Regulation D.[20] Some requested clarification of specific types of disclosure (*e.g.,* sponsor fees,[21] non-variable third party costs [22] or the scope of offering expenses [23]).

Several commenters suggested narrowing the scope of the Rule through additional exemptions, including adding exemptions for offers and sales to: all accredited investors; [24] small groups of accredited investors; [25] or alternatively a *de minimis* exemption for sales to accredited investors; [26] other registered broker-dealers in connection with the establishment of a joint back office arrangement; [27] issuers that are reporting companies under the Federal securities laws; [28] knowledgeable employees or officers of the issuing company; [29] or when there is a change in ownership.[30] Others argued that exemptions for the following types of securities should be added: insurance contracts; [31] mergers and acquisitions structured as a stock sale either for cash or for acquirer stock; [32] secondary sales of securities; [33] and privately offered commodity pools and investment funds.[34]

FINRA believes the exemptions in the proposed rule change are appropriately tailored and inclusive, and as noted above, are very similar to those in existing Rule 5122. Based upon its experience with Rule 5122, FINRA does not believe it should expand the list of exemptions. Further, FINRA notes that the proposed Rule would provide a method by which a member may apply for an exemption from the provisions of the Rule for good cause pursuant to the Rule 9600 Series.

Some commenters supported FINRA's proposal not to incorporate the wholesaling exemption into the Rule,[35] while others questioned the elimination of this exemption, especially as the 11–04 Proposal would have eliminated the exemption for member private offerings as well as private placements more generally.[36] The basis for this exemption in Rule 5122 was that distribution of the private placement by independent retail broker-dealers would obviate the need for the rule, which applies to private placements in which the selling member or its control entity is the issuer. However, given that the current proposed rule change reaches all private placements, the reliance upon the efforts of an ''independent'' broker-dealer is no longer relevant. Accordingly, the wholesaling exemption is not provided in proposed Rule 5123.

Commenters also requested that the Rule (or supplementary material) state that the exemption provisions may be combined without triggering the requirements of the Rule.[37] FINRA notes that the exemption provisions may be combined. These exemptions are derived from those in Rule 5122. In announcing the approval of Rule 5122, FINRA stated as follows:

> Types of exemptions may be combined without triggering the requirements of the rule. For example, if an MPO is offered to both qualified purchasers and employees or affiliates of the issuer or its control entities, as long as these purchasers qualify for exemptions under the rule, the MPO would be exempt from the rule's requirements.[38]

FINRA would make a similar statement in connection with a *Regulatory Notice* regarding this Rule.

One commenter raised a concern that, as proposed, the Rule would not afford confidential treatment to any comment or similar letters by FINRA, and thus they could be discovered by a litigant through appropriate legal action.[39] FINRA believes that proposed paragraph 5123(d) addresses this issue and would afford confidential treatment to all such documents.

As a result of the differences between the 11–04 Proposal (and Rule 5122) and the current proposed Rule, as described above, FINRA is proposing that the rule regarding private placements be a new rule separate from Rule 5122.[40]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. The Commission specifically requests comment on the following:

- Whether the proposed rule would impact issuers' access to capital via the private placement market, particularly small issuers. If so, how?
- Whether the proposed rule would impact investors purchasing private placement securities through a broker-dealer subject to the new rule. If so, how? For example, would knowledge of the information contained in a mandatory disclosure improve an investor's ability to decide whether to invest in a private placement subject to the rule?
- Whether the proposed rule would impact registered broker-dealers' participation in private placements. If so, how?

Comments may be submitted by any of the following methods:

[18] *See,* e.g., letter from WSI.

[19] *See,* e.g., letter from LeGaye.

[20] *See* letter from NY State Bar.

[21] *See* letter from AOG.

[22] *See* letter from Weinstein Smith.

[23] *See* letters from IMS and Weinstein Smith.

[24] *See* letters from NYC Bar, SIFMA, Sullivan & Cromwell and Weinstein Smith.

[25] *See* letter from LeGaye.

[26] *See* letters from ABA, IMS, NYC Bar, Rothwell Consulting, SIFMA, St. Charles and Sullivan & Cromwell.

[27] *See* letter from ABA.

[28] *See* letter from SIFMA.

[29] *See* letters from ABA, SIFMA and St. Charles.

[30] *See* letter from IMS.

[31] *See* letter from Sutherland.

[32] *See* letter from NYC Bar.

[33] *See* letter from Sullivan & Cromwell.

[34] *See* letter from MFA.

[35] *See* letters from Cornell, NIBA and SIFMA.

[36] *See* letters from 3PM, LeGaye, SIFMA and WSI.

[37] *See* letters from ABA, NYC Bar, Rothwell Consulting and SIFMA.

[38] *See Regulatory Notice* 09–27 (May 2009) (Member Private Offerings).

[39] *See* letter from ABA.

[40] FINRA believes that the provisions of existing Rule 5122 are appropriate for the types of private offerings covered by that rule, *i.e.,* the offering of securities issued by a member or its control affiliate. In addition, FINRA is not aware of any concerns regarding the timing of Rule 5122's filing requirement.

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–2011–057 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–2011–057. 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–2011–057 and should be submitted on or before November 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Elizabeth M. Murphy,

Secretary.

Exhibit A

Alphabetical List of Written Comments

1. Achates Capital Advisors LLC (March 4, 2011) (''Achates'').
2. American Bar Association (March 14, 2011) (''ABA'').
3. AOG Wealth Management (March 14, 2011) (''AOG'').
4. Balanced Financial Securities (February 12, 2011) (''BFS'').
5. Colonnade Securities LLC (March 10, 2011) (''Colonnade'').
6. Cornell University Law School (March 14, 2011) (''Cornell'').
7. Financial Services Institute (March 15, 2011) (''FSI'').
8. Ken George (March 14, 2011) (''George'').
9. Integrated Management Solutions USA LLC (March 14, 2011) (''IMS'').
10. Investment Program Association (March 14, 2011) (''IPA'').
11. Intellivest Securities, Inc. (March 10, 2011) (''Intellivest Securities'').
12. Krieger & Prager, LLP (February 18, 2011) (''Krieger & Prager'').
13. The LeGaye Law Firm P.C. (March 14, 2011) (''LeGaye'').
14. Valerie Lewis (January 19, 2011) (''Lewis'').
15. Locke Lord Bissell & Liddell LLP (March 11, 2011) (''Locke Lord'').
16. Moloney Securities Co., Inc. (March 7, 2011) (''Moloney'').
17. Managed Funds Association (March 14, 2011) (''MFA'').
18. Mick & Associates, P.C., LLO (March 10, 2011) (''Mick & Associates'').
19. National Investment Banking Association (March 14, 2011) (''NIBA'').
20. Network 1 Financial Securities, Inc. (March 10, 2011) (''Network 1'').
21. New York City Bar Association (March 14, 2011) (''NYC Bar'').
22. New York State Bar Association (March 28, 2011) (''NY State Bar'').
23. Patrick Capital Markets, LLC (March 14, 2011) (''Patrick'').
24. Real Estate Investment Securities Association (March 14, 2011) (''REISA'').
25. Rothwell Consulting LLC (March 1, 2011) (''Rothwell Consulting'').
26. Saxony Securities, Inc. (March 14, 2011) (''Saxony'').
27. Schulten, Ward & Turner (February 3, 2011) (''Schulten Ward'').
28. Secore & Waller, L.L.P. (March 14, 2011) (''Secore & Waller'').
29. Securities Industry and Financial Markets Association (March 14, 2011) (''SIFMA'').
30. St. Charles Capital, LLC (March 14, 2011) (''St. Charles'').
31. Sullivan & Cromwell LLP (March 14, 2011) (''Sullivan & Cromwell'').
32. Sutherland Asbill & Brennan LLP (March 14, 2011) (''Sutherland'').
33. Third Party Marketers Association (March 10, 2011) (''3PM'').
34. Walton Securities, Inc. (March 14, 2011) (''WSI'').
35. Weinstein Smith LLP (March 9, 2011) (''Weinstein Smith'').

[FR Doc. 2011–27328 Filed 10–21–11; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65588; File No. SR–ICC–2011–01]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Add Rules Related to the Clearing of Emerging Markets Sovereigns

October 18, 2011.

I. Introduction

On August 30, 2011, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2011–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on September 9, 2011.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

This rule change will amend Chapter 26 of ICC's rules to add Sections 26D and 26E to provide for the clearance of Emerging Markets Standard Sovereign CDS Contracts (''SES Contracts''). ICC will clear SES Contracts on four sovereign reference entities: the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela, and the Argentine Republic. If ICC determines to list additional SES Contracts, it will seek approval from the Commission for such contracts (or for a class of product including such contracts) by a subsequent filing with the Commission.

SES Contracts have similar terms to the North American Corporate CDS Contracts (''Corporate Single Name CDS Contracts'') currently cleared by ICC and governed by Section 26B of the ICC rules. Accordingly, proposed rules in Section 26D largely mirror the ICC rules for Corporate Single Name CDS Contracts in Section 26B, with certain modifications that reflect differences in terms and market conventions between SES Contracts and Corporate Single Name CDS Contracts. In the event that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–65259 (September 2, 2011), 76 FR 55984 (September 9, 2011). In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements are incorporated into the discussion of the proposed rule change in Section II below.

a clearing participant is domiciled in a country that is the reference entity for an SES Contract, ICC will not permit the clearing participant to clear such SES Contract.

Rule 26D–102 (Definitions) sets forth the definitions used for SES Contracts. An ''Eligible SES Reference Entity'' is defined as ''each particular Reference Entity included from time to time in the List of Eligible Reference Entities,'' which is a list maintained, updated and published from time to time by ICC containing certain specified information with respect to each reference entity.[4] The Eligible SES Reference Entities will at present be limited to the four Latin American sovereigns listed above. Certain substantive changes have also been made to the definition of ''List of Eligible SES Reference Entities'' (as compared to the corresponding definition in Section 26B), due to the fact that certain terms and elections for Corporate Single Name CDS Contracts are not applicable to SES Contracts. These include (i) The need for an election as to whether ''Restructuring'' is an eligible ''Credit Event'' (it is by market convention applicable to all SES Contracts, whereas it is generally not applicable to Corporate Single Name CDS Contracts) and (ii) the applicability of certain International Swaps and Derivatives Association (''ISDA'') supplements that may apply to Corporate Single Name CDS Contracts but do not apply to SES Contracts, including the 2005 Monoline Supplement, the ISDA Additional Provisions for a Secured Deliverable Obligation Characteristic, and the ISDA Additional Provisions for Reference Entities with Delivery Restrictions. According to ICC, SES Contracts will only be denominated in U.S. Dollars. The remaining definitions are substantially the same as the definitions found in ICC Section 26B, other than with respect to certain conforming changes.

Rules 26D–203 (Restriction on Activity), 26D–206 (Notices Required of Participants with respect to SES Contracts), 26D–303 (SES Contract Adjustments), 26D–309 (Acceptance of SES Contracts by ICE Trust), 26D–315 (Terms of the Cleared SES Contract), 26D–316 (Relevant Physical Settlement Matrix Updates), 26D–502 (Specified Actions), and 26D–616 (Contract Modification) reflect or incorporate the basic contract specifications for SES Contracts and are substantially the same as the corresponding provisions applicable to Corporate Single Name CDS Contracts in Section 26B of ICC rules, other than with respect to certain conforming changes. For the avoidance of doubt, ICC will not accept a trade for clearance and settlement if at the time of submission or acceptance of the trade or at the time of novation the CDS Participant submitting the trade is domiciled in the country of the Eligible SES Reference Entity for such SES Contract.

In addition to various non-substantive conforming changes, the proposed rules differ from the existing rules for Corporate Single Name CDS Contracts in that the contract terms in Rule 26D–315 incorporate the relevant published ISDA physical settlement matrix terms for Standard Latin American Sovereign transactions, rather than Standard North American Corporate transactions, and, as noted in the preceding paragraph, to account for certain elections and supplements used for Corporate Single Name CDS Contracts that are not applicable to SES Contracts.

New Section 26E (CDS Restructuring Rules) provides rules applicable to cleared Contracts in the event of a restructuring credit event. Corporate Single Name CDS Contracts currently cleared by ICC are generally not subject to these restructuring rules. Unlike other credit events, following a restructuring credit event, parties to a cleared SES Contract must determine whether or not to trigger their credit protection. To facilitate this election while permitting ICC to maintain a matched book of cleared Contracts, Section 26E provides that protection buyers and protection sellers under a Restructuring CDS Contract (defined as a CDS Contract where a restructuring credit event has occurred) will be matched into pairs, each referred to as a ''Matched Restructuring Pair,'' by ICC for purposes of sending and receiving such triggering notices. Rule 26E–102 sets forth the definitions used throughout Section 26E in connection with a restructuring credit event.

The procedures for creation of Matched Restructuring Pairs are set forth in Rule 26E–103 (Allocation of Matched Restructuring Pairs). Following the announcement that a restructuring credit event has occurred with respect to an SES Contract, ICC will match each protection seller in that contract with one or more protection buyers in that contract, such that the notional amount of the contract of each protection seller is fully allocated to one or more protection buyers. In order to be matched, positions in an SES Contract must be of the same type (*i.e.,* having the same reference entity, tenor, reference obligation, fixed rate, and relevant physical settlement matrix).

The mechanics associated with the delivery and receipt of notices by clearing participants under Matched Restructuring Pairs are set forth in Rule 26E–104 (Matched Restructuring Pairs; Designations and Notices). This rule provides that once ICC has created the Matched Restructuring Pairs, ICC will be deemed to have designated the matched CDS buyer and matched CDS seller as its designee to receive and deliver credit event notices in relation to the Restructuring CDS Contract. The rule also contains a mechanism for notifying ICC of disputes with respect to such notices.

Finally, Rule 26E–105 (Separation of Matched Restructuring Pairs) addresses situations where an announcement of a restructuring credit event is followed by a determination that such event did not in fact occur.[5] The rule provides that if ICC has not matched buyers with sellers to form a Matched Restructuring Pair, then ICC will not do so. If ICC has matched sellers with buyers to form a Matched Restructuring Pair, but settlement (either auction settlement or fallback physical settlement) has not occurred, then ICC will reverse the matching. If fallback physical settlement is applicable, ICC will not reverse any matching to the extent that the matched CDS buyer or matched CDS seller has given notice to ICC that the parties have settled the relevant matched CDS contract within one Business Day following delivery of the matching reversal notice. If a CDS contract is reversed, ICC will recalculate the margin accordingly.

ICC believes that clearance of SES Contracts will facilitate the prompt and accurate settlement of security-based swaps and contribute to the safeguarding of securities and funds associated with security-based swap transactions.[6]

[4] Similar to the index credit default swap (''CDS'') contracts and Corporate Single Name CDS Contracts that ICC currently clears, ICC will accept for clearing sovereign CDS contracts denominated in U.S. Dollars only.

[5] Determination of a credit event and a subsequent determination that a credit event did not occur are made by the ISDA relevant credit derivatives determinations committee (''DC''), or, in the event a request has been submitted to the relevant DC and ISDA has publicly announced that the relevant DC has resolved not to determine the answer, by the appropriate ICE Clear Credit Regional CDS Committee.

[6] ICC has performed a variety of empirical analyses related to clearing of SES Contracts on sovereign reference entities, including back tests and stress tests using actual clearing participant portfolios (with respect to the stress tests) combined with hypothetical positions in sovereign CDS contracts based on data retrieved from the Depository Trust Clearing Corporation's Trade Information Warehouse and through interaction with ICC's Trade Advisory Committee.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For example, Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

If approved, the proposed rule change would for the first time permit a Commission-registered clearing agency to clear sovereign CDS contracts, and ICC has informed the Commission that it intends to introduce clearing of SES Contracts on four sovereign reference entities (the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela, and the Argentine Republic) products promptly after obtaining Commission approval. By bringing additional products into clearing, the Commission believes the proposed rule change is consistent with the requirements of the Act in that it would contribute to the national system for the prompt and accurate clearance and settlement of securities transactions.

Given the particular characteristics of the products proposed to be cleared, the Commission also carefully considered ICC's ability to clear SES Contracts in a safe and sound manner. After considering the representations made by ICC regarding its belief that the clearance of SES Contracts will contribute to the safeguarding of securities and funds associated with security-based swap transactions based on its analysis,[9] the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, including ICC's obligation to ensure that its rules be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–ICC–2011–01) be, and hereby is, approved.[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27380 Filed 10–21–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(2)(B).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Supra* note 6.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65587; File No. SR–NASDAQ–2011–144]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of a Direct Market Data Product, NASDAQ Options Trade Outline (''NOTO'')

October 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish a direct market data product, NASDAQ Options Trade Outline (''NOTO'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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 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 establish the NOTO market data product. NOTO is a market data product offered by the Exchange that is designed to provide proprietary electronic trade data to subscribers. NOTO is available as either an ''End-of-Day'' data product or an ''Intra-Day'' data product, as described more fully below. NOTO is available to any person who wishes to subscribe to it, regardless of whether or not they are a member of the Exchange. NOTO is available only for internal use and distribution by subscribers.

Data Included in NOTO

NOTO provides information about the activity of a particular option series during a particular trading session. NOTO subscribers will receive the following data:

- Aggregate number of buy and sell transactions in the affected series;
- Aggregate volume traded electronically on the Exchange in the affected series;
- Aggregate number of trades effected on the Exchange to open a position;[3]
- Aggregate number of trades effected on the Exchange to close a position;[4]

[3] NOTO will provide subscribers with the aggregate number of ''opening purchase transactions'' in the affected series. An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. NOTO will also provide subscribers with the aggregate number of ''opening writing transactions.'' An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.

[4] NOTO will provide subscribers with the aggregate number of ''closing purchase transactions'' in the affected series. A closing

Continued

• Origin of the orders involved in trades on the Exchange in the affected series during a particular trading session, specifically aggregated in the following categories of participants: customers, broker-dealers, and market makers.

End of Day Product

The End of Day product includes the aggregate data described above representing the entire trading session. It is calculated during an overnight process after each trading session and is available to subscribers for download the following morning at approximately 7 a.m., E.T.

The Exchange will establish a monthly subscriber fee for the End of Day product by way of a separate proposed rule change, which the Exchange will submit after the NOTO market data product is established.

Intra-Day Product

The Intra-Day product includes periodic, cumulative data for a particular trading session. The Intra-Day product is produced and updated every ten minutes during the trading day. Data is captured in ''snapshots'' taken every 10 minutes throughout the trading day and is available to subscribers within 5 minutes of the conclusion of each 10 minute period. For example, subscribers to the Intra-Day product will receive the first calculation of intra-day data by 9:44 a.m. E.T., which represents data captured from 9:30 a.m. to 9:39 a.m. Subscribers will receive the next update at 9:54 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:49 a.m., and so forth. Each update will represent the aggregate data captured from the current ''snapshot'' and all previous ''snapshots.''

The Exchange will establish a monthly subscriber fee for the Intra-Day product by way of a separate proposed rule change, which the Exchange will submit after the NOTO market data product is established.

NOTO provides subscribers data that should enhance their ability to analyze option trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes that NOTO is a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular option series.

NOTO is virtually identical to a market data product currently available on NASDAQ OMX PHLX LLC (''PHLX'') known as the PHLX Options Trade Outline (''PHOTO'') market data product.[5]

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by establishing a market data product that enhances subscribers' ability to make decisions on trading strategy, and by providing option trade and volume data that should help bring about such decisions in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–144 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2011–144. 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

purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. NOTO will also provide subscribers with the aggregate number of ''closing sale transactions.'' A closing sale transaction is an Exchange options transaction an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.

[5] *See* Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR–Phlx–2010–121).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–144 and should be submitted on or before November 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27379 Filed 10–21–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65586; File No. SR–Phlx–2011–135]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Tether Monthly Service Fee

October 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 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 eliminate the Tether Monthly Service Fee from the Fee Schedule. The Exchange also proposes to make other minor amendments to the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the elimination of the Tether Monthly Service Fee to be operative on November 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 eliminate the Tether Monthly Service Fee. A tether is a hardwire connection to an existing Exchange communication network (local areas network) on the Exchange's options trading floor. It allows users on the options floor to connect their handheld devices to the existing Exchange communication network and thereby interface with member firm communication networks via a wireless network.

The Exchange currently assesses Registered Options Traders[3] and floor brokers on the options trading floor a Tether Monthly Service Fee of $150.[4] The number of users of the tether service on the options trading floor has diminished significantly since the tethers were first put into place in 2001.[5] While the Exchange will continue to offer its members the ability to use the tethers, it will no longer assess a fee as of November 1, 2011.

The Exchange also proposes an amendment to eliminate an unnecessary reference to the Market Access Provider Subsidy (''MAP''). The Exchange previously eliminated this subsidy from the Fee Schedule.[6] The remaining reference to the MAP in Section I of the Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' is outdated. The Exchange also proposes to replace the word ''charges'' in the Fee Schedule with the word ''fees'', in order to conform the verbiage in the Fee Schedule to maintain clarity.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] 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 elimination of the Tether Monthly Service Fee is reasonable, equitable and not unfairly discriminatory because members will still have the ability to tether on the options trading floor, but will not be assessed a fee. In 2001, the Exchange installed tethers due to an increase in bandwidth demands and the use of applications by traders. All floor members will still have access to this service, however no member will be assessed a fee for this service.

The Exchange believes that other proposed modifications to the Fee Schedule to eliminate outdated references in the Fee Schedule and amend certain verbiage are reasonable and equitable to clarify the Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Registered Options Trader (''ROT'') includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT nor 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).

[4] Specialists are not assessed this fee. The fee was initially assessed in 2001 and based on actual and estimated expenses incurred in installing and maintaining the tethered connections.

[5] *See* Securities Exchange Act Release No. 44963 (October 19, 2001), 66 FR 54317 (October 19, 2011) (SR–Phlx–2001–84).

[6] *See* Securities Exchange Act Release No. 64539 (May 24, 2011), 76 FR 31384 (May 31, 2011) (SR–Phlx–2011–68).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii) of the Act.[9] 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–2011–135 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–2011–135. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–135 and should be submitted on or before November 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27378 Filed 10–21–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ADS Media Group, Inc., American Enterprise Development Corp., and Arcland Energy Corp.; Order of Suspension of Trading

October 20, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ADS Media Group, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Enterprise Development Corp. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Arcland Energy Corp. because it has not filed any periodic reports since the period ended April 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 20, 2011, through 11:59 p.m. EDT on November 2, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–27568 Filed 10–20–11; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0035]

Agency Self-Evaluation Under Section 504 of the Rehabilitation Act of 1973; Public Forums on Accessibility for Individuals With Disabilities; Extension of Comment Period

AGENCY: Social Security Administration.

ACTION: Notice of extension of comment period.

SUMMARY: On August 2, 2011, we announced in the **Federal Register** that we were soliciting oral and written comments at two Section 504 Self-Evaluation Forums. We stated that the deadline for written comments was October 31, 2011. We are extending the written comment deadline by 15 days to match the date we publicly announced at the August forum.

Deadline for Comments: To ensure that your written comments are considered, we must receive them no later than November 15, 2011.

Written Comments: If you are not available to participate real-time in the public forums, we encourage you to submit written comments by Internet, fax, or mail. If you submitted oral comments at a public forum, you may also submit additional comments in writing. In your submission, please state that your comments refer to Docket No. SSA–2011–0035 so that we may associate your comments with the correct document.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

- *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function to find docket number SSA–2011–0035. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.
- *Fax:* Fax comments to (410) 966–2830.

• *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mariangela Rosa, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 1–877–794–7395 or e-mail *SSA.504@ssa.gov.* For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

Dated: October 17, 2011.

Michael J. Astrue,

Commissioner of Social Security

[FR Doc. 2011–27353 Filed 10–21–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Friendship Airways, Inc. d/b/a Yellow Air Taxi for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2011–10–9), Docket DOT–OST–2005–21533.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should revoke the Commuter Air Carrier Authorization issued to Friendship Airways, Inc. d/b/a Yellow Air Taxi and deny its application to resume commuter operations, pursuant to 49 U.S.C. 40109(f) and 14 CFR part 298.

DATES: Persons wishing to file objections should do so no later than November 1, 2011.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2005–21533 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine J. O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: October 18, 2011.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–27455 Filed 10–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Improvement Program: Modifications to Benefit Cost Analysis (BCA) Threshold

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of changes; comments and responses.

SUMMARY: This document announces the publication of the final policy changes to the Federal Aviation Administration's policy requiring a benefit cost analysis (BCA) for capacity projects funded by Airport Improvement Program (AIP) discretionary funds. On December 16, 2010, the FAA issued a *Notice of Availability of Draft Guidance and Request for Comments* with regard to the modification of its policy requiring benefit cost analyses (BCA) for capacity projects, which was published in the **Federal Register.** (78 FR 78798–02, December 16, 2010). The FAA now is (1) Issuing the final policy modifying the threshold at which BCAs are required from $5 million to $10 million in Airport Improvement Program (AIP) Discretionary funds, and (2) responding to comments requested in the Notice on December 16, 2010.

DATES: Effective date of the modified policy October 24, 2011.

ADDRESSES: Copies of the final guidance to begin the implementation of the policy for conducting BCAs can be obtained from the Federal Aviation Administration, Office of Airport Planning and Programming, Airports Financial Assistance Division (APP–500), 800 Independence Avenue, SW., Washington, DC 20591. An electronic copy of the guidance will be posted on the FAA's Airport's Division Web site at *http://www.faa.gov/airports/aip/bc_analysis* within 7 days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Frank San Martin, Manager, Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3831.

SUPPLEMENTARY INFORMATION:

A. Background

Policy History

In 1994, the FAA established its policy on Benefit Cost Analysis (BCA) requirements for airport capacity projects. Factors leading to these requirements included:

1. The need to improve the effectiveness of federal airport infrastructure investments in light of a decline in federal AIP budgets;
2. Issuance of Executive Order No. 12893, *''Principles for Federal Infrastructure Investments,''* 59 FR 4233, Jan. 26, 1994;
3. Guidance from Congress citing the need for economic airport investment criteria; and
4. Statutory language from 1994 included in Title 49 U.S.C. 47115 (d) specifying that, in selecting projects for discretionary grants to preserve and enhance capacity at airports, the Secretary shall consider the benefits and costs of the projects.

The FAA implemented BCA requirements for capacity projects at all categories of airports in order to limit the FAA's risks when investing large amounts of discretionary funds. The FAA uses the conclusions reached in the BCA review to make policy and funding decisions on possible future federal investments.

In 1997, a new FAA policy transferred responsibility for preparing BCAs from the FAA to the sponsor. In addition, the policy lowered the projected cost threshold from $10 million in AIP discretionary funds (established in 1994) to $5 million.

The $5 million threshold change was made policy in 1997 and formalized in a 1999 **Federal Register** notice, *Federal Aviation Administration Policy and Final Guidance Regarding Benefit Cost Analysis (BCA) on Airport Capacity Projects for FAA Decisions on Airport Improvement Program (AIP) Discretionary Grants and Letters of Intent (LOI),* 64 FR 70107 (Dec. 15, 1999).

Since 1997, sponsors have been required to conduct BCAs for capacity projects for which more than $5 million in AIP discretionary funding will be requested. In developing the new draft guidance increasing the threshold, the FAA reviewed the reasons for lowering the BCA threshold amount in 1997 and concluded that those reasons do not present sufficient basis to warrant maintaining the $5 million level threshold today.

The FAA has gained valuable experience assessing the implementation of the policy and the need to further clarify the threshold

requirements for BCA. The $5 million threshold has remained unchanged for over 13 years while costs of construction have risen significantly. Using a construction cost index that approximates heavy civil infrastructure costs and is maintained by the Bureau of Labor and Statistics, construction costs of $5 million in 1997 are equivalent to costs of $9.6 million in July 2011. FAA's use of BLS construction cost data is explained later in Section C. b. ''Setting of the New Threshold Level.''

Based on the increase in construction costs, the FAA has concluded that $10 million in AIP Discretionary funds is the appropriate threshold for Fiscal Year 2012 and beyond. Though the BCA threshold is being increased, the FAA retains the right to require a BCA for any capacity project in order to evaluate the reasonableness of project costs relative to project benefits.

Procedural History

On December 16, 2010, the FAA published in the Federal Register a *Notice of Availability of Draft Guidance and Request for Comments* regarding the modification of its policy requiring benefit cost analyses (BCA) for capacity projects (78 FR 78798–02, December 16, 2010). This Notice requested comments on AIP grant and LOI cost threshold, above which BCAs must be performed; a total of three commenters responded to this request. Two commenters, the Airports Council International (ACI) and Mr. Joseph M. Polk of the Memphis-Shelby County Airport Authority, expressed support for the draft guidance, stating that it will reduce the need for potentially costly and time-consuming BCAs where limited AIP discretionary funds are involved. A third commenter, the Air Transport Association (ATA), expressed a series of questions and concerns about the draft guidance. The FAA has reviewed and addressed these comments below, consolidating and arranging them in a manner that enables us to best respond.

B. Modifications to Policy

The previous AIP grant policy, issued June 24, 1997 and commencing in Fiscal Year 1998, stated that airport sponsors seeking $5 million or more in AIP discretionary funds for capacity projects were required to provide a completed BCA with the grant application. The Letters Of Intent (LOI) policy stated that a BCA was required for any LOI request to be issued in Fiscal Year 1997 or thereafter. In 1999, federal policy exempted certain reconstruction projects from the BCA requirement.

The FAA will be issuing a companion Program Guidance Letter (PGL) 12–01 titled ''Revised BCA Guidance'' on the date of publication in the **Federal Register** which incorporates the BCA requirement threshold modification from $5 million to $10 million in requested AIP Discretionary funds. This revised guidance is based on the report titled ''Benefit Cost Analysis Threshold Evaluation'' which assessed the technical feasibility for raising the threshold to $10 million. A discussion of the evaluation and results is included in the PGL to inform FAA staff, airport sponsors, consultants and the public about the basis for this decision.

C. Discussion of Comments and Responses

On December 16, 2010, the FAA established a docket and invited airport sponsors and other interested parties to comment on the BCA requirement cost threshold for AIP grants and LOIs. The docket was open for about six weeks and closed on January 31, 2011. As stated above, this summary and discussion of comments reflects the major issues raised.

Comments From ACI and Mr. Polk

Both the Airports Council International (ACI) and Mr. Joseph Polk of the Memphis-Shelby County Airport Authority expressed support for the draft guidance. Mr. Polk cited economic inflation as resulting in grants below the $10 million mark being ''relatively small'' for ''most commercial airports.'' Mr. Polk also stated that this change ''reduces bureaucracy and returns funding applications to a level that worked in the mid-90s.'' Similarly, ACI expressed support and stated that the new policy will reduce the need for ''potentially costly and time-consuming BCAs when limited AIP discretionary funds are involved.'' The FAA agrees with these commenters as to the advantages of offsetting cost inflation and the resource conservation advantages of this new policy for all involved in the grant making process.

Comments From ATA

a. Cost/Benefit Statutory Requirement

ATA Comments: ATA stated that ''FAA fails to recognize or give effect to the statutory requirement that the Secretary of Transportation must consider the benefits and costs of projects selected for discretionary grants. FAA does not even attempt to demonstrate that raising the threshold will not compromise the Secretary's ability to do so.''

FAA Response: The FAA disagrees with the comment. The FAA does not require BCAs for all AIP projects, though the benefits and costs of all projects are thoroughly considered. The authorizing statute exempts certain projects from the BCA process where the underlying value of the type of project has already been subject to economic evaluations through regulation, advisory circulars, or an amendment process. In addition, to be eligible for federal funds AIP projects must comply with applicable federal regulations, including 14 CFR part 139, 49 CFR part 1542, and related FAA standards and policies. While the FAA relies on the BCA results, among other considerations, in making discretionary funding decisions for certain capacity projects, the BCA requirement is not imposed on all projects and BCA results are not the ultimate arbiter in determining grant decisions. Rather, the FAA pursues a balanced approach in applying the BCA policy to evaluate more expensive projects in order to protect the federal investment. The increase of the threshold amount from $5 million to $10 million does not change any other provisions related to the Secretary of Transportation's consideration of benefit and cost.

The FAA believes that the balancing of the benefits and costs of projects evaluated for analysis under this approach does not compromise but rather assists the Secretary in exercising this consideration. It is particularly important to note that the revised guidance still allows the FAA to require BCAs where the project costs fall below the threshold when such review is warranted by specific circumstances in consideration of all relevant factors.

b. Setting of the New Threshold Level

ATA Comments: ATA stated, ''[t]he Notice first points out that a construction cost of $5 million in 1997 was equivalent to $9.8 million in July 2008, and then asserts that '[t]he $5 million threshold has required both FAA and sponsors of non-primary and non-hub airports to devote substantial financial and staff resources in preparing and evaluating BCAs for relatively small projects with readily apparent capacity benefits.' However, the connection between the two statements is not supported by either the Notice or the draft [PGL] cited therein, and the conclusion that $10 million is the appropriate threshold for determining whether a BCA is required is arbitrary.''

FAA Response: The FAA disagrees with the comment. The FAA's decision to raise the BCA threshold to $10

million in 2011 is based mainly on increases in construction costs from 1997 to present. When the original BCA threshold of $10 million was established in 1994, FAA policy exempted projects undertaken solely or principally with the objectives of safety, security, conformance with FAA standards, or environmental mitigation. In addition, the FAA considered the potential expenses and time needed to assess individual capacity projects. At that time, the threshold was based on applying the policy to cover a select number of more expensive and higher risk projects, and this reasoning still applies. In reevaluating this balance, the FAA compared current construction costs with costs from 1997, when the threshold was lowered to $5 million.

The FAA was most interested in the value of construction costs, especially costs for material such as steel, concrete, and asphalt, because those costs have risen faster than the general rate of inflation. Since we were unable to locate construction cost data specific to airport construction, we relied upon highway and street construction data collected by the Bureau of Labor and Statistics (BLS). These data were collected through 2010 and have since been replaced by the new BONS index, which measures material and supply inputs for new nonresidential construction. For more information about the BONS Index, see U.S. Department of Labor Bureau of Labor and Statistics, *PPI Detailed Report Data for July 2010,* Vol. 14 No. 7, 6–7 (2010). These data provide a reasonable approximation of heavy civil infrastructure costs in general, and therefore best capture the dynamics of construction cost increases.

Based on the latest BLS data from July 2011, construction costs of $5 million in 1997 are equivalent to $9.6 million today. As calculated, the costs of construction have risen significantly over the last 13 years, but there has not been a corresponding increase in the BCA threshold. The FAA does note that construction costs that were previously at the $5 million level have not fully escalated to the $10 million level; nevertheless, a threshold increase to $10 million should negate the need to revisit the threshold issue again for a number of years.

c. Airport Project Construction Costs

ATA Comments: ATA stated ''While construction costs in general have indeed increased since 1997, FAA has not relied on actual costs of airport projects funded with AIP discretionary grants during that time period, despite the potential benefit of reviewing that data. (FAA notes in the PGL that 'we were unable to locate construction cost data specific to airport construction,' but does not explain why that data would not be readily available to the grant-maker.). Instead FAA has chosen to rely on highway and street construction data, which indicates that a $5 million project would cost about $8.6 million today, a decrease from the $9.8 million in 2008 cited in the Notice. As the table appended to the PGL illustrates, construction costs, while exhibiting an overall upward trend, fluctuate both seasonally and from year to year. To suggest, as FAA does by increasing the threshold for BCAs from $5 to $10 million, that project construction costs have doubled since 1997 is simply not accurate.''

FAA Response: The FAA agrees with the comment that it has access to FAA grant funding data, but these data have limited application since they are focused on federal grant program administration requirements. The grant data make up only a percentage of the project costs and the percentages vary by airport size and project type. The data are not meant to provide detailed cost statistics for airport construction projects and are not available in a way that allows tracking of the unit costs of construction items over time. More importantly, the funding amounts are based on general project descriptions, which make it difficult to assess changes in costs per work unit. The FAA lacks the resources to compile and analyze bid tabulations from the several thousand projects funded annually through AIP.

The FAA currently uses, and will continue to use, the readily available construction cost data from the Bureau of Labor and Statistics because these cost indices are objective, accepted, and used industry wide. In addition, the BLS data allows for a comparison between a set of construction unit costs from 1997 to that same set of costs in the current time period, data that the FAA does not collect as part of the Airport Improvement Program (AIP) grant making process. The FAA collects data on total eligible AIP costs, but the level of detail is not sufficient to provide a statistical comparison of airport construction unit costs between 1997 and 2010. Collection of such information by the FAA would require significant resources, would take years to compile, and would create a new index of construction costs that is duplicative of the data provided by the BLS.

The FAA notes that the comment is correct that the most recent data indicate that construction costs have not fully doubled.[1] The FAA would like to stress, however, that construction costs have risen significantly over the last 13 years and there has not been any corresponding increase in the BCA threshold. It is important that the FAA provides a well-justified threshold level that does not fluctuate at short intervals in order for airport sponsors to plan and develop projects in an efficient manner. Accordingly, as previously stated, although the escalation of costs has not yet reached the $10 million level, a threshold increase to $10 million should negate the need to revisit the threshold issue again for a number of years.

d. Capacity Benefits of Small Projects

ATA Comments: ATA stated ''Even if the highway construction cost index is relevant, and even if one accepts FAA's 'rounding up' of the numbers to support a threshold of $10 million, it does not follow that raising the threshold would merely exempt 'relatively small projects with readily apparent capacity benefits' at non-primary and non-hub primary airports, as the Notice implies. Again, FAA has access to data that could support—or refute—this point. How many of the BCAs prepared or reviewed by FAA in the past five or ten years fall into this category? How many of those projects would come under $10 million when adjusted for inflation? Are there any examples of projects in the $5–10 million range where the capacity benefits were not ''readily apparent''? And even if some capacity benefits are apparent, is it always the case that those benefits exceed the $5–10 million cost?''

FAA response: The FAA disagrees with the comment. The FAA is not proposing to exempt '''relatively small projects with readily apparent capacity benefits' at non-primary and non-hub primary airports'' from a thorough planning process, including an assessment of project benefits, by increasing the threshold to $10 million. Rather, in these instances the FAA will rely on the traditional master planning, regional metropolitan planning, or statewide planning processes to sufficiently study and analyze the capacity benefits of a project instead of requiring a separate BCA for such projects.

In addressing this comment, the FAA reviewed 117 BCAs for capacity projects since the year 2000. Of those, only 12 projects had construction costs totaling less than $10 million. If the threshold had increased to keep up with construction cost inflation, only one of

[1] The most current data (through July 2011) indicate a $5 million project would cost about $9.6 million today.

the 12 projects with costs under $10 million would have avoided the BCA requirement. Based on the data in FAA's National Plan of Integrated Airport Systems, retaining the $5 million threshold is likely to create an unnecessary resource burden in coming years. In the next five years alone there are more than 150 projects with capacity codes and/or project descriptions that appear to be capacity-related. Of these, 79 have total eligible project costs greater than $10 million which typically coincide with discretionary requests in excess of $5 million. This would likely result in project delays and corresponding increases in capital costs. By raising the threshold to $10 million, the number of projects that may require a BCA will increase at a significantly slower rate. The FAA believes this would preserve a prudent balance between analysis and expenditure of AIP funds, particularly since the planning process itself requires an assessment of the capacity benefits of such projects.

e. Staff and Sponsor Resource Conservation

ATA Comments: ATA stated, ''FAA cites staff and sponsor resources as a motivating factor in raising the threshold, but once again offers no evidence to support the conclusion that doing so will conserve these resources. It would be helpful to know how many projects FAA expects will be newly exempt from the BCA requirement in coming years, based on past experience with grant requests. Furthermore, when the threshold was lowered from $10 million to $5 million in 1997, it was done in conjunction with a shift of the responsibility for preparing a BCA from the FAA to the project sponsor. How much of the anticipated savings in staff resources will accrue to FAA, and how much to airport sponsors? ATA has a direct interest in this, since costs attributable to preparing BCAs are considered allowable airport planning costs, and, to the extent not covered by an AIP grant, may get passed back to airline tenants through inclusion in the rate base.''

FAA Response: The FAA's main justification in increasing the threshold from $5 million to $10 million is to keep pace with the impact of inflation on construction costs. Consistent with the original BCA policy, in increasing this threshold the FAA seeks to balance oversight of expensive, high risk projects with limited time and monetary resources. Based on the data presented above there is strong evidence to suggest that retaining the existing threshold would significantly increase the number of small capacity projects requiring formal BCA reviews. This would create additional project costs, lengthen the time required to implement a project, and create additional and duplicative levels of review by the FAA, airport staff, and airport users. Instead, the FAA will rely on existing master planning, metropolitan area planning, and statewide system planning to adequately address the capacity benefits of such projects. Anticipated savings will accrue to sponsors, airline tenants and the FAA, though the FAA is not currently able to directly quantify these savings.

g. Full Justification of Projects

ATA Comments: ATA stated ''ATA recognizes that FAA's constrained resources may make the prospect of fewer BCAs to prepare or review appealing, but we must point out that in an era of limited funding it is all the more important that projects be fully justified in terms of benefits relative to costs. While BCAs may not be the only means to do this, FAA should ensure that it will not lose sight of this principle before it raises the threshold.''

FAA Response: The FAA agrees with the comment that all projects must be fully justified in terms of benefits to the traveling public, aviation system users, and neighboring communities. However, not all projects that compete for limited AIP discretionary funds are subject to the BCA requirement. Instead, the BCA process is one of many tools the FAA uses to determine the capacity benefits of potential projects. The FAA relies on existing master planning, metropolitan area planning, and statewide system planning processes to adequately analyze and address the capacity benefits of such projects. As circumstances warrant, the FAA also requests BCAs or other economic evaluations be done for projects under the threshold.

Accordingly, after review of the public comments, the FAA has determined that the policy proposing to increase the BCA threshold from $5 million to $10 million in AIP Discretionary funds should be adopted now.

Issued in Washington, DC, on October 17, 2011.

Benito DeLeon,

Director, Office of Airport Planning and Programming.

[FR Doc. 2011–27364 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–48]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 14, 2011.

ADDRESSES: You may send comments identified by Docket Number *FAA–2011–1029* using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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 19477–78).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver, ARM–207, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591 or Walter Binkley, (405) 954–3284, FAA, Aircraft Registration Branch, PO Box 25504, Oklahoma City, OK 73125.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 19, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1029.

Petitioner: Maryland State Police Aviation Command.

Section of 14 CFR Affected: § 47.15(b).

Description of Relief Sought: Maryland State Police Aviation Command requests relief from § 47.15(b). If granted, an exemption would allow Maryland State Police Aviation Command to use registration numbers ''N1MSP'' through ''N11MSP'' for its new AW139 medevac fleet.

[FR Doc. 2011–27432 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0109]

Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport; Procedures for the Reallocation of Slots at Ronald Reagan Washington National Airport and LaGuardia Airport

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

ACTION: Notice of procedures for the reallocation of slots at Ronald Reagan Washington National Airport and LaGuardia Airport.

SUMMARY: Under this notice, the FAA announces the procedures for the reallocation of slots at Ronald Reagan Washington National Airport and LaGuardia Airport, which are being divested by Delta Air Lines, Inc. and US Airways, Inc. resulting from a grant of waiver to them.

SUPPLEMENTARY INFORMATION: On October 7, 2011, the Secretary of Transportation and the Administrator of the Federal Aviation Administration (FAA) granted with conditions a joint waiver request by Delta Air Lines, Inc. (Delta) and US Airways, Inc. (US Airways) from the prohibition on purchasing operating authorizations (slots) at LaGuardia Airport (LGA). 76 FR 63702 (Oct. 13, 2011) (the Waiver). The Waiver permitted Delta and US Airways 30 days to accept the terms of the Waiver. They accepted by joint letter on October 12, 2011.

Among the conditions of the Waiver, the Secretary and the Administrator require Delta and US Airways collectively to dispose of 16 slots at Ronald Reagan Washington National Airport (DCA) and 32 slots at LGA. Those divested slots will be reallocated in one slot bundle for DCA and two slot bundles (of 16 slots each) for LGA to eligible new entrant and limited incumbent carriers. The following discussion describes the procedures and timelines for that reallocation.

Registration for the Slot Reallocation

The Waiver establishes that new entrant and limited incumbent carriers with less than five percent of the total slot holdings at DCA or LGA, and which do not code share to or from DCA or LGA with any carrier that has five percent or more of the total slot holdings, may participate in the reallocation at the respective airport. Eligible participating carriers also may not be subsidiaries, either partially or wholly owned, of a company whose combined slot holdings are equal to or greater than five percent of the total slot holdings at DCA or LGA respectively, with the exception of Frontier Airlines as noted in the Waiver.

Because the identities of slot bidders are undisclosed during the bidding period, the FAA is requiring registration by eligible carriers to participate in the reallocation process. Eligible carriers may register by e-mail to *7-awa-slotadmin@faa.gov* between October 19 and October 28, 2011. Please include ''DCA/LGA Slot Reallocation'' in the email subject line. An eligible carrier must register as an individual carrier and may not submit a joint bid with another carrier. The registering carrier must indicate whether it intends to bid on slot bundles at DCA or LGA or both airports. The registering carrier must state whether there is common ownership or control of, by, or with any other carrier at the respective airport. Finally, the registering carrier must certify that it will disclose no purchase offer information to any person other than its agent.

The FAA will confirm eligibility and respond by email with a bidder identification number for each slot bundle no later than November 10, 2011.

Slot Bundles

The Waiver requires the divested slots to be reallocated in bundles. For DCA slots, there is one bundle of 16 slots (DCA Bundle). For LGA slots, there are two bundles of 16 slots each (LGA Bundle A and LGA Bundle B). The contents of the slot bundles are included in an appendix to this document.

Bidding on Slot Bundles

The Waiver permits a bidding period of seven business days. Accordingly, the bidding period will open at 9 a.m., Eastern time, on November 14, 2011, and it will close at 5 p.m., Eastern time, on November 22, 2011. Registered bidders may submit cash-only bids at any time during that bidding period and may submit multiple bids during the bidding period. The FAA will construe the latest received bid as that bidder's final bid.

Registered bidders may submit bids via email to *7-awa-slotadmin@faa.gov.* Please include ''DCA/LGA Slot Reallocation'' in the e-mail subject line. The FAA requests the following format for required bid information in the body of the email:

Bidder Identification Number, Slot Bundle, Preference Ranking, Bid Price

The preference ranking applies only to the LGA slot bundles, and the FAA will use it only if one bidder submits the highest bid for both bundles. This preference ranking should be either a ''1'' (first priority) or a ''2'' (second priority).

The FAA will reject any bid that does not contain all required bid information. The FAA also will reject any bid received after 5 p.m., Eastern time, on November 22, 2011. The FAA will use its email system time stamp as the submission time of the bid. Bids are effective upon receipt, and the FAA will not permit the withdrawal of any bid.

The FAA will post a running tally of bids for each slot bundle at *http://www.faa.gov/about/office_org/headquarters_offices/agc/ReAllocation.* That tally will include the required bid information and time stamp of the bid. The FAA will post bids at approximately 9 a.m., 12 p.m., and 4 p.m., Eastern time, on each business day of the bidding period (for bids received by 8 a.m., 11 a.m., and 3 p.m., Eastern time, respectively). On November 22, the FAA will post bids each hour from

9 a.m. through 4 p.m., Eastern time, for bids received prior to the previous half hour (e.g., at 10 a.m. for all bids received by 9:30 a.m.). On the following day, November 23, 2011, the FAA will post bids received during the last hour of bidding.

Completing the Slot Reallocation Transaction

On November 23, 2011, the FAA will notify the divesting carrier and the winning bidder for each bundle of the winning bid and contact information for completing the transaction. The Waiver requires the divesting carrier and each winning bidder to enter into a binding agreement with respect to the sale of the divested slots within five business days from the FAA's notice of the winning bid. Accordingly, the FAA expects the carriers will notify the FAA that they have entered into binding agreements with respect to the sale of the divested slots, via e-mail to *7-awa-slotadmin@faa.gov,* no later than December 1, 2011. That notification must certify that only monetary consideration will be or has been exchanged for the slots.

Posting Bid Information

After the FAA receives notice of the binding agreement between the divesting carrier and the winning bidder, it will post the winning bid and identity of the winning bidder at *http://www.faa.gov/about/office_org/headquarters_offices/agc/ReAllocation.* The FAA also will post all other bid information with the name of the respective bidders.

In the unlikely event that no bids are received for a particular slot bundle, those slots would revert to the FAA. The FAA would post notice if no bids were received at *http://www.faa.gov/about/office_org/headquarters_offices/agc/ReAllocation.*

DATES: Registration by eligible carriers must be completed by October 28, 2011. The bidding period for registered bidders will open at 9 a.m., Eastern time, on November 14, 2011, and will close at 5 p.m., Eastern time, on November 22, 2011.

ADDRESSES: Requests for registration and bids may be submitted by e-mail to the Slot Administration Office at *7-AWA-slotadmin@faa.gov.* Information regarding the slot reallocation may be found at: *http://www.faa.gov/about/office_org/headquarters_offices/agc/ReAllocation.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone number:* 202–267–7143; *fax number:* 202–267–7971; *e-mail: rob.hawks@faa.gov.*

Issued in Washington, DC, on October 18, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

Appendix

The DCA Bundle consists of:

Slot ID	Time	Frequency
1147	0700	X67
1132	0800	Daily
1150	0800	Daily
1056	0900	Daily
1030	1000	Daily
1083	1000	Daily
1223	1100	Daily
1027	1200	Daily
1142	1300	Daily
1109	1400	Daily
1389	1600	Daily
1238	1700	Daily
1401	1800	Daily
1515	1800	Daily
1308	2000	X6
1065	2100	X6

The LGA Bundle A consists of:

Slot ID	Time	Arr./Dep.	Frequency
3197	0600	Departure	X67
3183	0630	Departure	X67
2138	0730	Arrival	X67
2202	0830	Departure	X67
3003	0830	Arrival	X67
3230	0930	Departure	X67
3636	1100	Arrival	X67
3430	1230	Departure	X6
3415	1300	Arrival	X6
2160	1400	Departure	X6
2188	1500	Arrival	X6
3089	1600	Departure	X6
3606	1700	Arrival	X6
3015	1830	Departure	X6
3848	2000	Arrival	X6
3110	2100	Arrival	X6

The LGA Bundle B consists of:

Slot ID	Time	Arr./Dep.	Frequency
3326	0630	Departure	X67
2201	0700	Departure	X67
2108	0800	Arrival	X67
3318	0930	Departure	X67
2072	1000	Arrival	X67
2182	1030	Departure	X67
3093	1230	Arrival	X6
3075	1330	Departure	X6
3098	1430	Arrival	X6
3569	1600	Departure	X6
2004	1630	Arrival	X6
2129	1730	Departure	X6
2007	1830	Arrival	X6
2038	1930	Departure	X6
3104	2030	Arrival	X6
3054	2130	Arrival	X6

[FR Doc. 2011–27434 Filed 10–21–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Harris County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: Pursuant to 40 CFR 1508.22 and 43 TAC § 2.5(e)(2), the FHWA and the Texas Department of Transportation (TxDOT) are issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed North Houston Highway Improvement Project, in Harris County, Texas. The proposed project and study limits begin at interchange of United States Highway (US) 59 and State Highway (SH) 288 and follow northward along IH 45 to the interchange of IH 45 and Beltway 8 North, a distance of approximately 16 miles. The proposed project area also includes portions of IH 10, IH 610, US 59, SH 288 near the downtown area, and the Hardy Toll Road located north of downtown Houston. The proposed project will be developed in compliance with Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Gregory Punske, P.E., District Engineer, Federal Highway Administration—Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701. *Telephone:* 512–536–5960.

SUPPLEMENTARY INFORMATION: The North-Hardy Planning Studies: Alternative Analysis Report (Highway Component) was completed in November 2005. The report evaluated the alternatives for transportation improvements within the study corridor and recommended a locally preferred alternative to meet the corridor's highway transportation needs, while minimizing impacts to the surrounding environment.

Projected increases in population and employment in the Houston metropolitan area will contribute to additional IH 45 congestion, which is already serious to severe. The proposed project is needed to address the serious to severe congestion and to accommodate existing and anticipated future traffic. Additionally the project is needed to bring the roadway up to current design standards, which would improve safety and provide for more efficient movement of people and goods. Additional efficiency is also needed to aid in evacuation events. The purpose of the proposed project is to manage the traffic congestion in the IH 45 corridor, improve mobility, provide expanded transit and carpool opportunities, bring the roadway facility up to current design standards to improve safety and operations, and expand capacity for emergency evacuations.

The EIS will evaluate potential impacts from construction as well as routine operations of the proposed project, including, but not limited to the following: Impacts or potential displacements to residents and businesses; impacts to air and noise; impacts to water quality; impacts to waters of the United States; impacts to historic and archeological resources; impacts to hazardous materials; impacts to floodplains; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; impacts to land use; impacts to vegetation; and impacts to wildlife.

A Project Coordination Plan will be provided in accordance with Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Title VI, Subsection 6002, Efficient Environmental Reviews for Project Decision Making, August 10, 2005, to facilitate and document the lead agencies, structure interaction with the public and other agencies, and to inform the public and other agencies of how the coordination will be accomplished. The Project Coordination Plan will promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project need and purpose, schedule, level of detail for alternatives analysis, methods to be used in the environmental analysis, and the proposed process for coordination and communication.

The Project Coordination Plan is designed to be part of a flexible and adaptable process. The Project Coordination Plan will be available for public review, input, and comment at public meetings, including scoping meetings and hearings, held in accordance with the National Environmental Policy Act (NEPA) through the evaluation process. Pursuant to 23 U.S.C. Chapter 1, Subchapter 1, Section 139 of SAFETEA–LU, cooperating agencies, participating agencies and the public will be given an opportunity for input in the development of the project. The first of a series of public scoping meetings, conducted in an open house format, is planned to be held in the fall of 2011. As part of the NEPA process, this meeting will be the first in a series of meetings to solicit public comments throughout the planning process.

A scoping meeting is an opportunity for participating agencies, cooperating agencies and the public to be involved

in defining the need for and purpose of the proposed project, to assist in determining the range of alternatives considered in the draft EIS, and to comment on methods to evaluate alternatives. Public scoping meetings and a public hearing will be held during appropriate phases of the project development process. Public notices will be published in general circulation newspapers in the project area at least 30 days prior to the meeting, and again approximately 10 days prior to the meeting. The notices will be published in English and Spanish stating the date, time, and location of each. The Draft EIS will be available for public and agency review and comment prior to a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities, apply to this program.)

Issued on: October 13, 2011.

Gregory S. Punske,

District Engineer, Austin, Texas.

[FR Doc. 2011–27359 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, Army Corps of Engineers (USACE), and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, US 41 (Memorial Drive to County M) in Brown County, Wisconsin. Those actions grant approvals for the project. The project will widen the US 41 freeway mainline from 4 to 6 lanes and add auxiliary lanes at certain locations along US 41 northbound and southbound from Memorial Drive to County M, The project will also reconstruct I–43 from US 41 to Atkinson Drive and reconstruct the Velp Avenue, I–43, and County M interchanges. The I–43/US 41 interchange will be reconstructed as a System Interchange with directional ramps and will include a realignment of the US 41 mainline, raising of the northbound gradeline, and elimination of existing access between Velp Avenue and I–43 via US 41. The project limits on US 41 extend from Memorial Drive to County M, a distance of approximately 3.5 miles and the project limits on I–43 extend from US 41 to Atkinson Drive, a distance of approximately 2 miles. The project also includes construction of roundabouts, construction of new bridges and replacement of existing bridges.

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 within 180 days of publication of this **Federal Register** notice. 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: Tracey Blankenship, Major Projects Program Manager, Federal Highway Administration, 525 Junction Road Suite 8000, Madison, Wisconsin 53717; *telephone:* (608) 829–7510 or, *e-mail: Tracey.Blankenship@dot.gov.* The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. central time. For the Wisconsin Department of Transportation (WisDOT): Danielle Block, PE, Wisconsin Department of Transportation, US 41 Brown County Project Office, 1940 West Mason Street, Green Bay, Wisconsin 54303; *telephone:* (920) 492–2212; *e-mail: Danielle.Block@dot.wi.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: US 41 (Memorial Drive to County M), Brown County, Wisconsin, Project I.D. 1133–10–01. The project involves providing additional capacity on approximately 3.5 miles of US 41 from Memorial Drive to County M, reconstructing approximately 2 miles of I–43 from US 41 to Atkinson Drive, and reconstructing the Velp Avenue, IH–43, and County M interchanges on US 41. The actions taken by FHWA, and laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on July 7, 2011 (FHWA–WI–EIS–11–01–F), in the Record of Decision (ROD) issued on October 4, 2011, and in other documents in the FHWA/WisDOT administrative record for the project. The FEIS, ROD, and other project records are available by contacting FHWA or WisDOT at the addresses provided above.

The FEIS can also be viewed on the project Web site: *http://www.us41wisconsin.gov/overview/special-project-features/envdocsmemorialdrtocountym.*

This notice applies to all Federal agency decisions 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. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303], Section 6(f) of the Land and Water Conservation Act as amended [16 U.S.C. 4601], Farmland Protection Policy Act of 1980 [7 U.S.C. 4201–4209], and National Trails System Act [16 U.S.C. 1241–1249].

4. *Wildlife:* Endangered Species Act of 1973 [16 U.S.C. 1531–1543 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(c)]; Migratory Bird Treaty Act [16 U.S.C. 760c–760g].

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.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001 *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d) et. seq.]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Americans with Disabilities Act [42 U.S.C. 12101]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100–17].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1376]; Land and Water Conservation Fund [16 U.S.C. 460l–4 to 460l–11]; Safe Drinking Water Act [42 U.S.C. 300(f)–

300(j)(6)]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act, [42 U.S.C. 4001–4128]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931].

8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended [42 U.S.C. 9601–9657]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901 *et. seq.*].

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management as amended by E.O. 12148; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 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: October 13, 2011.

Tracey Blankenship,

Major Projects Program Manager, FHWA Wisconsin Division, Madison, Wisconsin.

[FR Doc. 2011–27358 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–15]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, (FRA), Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on August 12, 2011 (76 FR 50320).

DATES: Comments must be submitted on or before November 23, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 12, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR for which the agency was seeking OMB approval. 76 FR 50320. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

OMB Control Number: 2130–0008.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Abstract: Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA issued revisions to the regulations governing freight power brakes and equipment in October 2008 by adding a new Subpart addressing electronically controlled pneumatic (ECP) brake systems. The revisions are designed to provide for and encourage the safe implementation and use of ECT brake system technologies. These revisions contain specific requirements relating to design, interoperability, training, inspection, testing, handling defective equipment and periodic maintenance related to ECP brake systems. The final rule also identifies provisions of the existing regulations and statutes where FRA is proposing to provide flexibility to facilitate the voluntary adoption of this advanced brake system technology. The collection of information is used by FRA to monitor and enforce current regulatory requirements related to power brakes on freight cars as well as the recently added requirements related to ECP brake systems. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

Form Number(s): N/A.

Annual Estimated Burden Hours: 990,660 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have

practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on October 17, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–27340 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0273]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On August 1, 2011, in accordance with the Paperwork Reduction Act of 1995, PHMSA published a notice with request for comments in the **Federal Register** (76 FR 45904). The notice concerned several pipeline safety information collections that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and one information collection that PHMSA intends to discontinue. PHMSA received no comments on the notice. PHMSA is now forwarding the information collection request to OMB and providing an additional 30 days for comments.

DATES: Interested persons are invited to submit comments to OMB on or before November 23, 2011.

ADDRESS: Send comments regarding the burden estimate, including suggestions for reducing the burden, directly to OMB, Office of Information and Regulatory Affairs, Attn: Desk Officer for the U.S. Department of Transportation (PHMSA), 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies several information collection requests that PHMSA will be submitting to OMB for renewal and one collection that PHMSA plans to discontinue. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. Unless otherwise specified, PHMSA will request a three-year term of approval for each information collection activity. PHMSA plans to discontinue the following information collection:

Title: Pipeline Safety: Excess Flow Valves—Customer Notification.

OMB Control Number: 2137–0593.

Current Expiration Date: 1/31/2012 (To be discontinued).

Abstract: Pipeline operators are no longer required to provide notifications about excess flow valves to service line customers as described in 49 CFR 192.383.

Accordingly, PHMSA has decided to discontinue this collection.

PHMSA requests comments on the following information collections:

1. Title: Requirements for Liquefied Natural Gas (LNG) Facilities.

OMB Control Number: 2137–0048.

Current Expiration Date: 1/31/2012.

Abstract: Operators of liquefied natural gas facilities are required under 49 CFR Part 193 to maintain records, make reports, and provide information to PHMSA and state pipeline safety agencies concerning the operations of their facilities. The information aids Federal and state pipeline safety inspectors in conducting compliance inspections and investigating incidents.

Affected Public: Operators of liquefied natural gas facilities.

Annual Reporting and Recordkeeping Burden

Total Annual Responses: 101.

Total Annual Burden Hours: 12,120.

Frequency of Collection: On occasion.

2. Title: Recordkeeping for Natural Gas Pipeline Operators.

OMB Control Number: 2137–0049.

Current Expiration Date: 1/31/2012.

Abstract: Operators of gas pipelines are required per 49 CFR Part 192 to maintain records, make reports, and provide information to PHMSA and state pipeline safety agencies concerning the operations of their pipelines. The information aids Federal and state pipeline safety inspectors in conducting compliance inspections and investigating incidents.

Affected Public: Operators of natural gas pipeline systems.

Annual Reporting and Recordkeeping Burden

Total Annual Responses: 2,300.

Total Annual Burden Hours: 940,454.

Frequency of collection: On occasion.

3. Title: Customer-Owned Service Lines.

OMB Control Number: 2137–0594.

Current Expiration Date: 1/31/2012.

Abstract: Operators of gas service lines who do not maintain certain buried piping on behalf of their customers must provide notification about maintenance to those customers (49 CFR 192.16). Upon request, an operator must make documentation of compliance available to PHMSA or the appropriate state regulatory agency.

Affected Public: Natural gas pipeline operators.

Annual Reporting and Recordkeeping Burden

Total Annual Responses: 550,000.

Total Annual Burden Hours: 9,167.

Frequency of collection: On occasion.

4. Title: Pipeline Safety: Qualification of Pipeline Safety, Training.

OMB Control Number: 2137–0600.

Current Expiration Date: 2/29/2012.

Abstract: Pipeline operators are required to have continuing programs for qualifying and training personnel performing safety-sensitive functions on pipelines (49 CFR part 192, Subpart N and 49 CFR part 195, Subpart G). Operators must maintain records, make reports, and provide information to PHMSA and state pipeline safety agencies concerning these programs. The information aids Federal and state pipeline safety inspectors in conducting compliance inspections and investigating incidents.

Affected Public: Pipeline operators.

Annual Reporting and Recordkeeping Burden

Total Annual Responses: 22,300.

Total Annual Burden Hours: 466,667.

Frequency of collection: On occasion.

5. Title: Pipeline Safety: Report of Abandoned Underwater Pipelines.

OMB Control Number: 2137–0601.

Current Expiration Date: 2/29/2012.

Abstract: Pipeline operators are required to report certain information about abandoned underwater pipelines to PHMSA (49 CFR 195.59 and 192.727). The information aids Federal and state pipeline safety inspectors in conducting compliance inspections and investigating incidents.

Affected Public: Operators of underwater pipelines.

Annual Reporting and Recordkeeping Burden

Annual Responses: 10.

Annual Burden Hours: 60.

Frequency of collection: On occasion.

6. Title: Pipeline Safety: Integrity Management in High Consequence Areas for Operators with more than 500 Miles of Hazardous Liquid Pipelines.

OMB Control Number: 2137–0604.

Current Expiration Date: 1/31/2012.

Abstract: Hazardous liquid operators with pipelines in high consequence areas (*i.e.,* commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452. This collection, which applies to operators of more than 500 miles of hazardous liquid pipelines, is being merged with the information collection under OMB Control Number 2137–0605 which will now cover all hazardous liquid operators with pipelines in high consequence areas.

7. Title: Pipeline Safety: Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines. (New Title).

OMB Control Number: 2137–0605.

Current Expiration Date: 1/31/2012.

Abstract: Hazardous liquid operators with pipelines in high consequence areas (*i.e.,* commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452.

Affected Public: All pipeline operators of hazardous liquid pipelines located in high consequence areas.

Annual Reporting and Recordkeeping Burden

Annual Responses: 203.

Annual Burden Hours: 325,470.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the proposed collection of information 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 the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on October 17, 2011.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2011–27369 Filed 10–21–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before November 8, 2011.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 6, 2011.

Donald Burger,

Chief, General Approvals and Permits.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Name of special permit thereof
8495–M	.....	Kidde Aerospace and Defense Wilson, NC.	49 CFR 173.304(a)(1); 178.47; 175.3.	To modify the special permit to clarify the pressure at which the wall thickness of the pressure vessel is defined and tested.
12930–M	.....	Roeder Cartage Company, Inc. Lima, OH.	49 CFR 180.407(c), (e) and (f).	To modify the special permit to add an additional trailer.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Name of special permit thereof
14940–M	.....	Crown Aerosol Packaging Philadelphia, PA.	49 CFR 173.306	To modify the special permit to authorize rail freight and cargo vessel as additional modes of transportation.

[FR Doc. 2011–27110 Filed 10–21–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Capability

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Capability (''Council'') will convene for a public meeting on November 8, 2011 at the Department of Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10:30 a.m. Eastern Time. The meeting will be open to the public. The Council will: (1) Receive a report from the Council's subcommittees (Financial Access, Research and Evaluation, Partnerships, and Youth) on their progress; (2) review membership and composition of the subcommittees, (3) review the comments the Council received on its proposed themes and principles that were posted for public comment on September 1, 2011, and (4) hear from outside experts about youth financial capability and the use of technology in improving financial capability.

DATES: The meeting will be held on November 8, 2011, at 10:30 a.m. Eastern Time.

Submission of Written Statements: The public is invited to submit written statements to the Council. Written statements should be sent by any one of the following methods:

Electronic Statements

E-mail *ofe@treasury.gov.*

Paper Statements

Send paper statements to the Department of the Treasury, Office of Financial Education and Financial Access, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will make all statements available in their original format, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers, for public inspection and photocopying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Dubis Correal, Director, Office of Financial Education, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–5770 or *ofe@treasury.gov.*

SUPPLEMENTARY INFORMATION: On January 29, 2010, the President signed Executive Order 13530, creating the Council to assist the American people in understanding financial matters and making informed financial decisions, thereby contributing to financial stability. The Council is composed of two *ex officio* Federal officials and 12 non-governmental members appointed by the President with relevant backgrounds, such as financial services, consumer protection, financial access, and education. The role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance individuals' and families' financial capability. The Council held its first meeting on November 30, 2010. At that meeting, the Chair recommended the establishment of five subcommittees to focus on the following strategic areas: National Strategy, Financial Access, Research and Evaluation, Partnerships, and Youth. The Council met again on April 21, 2011, and approved two recommendations: that the Department of the Treasury hold a challenge to the private sector to create applications for mobile devices that promote financial capability and financial access, and that the Department of the Treasury support the Workplace Leaders in Financial Education Award. On July 12, 2011, the Council held a public meeting via webcast. The Council presented the proposed themes and principles for the Council's consideration. For more information about the proposed themes and principles, click here. The Council also recommended that the United States join other Organization for Economic Cooperation and Development countries in administering the 2012 Programme for International Student Assessment financial literacy assessment, and identify funding to support this implementation.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Council, has ordered publication of this notice that the Council will convene its fourth meeting on November 8, 2011 at the Department of Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10:30 a.m. Eastern Time. The meeting will be open to the public. Members of the public who plan to attend the meeting must RSVP with their name, organization represented (if any), phone number, and email address. To register, please go to *http://www.treasury.gov,* click on Resource Center, then Office of Financial Education and Financial Access, and then on the President's Advisory Council on Financial Capability or call (202) 622–5770 by 5 p.m. Eastern Time on November 1, 2011. For entry into the building on the date of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo. The purpose of the meeting is to receive an update from the Council's subcommittees on their progress. The Council will review the membership and the composition of its subcommittees, and the comments received on the Council's proposed themes and principles. The Council will also hear from outside experts on youth financial capability and how technology can improve the financial capability of youths.

Alastair Fitzpayne,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2011–27423 Filed 10–21–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice and request for applicants or nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies, which will occur in June 2012: Two (2) employee plans; two (2) exempt organizations; one (1) Indian tribal government; and two (2) tax exempt bonds. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise. Members of the ACT may not be federally registered lobbyists.

DATES: Written applications or nominations must be received on or before Dec. 1, 2011.

ADDRESSES: Send all applications and nominations to: Bobby Zarin; Director TE/GE Communications and Liaison; 1111 Constitution Ave., NW.—SE.: T: CL, Penn Bldg; Washington, DC, 20224; *Fax:* (202) 283–9956 (not a toll-free number); *e-mail: Roberta.b.zarin@irs.gov*

Application: Applicants may use the ACT Application Form on the IRS Web site (IRS.gov) or may send an application by letter with the following information: Name; Other Name(s) Used and Date(s) (required for FBI check); Date of Birth (required for FBI check); City and State of Birth (required for FBI Check); Current Address; Telephone and Fax Numbers; and e-mail address, if any. Applications should also describe and document the proposed member's qualifications for membership on the ACT. Applications should also specify the vacancy for which they wish to be considered.

FOR FURTHER INFORMATION CONTACT: Bobby Zarin (202) 283–8868 (not a toll-free number) or by e-mail at *Roberta.b.zarin@irs.gov*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and federal, state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements.

ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended for an additional year. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax exempt bonds, and Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for ACT membership, including the nominee's past or current affiliations and dealings with the particular community or segment of the community that he or she wishes to represent (such as, employees plans). Nominations should also specify the vacancy for which they wish to be considered. The Department of the Treasury seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal governments. Nominees must go through a clearance process before selection by the Department of the Treasury. In accordance with the Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and an FBI criminal and subversive name check, fingerprint check, and security clearance.

Dated: October 17, 2011.

Roberta B. Zarin,

Designated Federal Official, Tax Exempt and Government Entities, Division, Internal Revenue Service.

[FR Doc. 2011–27350 Filed 10–21–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on November 9–10, 2011, at The Residence Inn Arlington Pentagon City, 550 Army Navy Drive, Arlington, VA. The meeting is scheduled to begin at 8 a.m. each day and end at 5 p.m. on November 9 and at 3 p.m. on November 10.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the projects, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or *e-mail* at *grant.huang@va.gov* or phone at (202) 443–5600.

Dated: October 18, 2011.

By Direction of the Secretary.

Vivian Drake.

Committee Management Officer.

[FR Doc. 2011–27356 Filed 10–21–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249

Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–65543; File No. S7–40–11]

RIN 3235–AL05

Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') requires the Securities and Exchange Commission (''Commission'') to issue rules to provide for the registration of security-based swap dealers (''SBS Dealers'') and major security-based swap participants (collectively, ''SBS Entities''). Pursuant to this requirement, the Commission is proposing new Rules 15Fb1–1 through 15Fb6–1 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), to provide for the registration of SBS Entities. The Commission is also proposing forms to facilitate registration (and withdrawal from registration) of these entities.

DATES: Comments should be received on or before December 19, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–40–11 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 S7–40–11. 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/proposed.shtml*). Comments will also 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. 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.

FOR FURTHER INFORMATION CONTACT: David W. Blass, Chief Counsel; Joseph Furey, Assistant Chief Counsel; or Bonnie Gauch, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

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I. Introduction

A. Background

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was designed to promote, among other things, the financial stability of the United States by improving accountability and transparency in the financial system.[2] Among other measures, the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission (''CFTC'') with authority to regulate certain aspects of the over-the-counter (''OTC'') derivatives market, where the recent financial crisis demonstrated a need for enhanced regulation. The Dodd-Frank Act is intended to provide the Commission

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

[2] *See id.,* at Preamble.

and the CFTC with effective new regulatory tools to oversee that market, which has grown exponentially in recent years and is capable of affecting significant sectors of the U.S. economy.

Title VII of the Dodd-Frank Act broadly categorizes covered products as ''swaps,'' [3] regulated primarily by the CFTC, ''security-based swaps,'' [4] regulated primarily by the Commission, or ''mixed swaps,'' jointly regulated by the Commission and the CFTC.[5] Among other things, the Dodd-Frank Act prohibits any person from acting as a ''security-based swap dealer'' [6] or ''major security-based swap participant'' [7] without being registered with the Commission, and requires that the Commission issue rules to provide for registration of these SBS Entities.[8]

The Commission is proposing Rules 15Fb1–1 to 15Fb6–1 under the Exchange Act to establish procedures for an SBS Entity to register with the Commission and additional provisions related to such registration, including: (1) A requirement to amend an inaccurate application for registration; (2) procedures for succession to, or withdrawal from, registration; and (3) procedures for the Commission to cancel or revoke registration.[9] The proposed rules would also establish a requirement for an SBS Entity to certify that none of its associated persons that effect, or are involved in effecting, security-based swaps on the SBS Entity's behalf is subject to statutory disqualification. The Commission is proposing forms to facilitate SBS Entities' registration and withdrawal from registration.

The proposed rules and forms would address additional registration requirements applicable to nonresident SBS Entities, including requirements to appoint a U.S. agent for service of process, and to provide an opinion of counsel regarding the entity's ability to (1) Provide the Commission with prompt access to books and records, and (2) be subject to onsite examinations and inspections by the Commission.

In proposing these rules and forms, the Commission is mindful that there are similarities and differences among SBS Entities that hold substantial positions in security-based swaps and dealers and participants that hold substantial positions in other financial products. The Commission also understands that there are similarities and differences between the security-based swap market and the markets for other financial products. The Commission believes that, both over time and as a result of Commission proposals to implement the Dodd-Frank Act, further information concerning the application of existing registration and regulatory regimes to SBS Entities and the development of the security-based swap market may alter certain considerations relating to the registration of SBS Entities. During the process of implementing the Dodd-Frank Act and beyond, the Commission intends to closely monitor developments relating to SBS Entities and the security-based swap markets. In particular, the Commission intends to evaluate further information concerning the range of market participants that may register as SBS Entities, the activities of and services provided by such market participants, whether these activities and services are identical or similar to activities and services already regulated by the federal securities laws or other laws, and how applicable existing registration and regulatory regimes interact with one another and apply to SBS Entities.

B. General Approach to the SBS Entity Registration Process

The Commission's proposed registration requirements for SBS Entities largely are modeled after the registration regime applicable to broker-dealers,[10] while also taking into account the CFTC's registration requirements for intermediaries.[11] We preliminarily believe that because the proposed requirements would closely align with current requirements for our other registrants, and would be similar to the registration regime for CFTC registrants, this approach would provide the Commission and the staff with key information about registrants while leveraging Commission staff experience and standing procedures to facilitate a

[3] Defined in Section 1a of the Commodity Exchange Act (''CEA'').

[4] Defined in Section 3(a)(68) of the Exchange Act. All references to the Exchange Act contained in this release refer to the Securities Exchange Act of 1934, as modified by the Dodd-Frank Act.

[5] In addition, Section 712(d)(1) of the Dodd-Frank Act directs the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, to propose rules and interpretative guidance to further define, among other things, the terms ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' and ''major security-based swap participant.'' The Commission and CFTC jointly proposed further rules and guidance with respect to the dealer and participant definitions on December 7, 2010. *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,''* Exchange Act Release No. 63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 10, 2010) (the ''Intermediary Definitions Release''). The Commission and CFTC jointly proposed further rules and guidance with respect to the definitions of ''swap'', ''security-based swap'', and other terms on April 29, 2011. *Further Definition of ''Swap, '' ''Security-Based Swap, '' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Exchange Act Release No. 64372 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011)).

[6] Subject to certain exceptions, Exchange Act Section 3(a)(71)(A) defines ''security-based swap dealer'' to mean any person who: (i) Holds themself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. *See also supra* note 5.

[7] Exchange Act Section 3(a)(67)(A) defines ''major security-based swap participant'' to mean ''any person: (i) who is not a security-based swap dealer; and (ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; (II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or (III) that is a financial entity that (aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking regulator; and (bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.'' *See also supra* note 5.

[8] The Commission has concluded that SBS Entities that were not registered with the Commission as of the July 16, 2011, effective date of Section 15F of the Exchange Act are permitted to lawfully continue their business absent Commission action with respect to the SBS Entity registration regime. *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 (Jun. 15, 2011), 76 FR 36287, 36299–300 (Jun. 22, 2011) (the ''Effective Date Release'').

[9] The Exchange Act gives the Commission broad authority to craft a registration regime for SBS Entities that helps the Commission accomplish its missions of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. For example, Section 15F(b)(2) of the Exchange Act states that an application for registration ''shall be made in such form and manner as prescribed by the Commission, and shall contain such information as the Commission considers necessary concerning the business in which the applicant is or will be engaged.'' In addition, Section 15F(d)(1) of the Exchange Act directs the Commission to ''adopt rules for persons that are registered as [SBS Entities] under [Section 15F].''

[10] This includes rules promulgated under Sections 15(b) and 17(a) of the Exchange Act.

[11] 17 CFR 3.1 *et seq.* Futures commission merchants (''FCMs'') and introducing brokers presently register with the CFTC by filing Form 7–R with the National Futures Association. The CFTC has proposed to register swap dealers and major swap participants through this same process. *See* 75 FR 71379, at 71382 (Nov. 23, 2010).

substantive review of applications for registration and inspections of registrants. In addition, the broker-dealer registration regime should be familiar to, and understood by, many SBS Entities. In particular, SBS Dealers may already be registered and regulated as broker-dealers or may be affiliated with a broker-dealer. Moreover, if an SBS Dealer enters into security-based swap transactions with persons that are not eligible contract participants, it must register as a broker-dealer unless an exemption or exception applies.[12] The proposed approach would seek to ensure that a market participant registered as both an SBS Entity and a broker-dealer is subject to a similar and complementary registration regime. It could therefore both ease the regulatory burden on such entities and help to establish a consistent regime for regulating SBS Dealers and dealers of other securities.

As explained below, our proposed approach to the application process would build on our existing broker-dealer registration forms—most notably, Form BD—but also is designed to avoid unnecessary duplication by permitting SBS Entities that are otherwise registered or registering as intermediaries with either the Commission or the CFTC to complete simplified application forms. Under this process, SBS Entities registered or registering with the Commission as broker-dealers or with the CFTC as swap dealers or major swap participants would submit a shorter SBS Entity registration form along with a copy of their existing registration form.

An SBS Entity would be permitted to file an application for registration as soon as final registration rules and forms are adopted. Further, each SBS Entity would need to be registered (at least conditionally) by the compliance date set forth in the final registration rules. In certain circumstances, SBS Entities would be required to apply for *conditional* registration, which they could convert to *ongoing* registration by fulfilling the applicable requirements set forth in the proposed rules. As discussed in more detail below, those requirements would differ depending on whether: (1) The application was filed with the Commission before or after the compliance dates for certain new rules to be adopted pursuant to Section 15F of the Exchange Act; and (2) the applicant is an SBS Dealer or instead is a major security-based swap participant. Conditional registration would expire after a specified time, and a conditionally registered SBS Entity would be required to cease its security-based swap business if it had not satisfied the applicable conditions to convert its registration to an ongoing registration. The Commission could, however, extend any conditional registration for good cause.

Although the Commission may be familiar with SBS Entities that are already registered with the Commission (*e.g.,* broker-dealers or investment advisers), the Commission is mindful that SBS Entities will nonetheless constitute a new class of registrants that may present business models and practices with which the Commission will need to gain experience. Accordingly, the Commission expects that its careful review of each application for registration and each certification on Form SBSE–C (the ''Senior Officer Certification'' described further below) will not only facilitate the Commission's decision to grant or deny registration to an SBS Entity, but also help to develop this experience and aid in the identification of areas for further inquiry, including, as may be appropriate, examinations of particular firms or business units by the Commission's Office of Compliance Inspections and Examinations (''OCIE''), in order to establish an effective ongoing examination program for such entities.[13]

OCIE currently uses risk-based methodologies to focus Commission examination resources on firms and activities that could pose the greatest risk to investors and the integrity of the markets. Consistent with that general approach, OCIE and the Division of Trading and Markets intend jointly to perform a substantive review of applications and Senior Officer Certifications received for registration of SBS Entities to determine whether additional Commission action is appropriate and to evaluate potential registrants' risk for purposes of prioritizing examinations.

1. Conditional Registration

Under the proposed rules, an SBS Entity seeking Commission registration generally would be required to apply for conditional registration by submitting a complete application to the Commission. The Commission would then grant conditional registration if it finds that the SBS Entity's application is complete, except that the Commission may institute proceedings to determine whether the Commission should deny conditional registration if the applicant is subject to a statutory disqualification or the Commission is aware of inaccurate statements in the application.[14] The Commission would notify the entity electronically when conditional registration is granted, and would make information regarding registration status publicly available.

For an SBS Entity to convert its conditional registration to ongoing registration, it would be required to submit a Senior Officer Certification signed by one of its knowledgeable senior officers. The contents of the Senior Officer Certification and the time frame within which it must be submitted to the Commission are described more fully below and specified in the rule. Generally, however, the Senior Officer Certification would state that, after due inquiry, the senior officer has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or a major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination. We preliminarily believe that this certification requirement would help to protect both investors and markets from potential problems arising from SBS Entities that may lack the capabilities necessary to operate their businesses in compliance with their regulatory obligations.

[12] *See* 15 U.S.C. 78c(a)(5) and 78o(a).

[13] In addition to SBS Entities, the Dodd-Frank Act requires the Commission to register for the first time security-based swap execution facilities, security-based swap data repositories, municipal advisors, and certain private fund advisers. In light of these new categories of registrants, the Commission is presently reviewing the various standards and processes it uses to facilitate registration of the many types of entities required to register with it—including broker-dealers, investment advisers, nationally recognized statistical rating organizations, transfer agents, clearing agencies, exchanges, national securities associations, and others. In this regard, the Commission plans to issue a concept release designed to collect information and evaluate different aspects of these registration standards and processes. In particular, the Commission intends to consider the policy objectives of registration, how best to achieve those policy objectives through registration and other means, and the relative benefits and costs of the various means available. Through such a concept release, the Commission would hope to gain insight into how evolving market practices, technology, and other considerations could affect or be affected by the Commission's approach to the registration processes for various types of entities. Recognizing that the Commission has finite resources to allocate to registration, examination, and enforcement functions, the Commission intends to use the concept release to seek comment as to how it can most effectively and efficiently utilize these registration and other functions to help ensure that entities registered by the Commission to perform important financial intermediary and other functions in the securities markets have the capability to carry out those functions and to fully comply with all applicable regulatory requirements.

[14] Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing, and that at the conclusion of such proceedings, the Commission would grant or deny such registration. *See* proposed Rule 15Fb2–1(d)(1).

i. Implementation Plan and the Last Compliance Date

After proposing all of the key rules under Title VII, the Commission intends to seek public comment on a detailed implementation plan that will permit a roll-out of the new securities-based swap requirements in a logical, progressive, and efficient manner, while minimizing unnecessary disruption and costs to the markets. Among other things, the implementation plan would inform the timing of the requirement for SBS Entities to register with the Commission, including whether such registration requirement would exist prior to the latest date, designated by the Commission, by which SBS Dealers and major security-based swap participants must begin complying with all of the initial rules promulgated under Section 15F of the Exchange Act (''Last Compliance Date'').[15]

The Commission believes it is possible that SBS Entities may be required to register before the Last Compliance Date.[16] For these ''transitional'' applicants, whether SBS Dealer or major security-based swap participant, there would be a period of time before the Last Compliance Date when the Senior Officer Certification would be either unduly burdensome for registrants (*e.g.,* a rule has been promulgated by the Commission under Section 15F of the Exchange Act, but compliance with that rule is not yet required) or inappropriate for meeting the goals of the certification (*e.g.,* the Commission has not yet adopted a significant rule under Section 15F of the Exchange Act, so the certification would not cover compliance in an important regulatory area).

To address this potential transition issue, we preliminarily believe it is appropriate to propose a conditional registration process that would permit registration without a Senior Officer Certification prior to the Last Compliance Date. This process would be available to all applicants (whether SBS Dealer or major security-based swap participant) and would, among other things, facilitate the identification of existing SBS Entities in advance of the compliance date of certain substantive requirements. Conditional registration would be effective once the Commission grants such conditional registration and would expire on the Last Compliance Date (unless conditional registration was extended pursuant to paragraphs (b) or (c) of proposed Rule 15Fb3–1). Ongoing registration of these conditionally registered SBS Entities would be conditioned on, among other things, the registrant providing the Senior Officer Certification to the Commission on or before the Last Compliance Date. As described above, fulfillment of this requirement by an SBS Entity would provide the Commission with some assurance that the SBS Entity understands and has the ability to undertake its business in compliance with the applicable requirements. Once a registrant submits its Senior Officer Certification, the Commission would consider converting its conditional registration to an ongoing registration.[17] However, whether or not a conditional registrant provides the Senior Officer Certification on or before the Last Compliance Date, the Commission would retain the flexibility to extend conditional registration for good cause.

Once the Last Compliance Date has occurred, the conditional registration process for SBS Dealers would effectively collapse into the ongoing registration process and any SBS Dealer would need to submit its Senior Officer Certification with its application (*i.e.,* after the Last Compliance Date, SBS Dealers could only apply for ongoing registration). Major securities-based swap participants could still conditionally register (as described below) because of challenges separate and apart from implementation of Section 15F of the Exchange Act.

ii. Major Security-Based Swap Participant Applicants Registering After the Last Compliance Date

As noted in the proposed definition of major security-based swap participant,[18] an entity whose security-based swap portfolio crosses established thresholds in a fiscal quarter would have a two-month grace period following the end of that quarter to submit a complete application for registration as a major security-based swap participant. The Commission preliminarily believes that, while there is likely to be some advance notice of an impending status change due to ongoing monitoring of portfolios in the ordinary course of business, an entity that would likely fall within the definition of a ''major security-based swap participant'' because of activities in a given fiscal quarter may not have adequate compliance systems in place within two months after the end of the triggering quarter to allow the entity to provide the Commission with a Senior Officer Certification. Therefore, the Commission proposes to conditionally register such new participants based on their filing of a complete application before the expiration of the two-month grace period, subject to a requirement that they provide a Senior Officer Certification to the Commission within four months of the submission of their complete application (*i.e.,* within six months after the end of the triggering quarter). This proposal is intended to balance the additional time a new major security-based swap participant may require to build out its compliance structure with the Commission's strong interest in having new registrants promptly comply with applicable federal securities laws. Such conditional registration would be effective once the Commission grants conditional registration and would expire four months after receipt of that application unless the firm files a Senior Officer Certification with the Commission within that time frame.

As with conditional registrations granted prior to the Last Compliance Date, once a major security-based swap participant that applies for registration after the Last Compliance Date submits its Senior Officer Certification, the Commission could consider converting its conditional registration to an ongoing registration, as described below. In addition, whether or not a conditionally registered major security-based swap participant provides the Senior Officer Certification within four months after submitting its application, the Commission retains the flexibility to extend the conditional registration for good cause.

The Commission notes that the conditional registration mechanism for major security-based swap participants would remain in place even after the Last Compliance Date (*i.e.,* major security-based swap participants could always avail themselves of a conditional registration period).

2. Ongoing Registration

The proposed rules would provide for the ongoing registration of all conditionally registered SBS Entities following their fulfillment of the applicable requirements, as well as SBS

[15] The term ''Last Compliance Date'' is defined in proposed Rule 15Fb2–1(e). The Commission anticipates that the Last Compliance Date would be clearly stated in the relevant adopting release and prominently announced on the Commission's Web site.

[16] The Commission notes that, regardless of the timing of the Last Compliance Date, a registered SBS Entity would be required to comply with certain self-operative provisions in Exchange Act Section 15F upon registration (conditional or otherwise), absent further Commission action. *See* Effective Date Release, *supra* note 8.

[17] Submission of a Senior Officer Certification also would toll expiration of the SBS Entity's conditional registration for thirty days, if necessary to facilitate the Commission's review, or such longer period as the Commission finds for good cause (*see* proposed Rule 15Fb3–1).

[18] *See* Intermediary Definitions Release, *supra* note 5, at 103.

Dealers registering with the Commission after the Last Compliance Date (and, therefore would not be required to conditionally register). As described above, an SBS Entity would need to submit both a completed application and a Senior Officer Certification to obtain ongoing registration. An SBS Entity that was conditionally registered would not be required to submit a new application. At the time it applies for ongoing registration, however, the SBS Entity would be required to amend its application to correct any information that has become inaccurate for any reason.

The Commission would grant ongoing registration if it finds that the requirements of Section 15F(b) of the Exchange Act are satisfied, but the Commission would institute proceedings to determine whether the Commission should deny ongoing registration if the Commission does not make such a finding, if it finds that the applicant is subject to a statutory disqualification, or if it is aware of inaccurate statements in the application or certification.[19] The Commission would notify the entity electronically when ongoing registration is granted, and would make information regarding registration status publicly available. Pursuant to proposed Rule 15Fb3–1(a), ongoing registration would be effective until any cancellation, revocation or withdrawal of the registration or on any other event the Commission determines should trigger expiration.

3. Solicitation of Comments on the General Approach to the SBS Entity Registration Process

We request comment on this approach to the SBS Entity registration process.

Q–1. Should the Commission model the registration regime applicable to SBS Entities more closely after one or more other registration regimes regulated by the Commission (*e.g.,* securities exchanges or associations,[20] clearing agencies,[21] or investment advisers [22]), self regulatory organizations (''SROs''),[23] or other regulators? [24] If so, please describe which model should be followed and why.

Q–2. Does the conditional process for SBS Entity registration outlined above provide a practicable solution to the potential timing issues raised by the implementation of Section 15F of the Exchange Act? Are there additional or alternative conditions or mechanisms that would be appropriate for addressing those issues?

Q–3. Does the conditional process for major security-based swap participant registration outlined above provide a practicable solution to the potential timing issues raised by the look-back features in the proposed definition of ''major security-based swap participant'' definition? Are there additional or alternative conditions or mechanisms that would be appropriate for addressing those issues?

Q–4. Should the Commission delay all registrations until the Last Compliance Date instead of adopting a conditional registration process? Why or why not?

Q–5. Should the Commission consider granting conditional registration automatically based on the receipt of a completed application or some other or additional documents? If so, why?

Q–6. Should the Commission notify the SBS Entity that it has granted conditional or ongoing registration prior to making the SBS Entity's registration status publicly available? If so, why and what should be the timing difference?

Q–7. Should the Commission provide additional guidance regarding the process for institution of proceedings? For instance, should the Commission include timeframes within which proceedings would be instituted and/or a decision to grant or deny registration based on those proceedings should be provided (*e.g.,* Exchange Act Section 15(b)(1))? If so, what timeframes or other guidance would be appropriate and why?

Q–8. Is it appropriate to seek to minimize duplication by permitting registered intermediaries to follow a registration process that uses simplified forms? Why or why not?

Q–9. Should these intermediaries be required to file their existing registration forms with the Commission as part of this process, or should they be required to authorize the Commission to obtain access to those forms at the relevant repository (*e.g.,* the Financial Industry Regulatory Authority (''FINRA'') or the National Futures Association (''NFA''))?

Q–10. Should SBS Entities be afforded more time (beyond the Last Compliance Date) to prepare and provide their Senior Officer Certification? Why or why not? If so, how much additional time would be appropriate?

Q–11. Should major security-based swap participants that file applications after the Last Compliance Date be afforded more or less than four months to prepare and provide their Senior Officer Certification? Why or why not?

Q–12. What would be the advantages and disadvantages and costs and benefits of the Commission adopting an approach to SBS Entity registration that encompasses a more substantive inquiry concerning the business of an applicant? What would be the impact on market participants, including investors?

Q–13. Are there additional or alternative mechanisms that the Commission could employ to better protect markets and market participants and minimize the burden on registrants while meeting the regulatory objectives of a registration scheme for SBS Entities?

Commenters are encouraged to identify other possible solutions that would allow the Commission to promptly review and consider SBS Entity registration applications so they would not experience undue interruptions in business while also providing the Commission reasonable assurance that they have the ability to carry out their business and are able to comply with applicable federal securities laws.

II. Proposed Exchange Act Rules and Forms

A. Registration Application and Amendment

1. Proposed Rule 15Fb2–1

Proposed Rule 15Fb2–1 would set forth the method through which SBS Entities could apply for registration with the Commission. Essentially, the forms and process for filing applications and other documents electronically with the Commission would be identical for SBS Dealers and major security-based swap participants. This proposed rule also would describe the timing of such filings and the standard of review applied by the Commission in determining whether to grant or deny registration, which may differ slightly for SBS Dealers and major security-based swap participants, depending on the type of registration the firm is seeking. While it may be appropriate for certain rules applicable to SBS Dealers to differ from those applicable to major security-based swap participants, the Commission preliminarily believes that

[19] Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing, and that at the conclusion of such proceedings, the Commission would grant or deny such registration. *See* proposed Rule 15Fb2–1(d)(2).

[20] 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78o–3(b)(1)–(2).

[21] 15 U.S.C. 78q–1(b)(3)(A).

[22] 15 U.S.C. 80b–3(c).

[23] *See, e.g.,* National Association of Securities Dealers Rules 1013 and 1014; Chicago Board Options Exchange Rules 3.5(c)(ii), 8.83(b), and 44.12(b); and NYSE Arca Rule 7.22(a).

[24] *See, e.g.,* National Futures Association Registration Rules (which can be found at *http://www.nfa.futures.org/nfamanual/NFAManualTOC.aspx?Section=8*).

the registration rules and forms need not differ significantly because the information the Commission would need to determine whether registration is appropriate is similar for both types of entities.

i. Form of Application

Paragraph (a) of proposed Rule 15Fb2–1 would provide that an SBS Entity would apply for registration electronically on Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, in accordance with the instructions to the form. In general:

- SBS Entities registered or registering with the Commission as broker-dealers would apply for registration using Form SBSE–BD;
- SBS Entities registered or registering with the CFTC as swap dealers or major swap participants (and not also registered or registering with the Commission as broker-dealers) would apply for registration using Form SBSE–A; and
- SBS Entities that do not fit either of the above categories would apply for registration using Form SBSE.

Specifics regarding each of these forms and their differences and uses are discussed in more detail below. These forms would be used to register with the Commission regardless of whether an SBS Entity was applying for conditional or ongoing registration.

The Commission solicits comment on the use of forms to register with the Commission.

Q–14. Would an alternative mechanism be more appropriate for registering SBS Entities? If so, which one and why?

Q–15. Should the registration forms differ based on whether the entity is registering as an SBS Dealer or major security-based swap participant? If so, how?

ii. Senior Officer Certification

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity provide the Commission with a certification on Form SBSE–C to facilitate the Commission's review of each firm's application for ongoing registration. A knowledgeable senior officer of the SBS Entity would be required to sign the certification,[25] which is designed to provide the Commission with the applicant's assurance that the applicant has the capabilities necessary to operate as an SBS Entity and, therefore, that the applicant should qualify for registration under Exchange Act Section 15F(b). Accordingly, the certification would assist the Commission in determining whether to grant the SBS Entity ongoing registration. Such an informed determination, based in part on the certification, will help the Commission maintain orderly and efficient markets and protect investors by helping to ensure that the Commission only grants registration to SBS Entities that can attest that they possess the operational, financial, and compliance capabilities to conduct business as an SBS Entity. Specifically, under the proposal, each SBS Entity must have a senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational,[26] financial,[27] and compliance[28] capabilities to act as an SBS Entity. In addition, the proposal would require that the senior officer certify that he or she has documented the process by which he or she reached that determination. While the Commission has required regulated entities to provide a certification in other contexts,[29] a requirement that an applicant or regulated entity certify as to its ability to engage in the business it would be registered to do is relatively new.[30]

The Commission preliminarily believes that receipt of a Senior Officer Certification would provide assurances to the Commission that each SBS Entity has the requisite capabilities to operate in the capacity for which it seeks registration. The Senior Officer Certification is designed to require a deliberate and thoughtful self-assessment by each SBS Entity of its capabilities and thus should provide assurances to potential investors, customers of, and counterparties to an SBS Entity that the SBS Entity has the requisite capabilities to act in that capacity. Further, this Senior Officer Certification requirement could help prevent disorderly and unstable markets that could result from the failure of a registered SBS Entity that lacks the requisite capabilities to operate its business in a registered capacity. The Senior Officer Certification also may enhance market participants' ability to assess the counterparty credit risk associated with a particular SBS Entity counterparty. In this way, the Senior Officer Certification should help to protect investors and other market participants from SBS Entities that are not competent to engage in that business, lack the financial resources to do so, or are unable or unwilling to comply with applicable law. The Commission thus preliminarily believes that the Senior Officer Certification could help the efficient functioning of the market and enhance the confidence of investors and other market participants.

The Senior Officer Certification requirement, in other words, is meant to address many of the same considerations that arise during the in-depth review by the Commission and its staff, or, in some cases, SROs, prior to

[25] In accordance with Proposed Rule 15Fb1–1(b), the SBS Entity will need to maintain a manually signed copy of this certification as part of its books and records until at least three years after the certification was filed with the Commission.

[26] The concept of ''operational capability'' can be an important regulatory consideration because an SBS Entity with insufficient infrastructure, technology, and human resources presents operational risks that may adversely impact its counterparties and the broader market—*e.g.,* if transactions are inaccurately documented, not documented at all, or if insufficient margin is collected. *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859, at 3860 (Jan. 21, 2011) (proposing release) (discussing the recognition by various parties of the importance of operational infrastructure in the over-the-counter derivatives market) (the ''Trade Acknowledgement Proposing Release''). The Commission expects that a key foundation for the Senior Officer Certification would be the capability of an SBS Entity to comply with the obligations that would be imposed by the Trade Acknowledgment Proposing Release, if adopted, other legal obligations applicable to the operations of an SBS Entity, and the capability of the SBS Entity to conduct its business as represented in the SBS Entity's application for ongoing registration.

[27] The concept of ''financial capability'' can be an important regulatory consideration because of, among other things, the role adequate financing plays in protecting an SBS Entity's counterparties and the broader market by ensuring that the SBS Entity has sufficient working capital and liquidity for its security-based swap business consistent with regulatory requirements and as needed to respond to market conditions. The Commission will separately propose capital rules for SBS Entities, as required by the Dodd Frank Act. 15 U.S.C. 78o–10(e). The Commission expects that the capability of an SBS Entity to comply with these obligations, if adopted, would form a key foundation for the Senior Officer Certification.

[28] The concept of ''compliance capability'' can be an important regulatory consideration because of, among other things, the wholesale creation of a new regulatory regime for security-based swaps under the Dodd-Frank Act. For example, in proposing business conduct rules for SBS Entities, the Commission proposed to require that each SBS Entity ''[establish, maintain, and enforce] written policies and procedures addressing the supervision of the types of security-based swap business in which the [SBS Entity] is engaged that are reasonably designed to achieve compliance with applicable securities laws and the rules and regulations thereunder.'' *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396, (Jul. 18, 2011), *as corrected by* Exchange Act Release No. 64766, 76 FR 46668 (Aug. 3, 2011) (proposing release). The Commission expects that development and implementation of such a compliance regime, if adopted, would serve as a key foundation for the Senior Officer Certification.

[29] *See, e.g.,* 17 CFR 240.15c3–5, 17 CFR 240.13a–14, and 17 CFR 270.30a–2.

[30] *See, e.g., Registration of Municipal Advisors,* Exchange Act Release No. 63576 (Dec. 20, 2010), 76 FR 824, (Jan. 6, 2011) (proposing release) (the ''Registration of Municipal Advisors Proposing Release'').

granting registration to certain applicants.[31] For example, under Sections 6(b) and 19(a) of the Exchange Act, an exchange may not be registered unless the Commission finds that the exchange ''is so organized and has the capacity to be able to carry out the purposes of the Exchange Act and to comply, and [* * *] to enforce compliance by its members and persons associated with its members, with the provisions of [the Exchange Act], the rules and regulations thereunder, and the rules of the exchange.'' [32] Similarly, under Section 17A of the Exchange Act, a clearing agency may not be registered unless the Commission finds that the agency ''has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of [the Exchange Act] and the rules and regulations thereunder, [and] to enforce [* * *] compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.'' [33] To this end, the Commission has published a series of standards ''that the [staff] will use in reviewing the organizations, capacities and rules of clearing agencies that currently are registered temporarily with the Commission and of clearing agencies that may apply for registration * * *.'' [34] Broker-dealers that register with the Commission under Section 15(b) also must become a member of an SRO, and SRO rules generally incorporate membership application procedures that include, among other things, assessments by the SRO of the broker-dealer's operational, financial, and compliance capabilities.[35]

At this time, although we provide guidance above regarding the factors a senior officer would use to serve as a foundation for the Senior Officer Certification,[36] we are not proposing a specific definition of the term ''operational, financial and compliance capabilities.'' Instead, we request comment regarding whether and how that phrase should be further defined or interpreted. The Commission recognizes that whether an SBS Entity has the operational, financial and compliance capabilities to act as an SBS Entity likely will depend on its particular facts and circumstances, including, among other things: the scope and nature of its security-based swap business; its other related financial and business activities; the extent to which it is subject to other registration and regulatory requirements or other supervisory oversight with respect to its activities; its relationships with, and reliance on, affiliates, service providers, and other parties; and the extent and nature of its historical involvement in security-based swap transactions. Moreover, it may be appropriate to consider the capabilities required for this certification by reference to regulatory standards. For example, attesting to capabilities might include a self-assessment of whether the SBS Entity is capable of communicating in a manner that is based on principles of fair dealing and good faith; [37] whether the SBS Entity has established all contractual or other arrangements and business relationships necessary to conduct its security-based swap business; [38] whether the SBS Entity has or has adequate plans to obtain facilities

[31] *See, e.g.,* 15 U.S.C. 78f(b)(1) (regarding registration of national securities exchanges), and 15 U.S.C. 78q–1(b)(3)(A) (regarding registration of clearing agencies). *See also* 15 U.S.C. 78o–3(b)(1) and (2) (regarding registration of national securities associations). In addition, the Commission recently proposed rules governing the registration of security-based swap data repositories (''SDRs''), security-based swap execution facilities (''SB SEFs''), security-based swap clearing agencies (''SBS CAs''), and municipal advisors that relate to potential registrants' operational, financial, and compliance capabilities. For example, the proposed registration rules for security-based swap data repositories are intended to, among other things, assure the Commission that ''an SDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provision of the Federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Exchange Act.'' These proposed rules may also require an SDR to file with the Commission, as a condition of registration or continued registration, a review relating to the SDR's operational capacity and ability to meet its regulatory obligations. Such review could be in the form of a report conducted by the SDR, an independent third party, or both. *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010) (proposing release). Similarly, the proposed registration rules for security-based swap execution facilities are designed to assure the Commission that a registrant ''has adequate financial, operational, and managerial resources to discharge each responsibility of the SB SEF, as determined by the Commission.'' *Registration and Regulation of Security-Based Swap Execution Facilities,* Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (proposing release). Among other things, these rules state in part that ''the financial resources of a SB SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SB SEF to cover its operating costs for a one year period.'' The Commission also proposed registration rules for security-based swap clearing agencies that require, among other things, registrants to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their systems provide adequate levels of capacity, resiliency, and security. Such policies and procedures shall, at a minimum: (i) Establish reasonable current and future capacity estimates; (ii) conduct periodic capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient manner; (iii) develop and implement reasonable procedures to review and keep current its system development and testing methodology; (iv) review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and (v) establish adequate contingency and disaster recovery plans. These rules further require that clearing agencies that provide central counterparty (''CCP'') services need to have a qualified person conduct a review of models that are used to set margin levels, along with related parameters and assumptions, in order to assure that the models perform in a manner that facilitates prompt and accurate clearance and settlement of transactions. In determining whether a person is qualified to conduct the model validation, clearing agencies providing CCP services could consider several factors, including the person's experience in validating margin models, expertise in risk management generally, and understanding of the clearing agency's operations and procedures. *Clearing Agency Standards for Operation and Governance,* Exchange Act Release No. 64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing release) (the ''Clearing Agency Standards Proposing Release''). Finally, the proposed registration rules for municipal advisors would require municipal advisors to certify that they have: ''1) sufficient qualifications, training, experience, and competence to effectively carry out their designated functions; 2) met, or within any applicable timeframe will meet, such standards of training experience, and competence, and such other qualifications, including testing, for a municipal advisor, required by the Commission, the MSRB or any other relevant self-regulatory organization; and 3) the necessary understanding of, and ability to comply with, all applicable regulatory obligations.'' Registration of Municipal Advisors Proposing Release, *supra* note 30.

[32] 15 U.S.C. 78f(b)(1).

[33] 15 U.S.C. 78q–1(b)(3)(A).

[34] The Commission has established a series of standards ''that the [staff] will use in reviewing the organizations, *capacities* and rules of clearing agencies that currently are registered temporarily with the Commission and of clearing agencies that may apply for registration * * *.'' *Regulation of Clearing Agencies,* Exchange Act Release No. 16900 (Jun. 17. 1980), 45 FR 41920 (June 23, 1980) (emphasis added). *See also* the Clearing Agency Standards Proposing Release, *supra* note 30.

[35] *See, e.g.,* NASD Rules 1013 and 1014 (membership application review requires a new broker-dealer to, among other things, file a detailed business plan, explain its sources of funding, describe the educational background and experience of its personnel, and undergo a membership interview). Existing FINRA members that wish to enter into a materially new business, such as dealing in security-based swaps, must also file an application to do so, and those applications are similarly reviewed to determine whether the broker-dealer has the requisite capabilities to conduct the new business. NASD Rule 1017. Exchange Act Rule 15b2–2 requires that a new broker-dealer be examined within six months to evaluate whether the broker-dealer is operating in conformity with applicable financial responsibility rules and again within twelve months to evaluate whether it is also operating in conformity with all other applicable provisions of the Exchange Act and rules thereunder. 17 CFR 240.15b2–2(b) & (c).

[36] *See supra* notes 26–28.

[37] *See* Section 15F(h)(3)(C) (providing that business conduct requirements adopted by the Commission shall establish a duty to communicate in a manner ''based on principles of fair dealing and good faith'').

[38] *See* NASD Rule 1014(a)(4).

that are sufficient for its operations;[39] and whether the SBS Entity is capable of maintaining a level of capital that is adequate to support the SBS Entity's intended business operations on a continuing basis.[40]

The proposed rules would require that a senior officer of an SBS Entity certify that he or she has reasonably determined that, after ''due inquiry,'' the security-based swap dealer or major security-based swap participant has the operational, financial, and compliance capabilities to act as an SBS Entity.[41] We believe it is important to make explicit that the senior officer is obligated under the rule to conduct some inquiry to form his or her reasonable determination. However, the Commission does not propose to prescribe any single method a senior officer must use to gain an appropriate level of comfort and information before signing the Senior Officer Certification. In other words, different SBS Entities may utilize different processes to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities.[42]

As described in Part I above, the proposed registration process would include conditional and ongoing registration. Pursuant to subparagraph (b)(1)(i) and (ii), respectively, of proposed Rule 15Fb2–1, SBS Entities that register conditionally during the transitional period would need to submit the Senior Officer Certification on or before the Last Compliance Date and major security-based swap participants that file an application after the Last Compliance Date would need to submit the certification within four months after filing an application. The Commission preliminarily believes that these timeframes would provide senior officers of conditionally registered SBS Entities sufficient time to determine that they are able to provide the relevant certification. Pursuant to subparagraph (b)(2), an SBS Dealer that files an application after the Last Compliance Date would need to submit the Senior Officer Certification with its application.

The Commission requests comment on all aspects of the proposed requirement for SBS Entities to provide the Commission with a Senior Officer Certification on Form SBSE–C as specified in proposed Rule 15Fb2–1(b), and on the registration process generally. With respect to this certification, the Commission is interested in commenters responses to the following questions, and also to questions Q–54. through Q–61. relating to Additional Registration Considerations.

Q–16. Would the Senior Officer Certification requirement provide sufficient assurance that each SBS Entity has the necessary capabilities to act as a registered SBS Entity? Why or why not? Would it provide sufficient assurance that SBS Entities have established controls to ensure compliance with all applicable securities law requirements? Why or why not?

Q–17. Would the Senior Officer Certification provide sufficient assurance to customers of and counterparties to SBS Entities, investors, eligible contract participants and other market participants that new SBS Entities have the requisite capabilities to act as SBS Entities? Why or why not?

Q–18. Should the Commission only require SBS Dealers, and not major security-based swap participants, to provide a Senior Officer Certification? Why or why not? What would be the comparative advantages, disadvantages, costs and/or benefits of such an approach?

Q–19. Alternatively, should the form of Senior Officer Certification an SBS Entity must file be driven by whether the entity is an SBS Dealer or major security-based swap participant? For instance, should an SBS Dealer be required to certify to its capabilities and a major security-based swap participant be required to certify to its policies and procedures? If so, what form of Senior Officer Certification should SBS Dealers be required to file and which form of Senior Officer Certification should major security-based swap participants be required to file? What would be the comparative advantages, disadvantages, costs and/or benefits of requiring dealers and participants to certify using different certification language?

Q–20. What alternative forms of Senior Officer Certification should be considered, if any? For example, should the proposed Senior Officer Certification use the language that the Commission proposed with respect to the certification to be made by municipal advisors?[43] Why or why not? What would be the comparative advantages, disadvantages, costs and/or benefits of using the same certification language the Commission has proposed for use by municipal advisors as opposed to the language proposed?

Q–21. The concept of developing and implementing written policies and procedures has often been used by the Commission to further its regulatory objectives. Should the Senior Officer Certification instead require that a senior officer certify that ''to the best of his or her knowledge, after due inquiry, the security-based swap dealer or major security-based swap participant has developed and implemented written policies and procedures reasonably designed to prevent violation of federal securities laws, the rules thereunder, and applicable self-regulatory organization rules?''[44] Why or why not? What would be the impact of the Senior Officer Certification if it did not specifically address operational capability? What would be the comparative advantages, disadvantages, costs and/or benefits of using this language as opposed to the language proposed?

Q–22. Should the Commission more specifically define the term ''operational, financial, and compliance capabilities''? If so, how should this term be defined to, among other things, provide greater certainty to market participants about the basis for providing the Senior Officer Certification?

Q–23. Should the Commission specifically define the term ''capability?'' Should the Commission, for example, define the term ''capability,'' as it relates to the financial, operational, and compliance functions of an SBS Entity, as ''having the necessary ability or qualities''? Why or why not? Should the Commission define the term capability in some other way? If so, how and why?

Q–24. Alternatively, should the Commission simply adopt the Webster's New World Dictionary definition which

[39] *See* NASD Rule 1014(a)(5).

[40] *See* NASD Rule 1014(a)(7).

[41] This certification must be accurate as of the date the certification is filed with the Commission. An SBS Entity would not be required to have a senior officer update the certification after the SBS Entity has been approved for ongoing registration.

[42] For example, in satisfying other certification requirements some SBS Entities may use a sub-certification process whereby the senior officer will not certify a firm-wide statement unless and until other persons responsible for certain activities in turn certify to the senior officer that the standard has been met, while other SBS Entities may use an internal or external audit-type process whereby a senior officer may choose to employ a third party to review an area subject to a firm-wide certification before submitting the certification.

[43] *See supra* note 31, regarding the certification the Commission proposed for use by municipal advisors in the Registration of Municipal Advisors Proposing Release.

[44] *See, e.g.,* Section 15(g) of the Exchange Act (requiring that broker-dealers establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information). 15 U.S.C. 78o(g). *See also* Rule 206(4)–7 of the Investment Advisers Act of 1940 (the ''Advisers Act'') (requiring that investment advisers must adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder). 17 CFR 275.206(4)–7.

defines the term ''capability'' to mean ''the quality of being capable; practical ability,'' and defines the term ''capable'' to mean, among other things, ''having ability; able; skilled; competent —capable of; having the ability or qualities necessary for; able or ready to?'' [45] Why or why not? Should the Commission instead adopt some other dictionary definition? If so, what other dictionary definition should be used and why? Alternatively, should the Commission define the term capability in some other way? If so, how and why?

Q–25. Should the Commission determine that a firm may rely on the establishment, maintenance and enforcement of written policies and procedures by an SBS Entity that are reasonably designed to prevent violation of federal securities laws, the rules thereunder, and applicable self-regulatory organization rules as a basis for a senior officer to certify that an SBS Entity has the appropriate ''compliance capability?'' Why or why not?

Q–26. Should the Commission determine that a firm may rely on the establishment, maintenance and enforcement of written policies and procedures by an SBS Entity that are reasonably designed to assure that the SBS Entity complies with applicable capital and margin requirements as a basis for a senior officer to certify that an SBS Entity has the appropriate ''financial capability?'' Why or why not?

Q–27. If the Commission does not specifically define what would constitute operational, financial, and compliance capabilities, will there still be a sufficient basis for SBS Entities and/or their senior officers to provide the Commission with a Senior Officer Certification? Why or why not? Would any potential uncertainty arising from the decision not to define at this time the terms ''operational, financial, and compliance capabilities'' and ''capabilities'' cause difficulties for SBS Entities seeking to register on an ongoing basis? If so, please describe.

Q–28. Should SBS Entities be required to provide a Senior Officer Certification as to any capabilities in addition to the three specified? If so, what other capabilities and why? Alternatively, should any of the capabilities be eliminated from the Senior Officer Certification? If so, which one(s) and why? For example, should the certification relating to an SBS Entity's capabilities be confined to operational capability given the regulatory imperative to comply with applicable regulations (including capital rules)? What would be the comparative advantages, disadvantages, costs and/or benefits of adding or eliminating such capabilities?

Q–29. In addition to, or in lieu of the Senior Officer Certification requirement, should the Commission utilize an approach to demonstration of capabilities similar to the one we use to register national securities exchanges under Exchange Act Section 6(b)(1) [46] (which requires that an exchange have the ''capacity to be able to carry out the purposes of [the Exchange Act * * *], the rules and regulations thereunder'')? Would such a standard provide additional clarity as to the capabilities to be required of registrants? What would be the advantages and disadvantages and the costs and benefits of such an alternative process?

Q–30. Should the Commission instead utilize an approach to demonstration of capabilities similar to the one we use to register clearing agencies under Exchange Act Section 17A(b)(3)(A) [47] (which requires that an exchange have the ''capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of [the Exchange Act] and the rules and regulations thereunder, [and] to enforce [* * *] compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section'')? Would such a standard provide additional clarity as to the capabilities to be required of registrants? What would be the advantages and disadvantages and the costs and benefits of such an alternative process?

Q–31. Should the form of Senior Officer Certification an SBS Entity must file be driven by whether the entity is, or is not, already registered with the Commission as a broker-dealer or with the CFTC as a swap dealer or major swap participant? Why or why not? If so, what forms of certification would be appropriate for use by SBS Entities that are already registered with one of the Commission or the CFTC? What would be the comparative advantages, disadvantages, costs and/or benefits of this approach?

Q–32. Should SBS Entities already registered with the Commission as a broker-dealer or with the CFTC as a swap dealer or major swap participant be excepted from the requirement to file a Senior Officer Certification? Why or why not? What would be the comparative advantages, disadvantages, costs and/or benefits of this approach?

Q–33. If an SBS Entity were also registered with the Commission as a broker-dealer and an SRO were to conduct a ''material change in business review'' of the SBS Entity's security-based swap business, should the SBS Entity be permitted to rely on the SRO's review and approval of that new business as a basis for its Senior Officer Certification? Would the form of Senior Officer Certification affect the SBS Entity's ability to rely on such a review and approval? If so, how and why? Given that SBS Entities that are also registered as broker-dealers would be required by existing SRO rules to undergo a material change in business review, are there any advantages and disadvantages or costs and benefits associated with reliance on an SRO ''material change in business review'' and approval as a basis for its Senior Officer Certification?

Q–34. Similarly, if an SBS Entity were also involved in swap activity, could that entity use any CFTC, NFA or prudential regulatory agency's review of its swap business to inform its Senior Officer Certification to the Commission? Would the form of Senior Officer Certification affect the SBS Entity's ability to rely on such a review and approval? If so, how and why? Are there any advantages and disadvantages or costs and benefits associated with reliance on a CFTC, NFA or prudential regulatory agency's review of its swap business as a basis for its Senior Officer Certification?

Q–35. Would the Senior Officer Certification requirement effectively require an SBS Entity to employ a third party's services to examine or confirm conclusions required for the certification? Why or why not? If third party services were effectively required, what would be the advantages and disadvantages and costs and benefits of such third party services?

Q–36. Should we include the due inquiry requirement in the rule? Should we instead specify particular steps a senior officer must take to determine whether the SBS Entity has the requisite capabilities?

Q–37. Should the senior officer of an SBS Entity be required to disclose on Form SBSE–C or elsewhere, the nature of the ''due inquiry'' he or she performed before signing Form SBSE–C and his or her resulting findings and conclusions? Why or why not?

Q–38. Should the Commission define its expectations with respect to the ''due inquiry'' a senior officer should perform

[45] *Websters New World Dictionary* 110 (2nd concise ed. 1975).

[46] *See supra* note 32.

[47] *See supra* note 33.

before signing Form SBSE–C? If so, what should be included as part of a senior officer's ''due inquiry?'' Should ''due inquiry'' differ depending on whether the SBS Entity is an SBS Dealer or a major security-based swap participant? Please explain.

Q–39. Is the timeframe within which the proposed Senior Officer Certification would need to be filed appropriate? If not, should the timeframe be shorter or longer and why?

Q–40. Should the Commission eliminate the requirement that a senior officer certify that he or she has documented the process by which he or she reached his or her determination regarding the SBS Entity's capacity? Why or why not? Should the Commission instead simply require that a senior officer document this process and require that the SBS Entity maintain those documents as part of its books and records? Would a senior officer believe that he or she may be second-guessed if, among other circumstances, the senior officer certifies as to an SBS Entity's capabilities but does not retain documentation demonstrating how he or she reached this determination?

iii. Electronic Filing

Paragraph (c) of proposed Rule 15Fb2–1 would address the manner in which the application, certification, and any additional registration documents would be filed with the Commission. Proposed paragraph (c)(1) would require applications, certifications, and any additional documents to be filed electronically. The Commission anticipates that the EDGAR system will be expanded to facilitate registration of SBS Entities because it likely would provide the most cost-effective solution.[48]

Proposed paragraph (c)(2) of proposed Rule 15Fb2–1 would specify the effective date of filing of applications and certifications submitted pursuant to the paragraphs (a) and (b). Subparagraph (c)(2)(i) would provide that an SBS Entity's application submitted pursuant to paragraph (a) would be considered filed only when a complete Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, and all required additional documents are filed with the Commission or its designee. Subparagraph (c)(2)(ii) would provide that an SBS Entity's certification submitted pursuant to paragraph (b) would be considered filed when a complete Form SBSE–C is filed electronically with the Commission or its designee.

If a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted, proposed temporary Rule 15Fb2–2T, described more fully below, would require SBS Entities to file applications and additional documents in paper form.

The Commission requests comment on the proposed method for receiving applications.

Q–41. Should the Commission not require electronic submission of applications? If not, why?

Q–41. Instead of expanding the EDGAR system to receive SBS Entity applications for registration, should the Commission utilize some other system? Please explain. What would be the comparative advantages and disadvantages and costs and benefits of utilizing a system other than EDGAR?

Q–43. What would be the advantages and disadvantages and costs and benefits to prospective applicants of expansion of the EDGAR system to receive SBS Entity applications for registration, especially with respect to the varying levels of familiarity that they may have with this system?

Q–44. Should the Commission designate another entity to facilitate the electronic receipt of applications? Why or why not? If so, what types of entities should we consider?

Q–45. What other issues, if any, should the Commission consider in connection with electronic filing?

iv. Standards for Granting or Denying Applications

Paragraph (d) of proposed Rule 15Fb2–1 would provide that the Commission may grant or deny an application for registration, and would set forth the standards the Commission would use to make that determination. The grant or denial of a conditional registration would depend principally on the completeness of an application, whether the applicant is subject to a statutory disqualification, and whether the Commission is aware of inaccurate statements in the application. The grant or denial of an ongoing registration would also require that the Commission find that the requirements of Exchange Act Section 15F(b) are satisfied. As noted in Part I above, conditionally registered SBS Entities would need to obtain ongoing registration to continue doing a security-based swap business once their conditional registration expires.[49]

When considering an application for conditional registration, proposed paragraph 15Fb2–1(d)(1) provides that the Commission would grant such registration if it finds that the firm's application is complete, except that the Commission may institute proceedings to determine whether to deny conditional registration if it finds that the applicant is subject to a statutory disqualification or the Commission is aware of inaccurate statements in the application. Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission would grant or deny such registration.

Paragraph (d)(2) would allow the Commission to grant ongoing registration to an SBS Entity. It is contemplated that ongoing registration would be sought by firms that have been conditionally registered with the Commission, as well as by new firms entering the marketplace that have not been conditionally registered (*e.g.,* an SBS Dealer seeking registration after the Last Compliance Date). Paragraph (d)(2) would specify that the Commission would grant ongoing registration based on a firm's application and certification. Proposed paragraph (d)(2) would provide that if the Commission granted conditional registration to an SBS Entity, the Commission could grant or deny ongoing registration based on the original application submitted by the SBS Entity, as amended,[50] and the certification submitted to the Commission by the SBS Entity pursuant to paragraph (b). When considering any

[48] To the extent the Commission utilizes the EDGAR system to facilitate registration of SBS Entities, applicants would need to utilize the EDGAR Filer Manual (as defined in 17 CFR 232.11) to facilitate their filing of applications electronically. The EDGAR Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Generally, entities filing documents in electronic format through the EDGAR system must comply with the applicable provisions of the EDGAR Filer Manual in order to assure the timely acceptance and processing of those filings.

[49] Proposed Rule 15Fb3–1(b)(1) would provide that conditional registrations granted pursuant to paragraph (d)(1) of Proposed Rule 15Fb2–1 would expire on the Last Compliance Date for SBS Entities that filed a complete application before the Last Compliance Date, unless the SBS Entity files with the Commission a certification on Form SBSE–C or the Commission extends conditional registration for good cause. Proposed Rule 15Fb3–1(b)(2) would provide that conditional registrations granted pursuant to paragraph (d)(1) of Proposed Rule 15Fb2–1 would expire four months after a major security-based swap participant files a complete application, if it filed such application after the Last Compliance Date, unless the major security-based swap participant files with the Commission a certification on Form SBSE–C. In both cases, if the Senior Officer Certification is filed within the given timeframe, conditional registration is extended by 30 days to allow the Commission time to determine whether to grant or deny ongoing registration.

[50] The SBS Entity may have amended its application to address changes that may have occurred in the intervening period between the date the application was originally filed and the date the Commission evaluates whether ongoing registration should be granted.

application for ongoing registration, Rule 15Fb2–1(d)(2) would provide that the Commission would grant registration if it finds that the requirements of Exchange Act Section 15F(b) are satisfied, except that the Commission may institute proceedings to determine whether ongoing registration should be denied if it does not make such finding or if it finds that the applicant is subject to a statutory disqualification or the Commission is aware of inaccurate statements in the application or certification. Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing, and that at the conclusion of such proceedings, the Commission would grant or deny such registration.

As discussed above, the Commission would notify the entity electronically when conditional or ongoing registration is granted, and would make information regarding registration status publicly available.

The Commission requests comment on these proposed standards of review for granting or denying registration in proposed Rule 15Fb2–1(d).

Q–46. Should the Commission consider using different standards of review to grant conditional registration to SBS Entities who apply before the Last Compliance Date than it uses for major security-based swap participants that apply for conditional registration after the Last Compliance Date?

Q–47. Would the standard requiring denial of an application if the applicant is subject to statutory disqualification cause undue hardship for any possible applicants? If so, how many applicants are likely to be affected? Should this standard be refined or eliminated? If applicants subject to statutory disqualification should be allowed to register, should they be subject to any additional requirements? Please explain.

Q–48. Should the Commission consider broader or more limited standards for granting or denying conditional registration? If so, please describe the standard that should be used and the reasons why it would be more appropriate than the standard proposed.

Q–49. Should the Commission consider using a different standard of review to grant ongoing registration?

Q–50. Should the Commission consider broader or more limited standards for granting or denying ongoing registration? If so, please describe the standard that should be used for granting or denying ongoing registration and the reasons why it would be more appropriate than the standard proposed.

Q–51. Should the Commission staff base its decision only on a review of a firm's application (including any additional documents) and certification or should an on-site examination or some other type of review be considered? If so, what would be the appropriate scope and timing of such a review?

Q–52. Is there a need to lengthen or shorten the proposed timeframes provided for the effectiveness of conditional registration in paragraph (d)(1)? If so, how long should they be?

Q–53. Should the Commission provide additional guidance regarding the process for institution of proceedings? For instance, should the Commission include timeframes within which proceedings would be instituted and/or a decision to grant or deny registration based on those proceedings should be provided (*e.g.,* Exchange Act Section 15(b)(1))? If so, what timeframes or other guidance and why?

v. Request for Comment on Additional Registration Considerations

The Commission requests comment on what, if any, alternative approaches should be considered to meet the Commission's regulatory objectives in the registration process for SBS Entities and how any such alternative approaches would compare to the current proposal.[51] Any such comparison should describe the relative advantages and disadvantages of each alternative, as well as their relative costs and benefits.

Q–54. Should the Commission not adopt a Senior Officer Certification requirement, and instead seek to satisfy itself during the registration process, based on documents the SBS Entity may be able to provide to the Commission, that the SBS Entity has the operational, financial, and/or compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable? What would be the advantages and disadvantages and the costs and benefits of such an alternative process?

Q–55. If the Commission determines to satisfy itself during the registration process, based on documents the SBS Entity may be able to provide to the Commission, that the SBS Entity has the operational, financial, and/or compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, should the Commission identify which documents or categories of documents should be submitted in order to facilitate its review and/or decision? If so, what types of documents (*e.g.,* business plan, written procedures, or annual audit statements) should the Commission identify to facilitate this review and what would be the costs of obtaining or providing such documents?

Q–56. Should the Commission not adopt a Senior Officer Certification requirement, and instead require that an SBS Entity obtain and submit to the Commission an independent third-party review of its operational, financial, and compliance capabilities or its written policies and procedures before granting ongoing registration? What practical considerations—*e.g.,* identifying an appropriate independent third party, measuring the time, cost, and reliability of any such review, addressing the types of information to be shared with a third party and the factors to be considered in its review—would inform whether such a review would be appropriate? What would be the advantages and disadvantages and costs and benefits of requiring a third-party review instead of the Senior Officer Certification?

Q–57. Should the Commission adopt a Senior Officer Certification requirement, and also require that an SBS Entity employ a third party to independently review its capabilities to provide a basis for that Senior Officer Certification? What would be the advantages and disadvantages and costs and benefits of having an SBS Entity's capabilities independently reviewed? If such a review were required, who could perform such a review, what would such review entail, and should the review be submitted to the Commission along with the certification? What would be the comparative advantages, disadvantages, costs and/or benefits of requiring dealers and participants to have their capabilities independently reviewed?

Q–58. If the Commission required that SBS Entities obtain and submit an independent third-party review, what types of entities could perform such a review (*e.g.,* accountants, law firms, consulting firms) and what independence standards should apply for purposes of conducting the review? Could a review or examination by another governmental agency (*e.g.,* the Federal Reserve Board, the CFTC, the Office of the Comptroller of the Currency) or an SRO constitute an independent third party review for these purposes? If not, why? Are there any practical or legal impediments to obtaining or providing to the Commission a review from a third party

[51] As described in footnote 12 above, the Commission is presently reviewing the various standards and processes it uses to facilitate registration, and we would expect that any alternative processes suggested by commenters here would inform that review.

or a governmental agency or an SRO? If so, could these be addressed by contract or otherwise?

Q–59. Are there any other forms of oversight that could or should reinforce or replace the proposed Senior Officer Certification? What would be the comparative advantages, disadvantages, costs and/or benefits of such an approach?

Q–60. Are there other approaches to registration the Commission should consider that, in a cost-effective manner, would both fulfill the statutory mandate to protect investors, maintain fair, orderly, and efficient markets, facilitate capital formation, and ensure that the security-based swap market smoothly transitions from a generally unregulated marketplace to one that is regulated and subject to appropriate oversight? If so, please explain which ones and why.

Q–61. If the Commission were to consider an approach to registration that required something other than a Senior Officer Certification, would SBS Entities need more time to gather, obtain, or submit any documents, third party review, or other items than we have proposed for submission of the Senior Officer Certification (*i.e.,* on or before the Last Compliance Date or, for participants that apply after the Last Compliance Date, within four months after it files its completed application)? If so why or why not?

In the Intermediary Definitions Release,[52] the Commission acknowledged that the statutory definitions include a provision stating that a person may be designated as a dealer for one or more types, classes or categories of security-based swaps, or activities. Further, that release indicated that one commenter stated that the Commissions should allow a person to register as a swap dealer or SBS Dealer for only a limited set of types, classes or categories of swaps or security-based swaps.

Q–62. Should the registration process be expanded in any way to allow firms to choose whether they register in a ''full'' or ''limited'' capacity? If so, how?

Q–63. What additional information should be elicited by the proposed forms to provide the Commission with sufficient information to determine whether limited (as opposed to full) registration is appropriate? Should there be separate forms for firms to apply for limited, as opposed to full, registration? Should there instead be a separate schedule to the forms as proposed? Should the timing differ and, if so, how and why?

Q–64. Should an applicant for limited registration be required to provide the Commission with a different senior officer or other certification? If so, how should the certification differ?

Q–65. Should the Commission apply a different standard of review when considering whether to grant or deny limited registration to an applicant? If so, which one and why?

Q–66. If the Commission were to grant an SBS Entity's application for limited registration and the SBS Entity later determined that it would prefer to be fully registered, how should this transition be effected?

Please provide as much detail as possible in commenting on which of the above referenced courses of action should be pursued. Please also provide information regarding possible costs or benefits of each of these alternatives.

2. Amendments to Application Forms: Proposed Rule 15Fb2–3

Proposed Rule 15Fb2–3 would require an SBS Entity to promptly[53] amend its Form SBSE, Form SBSE–A, Form SBSE–BD, as applicable, to correct any information it determines is, or has become, inaccurate for any reason.[54] The Commission preliminarily believes this proposed Rule is necessary in order for it to have access to accurate information as part of its ongoing oversight of SBS Entities.

The Commission requests comment on all aspects of proposed Rule 15Fb2–3.

Q–67. Should the Commission only require SBS Entities to promptly update their Forms SBSE, SBSE–A, and SBSE–BD when they become ''materially'' inaccurate?

Q–68. Should SBS Entities instead be required to periodically update these forms and, if so, what would be an appropriate timeframe for updating (*e.g.,* monthly, quarterly, annually)? What may be the comparative costs and benefits of periodic updating vs. ''prompt'' updating?

Q–69. If the Commission requires SBS Entities to promptly update their Forms SBSE, SBSE–A, and SBSE–BD when they become materially inaccurate, should it also require that all information on the forms be updated periodically?

Q–70. Would it be appropriate for the Commission to require that certain information be updated more frequently than other information? If so, please describe what information should be subject to more frequent updates and why, and the frequency with which each such item should be updated.

B. Associated Persons

1. Certification

Paragraph (b)(6) of Exchange Act Section 15F generally prohibits SBS Entities from permitting any of their associated persons[55] who are subject to a ''statutory disqualification'' (as defined in Exchange Act Section 3(a)(39)) to effect or be involved in effecting[56] security-based swaps on behalf of the SBS Entity if the SBS Entity knew, or in the exercise of reasonable care should have known, of the statutory disqualification. To provide SBS Entities with a mechanism to assess their compliance with this provision, paragraph (a) of proposed Rule 15Fb6–1 would require that an SBS Entity certify, on Schedule G of Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, that no person associated with it who effects or is involved in effecting security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act.[57] If an associated person later becomes

[52] Intermediary Definitions Release, *supra* note 5, at 80182.

[53] For purposes of Rule 15b3–1, the Commission has interpreted the term ''promptly'' to mean within 30 days. (*In the Matter of First Guarantor Securities, Inc.,* Exchange Act Release No. 32725, 51 S.E.C. 612 (Aug. 6, 1993), which states, ''Absent extraordinary circumstances, an amendment to Form BD filed beyond thirty days from the change in information cannot be considered 'promptly' filed in accordance with Rule 15b3–1.'') We preliminarily believe this standard is also appropriate with respect to the use of this term in proposed Rule 15Fb2–3.

[54] This proposed rule is based on Exchange Act Rule 15b3–1, which is applicable to registered brokers and dealers and has worked well to assure that broker-dealers promptly amend their applications.

[55] 15 U.S.C. 78c(a)(70) generally defines the term ''person associated with'' an SBS Entity to include: (i) Any partner, officer, director, or branch manager of an SBS Entity (or any person occupying a similar status or performing similar functions); (ii) any person directly or indirectly controlling, controlled by, or under common control with an SBS Entity; or (iii) any employee of an SBS Entity. However, it generally excludes persons whose functions are solely clerical or ministerial.

[56] The Commission believes that associated persons ''involved in effecting'' security-based swaps would include, but not be limited to, persons involved in drafting and negotiating master agreements and confirmations, persons recommending security-based swap transactions to counterparties, persons on a trading desk actively involved in effecting security-based swap transactions, persons pricing security-based swap positions and managing collateral for the SBS Entity, and persons assuring that the SBS Entity's security-based swap business operates in compliance with applicable regulations. In short, the term would encompass persons engaged in functions necessary to facilitate the SBS Entity's security-based swap business.

[57] Proposed Rule 15Fb1–1(b), described below, would require each SBS Entity to maintain a manually signed copy of this certification as part of its books and records until at least three years after the certification has been replaced or is no longer effective.

statutorily disqualified, the SBS Entity would need to ensure that the associated person does not continue to effect or be involved in effecting security-based swaps on the SBS Entity's behalf and/or promptly amend its Schedule G in accordance with proposed Rule 15Fb2–3.

To support this certification requirement, paragraph (b) of proposed Rule 15Fb6–1 would require SBS Entities to obtain a questionnaire or application for employment executed by each of its associated persons that effect or are involved in effecting security-based swaps on its behalf; such questionnaire or application would serve as a basis for a background check of the associated person to determine whether the associated person is statutorily disqualified. The questionnaires or applications would be required to contain, at a minimum, the following information: (1) The associated person's name, address, social security number, Central Registration Depository (''CRD'') number (if any), Investment Adviser Registration Depository (''IARD'') number (if any), and the starting date of the associated person's employment or other association with the SBS Entity; (2) the associated person's date of birth; (3) a complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time; (4) a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, by any national securities exchange or national securities association, or by a foreign financial regulatory authority including any finding that the associated person was a cause of any disciplinary action or had violated any law; (5) a record of any denial, suspension, expulsion or revocation of membership or registration of any broker, dealer, SBS Dealer, or major security-based swap participant with which the associated person was associated in any capacity when such action was taken; (6) a record of any permanent or temporary injunction entered against the associated person or any broker, dealer, SBS Dealer, or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered; (7) a record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities (including security-based swaps), futures or commodities (including swaps), banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and (8) a record of any other name or names by which the associated person has been known or which the associated person has used.

The Commission believes that it is standard in the financial services industry for firms to request this information on employment questionnaires. This information is similar to the information identified in Exchange Act Rule 17a–3(a)(12)(i) and required to be collected by broker-dealers with respect to their associated persons. Additionally, Form U–4 contains all the information needed pursuant to Exchange Act Rule 17a–3(a)(12)(i) and would fulfill the requirement to obtain a questionnaire or application specified in Rule 15Fb6–1(b). Rule 17a–3(a)(12)(i) and Form U–4 provide broker-dealers with information through which they can perform background checks on associated persons necessary to assure that those associated persons are not subject to statutory disqualification. Moreover, the NFA collects similar data on associated persons of its members through the Form 8–R. Consequently, we preliminarily believe it would be appropriate for SBS Entities to collect this information on associated persons to allow them to conduct background checks so that they can comply with the prohibition in Section 15F(b)(6) of the Exchange Act from allowing statutorily disqualified individuals to effect or be involved in effecting SBS transactions on their behalf.

In addition, paragraph (b) of proposed Rule 15Fb6–1 would require that the SBS Entity's chief compliance officer (''CCO'') (appointed in accordance with Exchange Act Section 15F(k)), or his or her designee, review and sign each questionnaire or application.[58] This provision is designed to help ensure that due regard is being paid to this requirement to collect information on employees and to help ensure that none of the SBS Entity's employees who effect or are involved in effecting security-based swaps on the SBS Entity's behalf is subject to statutory disqualification. Moreover, to the extent the SBS Entity's CCO, or his or her designee, must sign the certification, this requirement helps ensure that the CCO is aware of this statutory prohibition and is familiar with the SBS Entity's procedures to comply with it.

Finally, paragraph (c) of proposed paragraph 15Fb6–1 would require that each SBS Entity maintain the questionnaires and applications for employment obtained pursuant to paragraph (b) as part of its books and records for at least three years after the associated person has terminated his or her association with the SBS Entity. It is likely that SBS Entities would retain these records for business purposes; however, this requirement will assure that the questionnaires and applications are available to the Commission during inspections and examinations.

The Commission requests comment on proposed Rule 15Fb6–1.

Q–71. Would the information regarding associated persons in paragraph (b) of the proposed rule be sufficient for a CCO to make the required certification? Why or why not?

Q–72. Should the information requirements in paragraph (b) be modified in any way?

Q–73. Should applicants be required to obtain any additional information not specified in proposed paragraph (b)?

Q–74. Should the Commission require that SBS Entities perform background checks on their employees (*e.g.,* to confirm that their associated persons do not have a criminal history) in addition to obtaining questionnaires or applications? Why or why not?

Q–75. If not, what other process could the Commission use to help ensure that an applicant is not violating Exchange Act Section 15F(b)(6)?

Q–76. Should the Commission require applicants to require credit checks on associated persons? Why or why not?

Q–77. What, if any, practical or legal limitations or barriers exist that would hinder an applicant from obtaining background or credit checks?

Q–78. Should the Commission require applicants to obtain and process fingerprints of their associated persons that will be effecting or involved in effecting security-based swaps on the applicant's behalf? Why or why not?

Q–79. What, if any, practical or legal limitations or barriers exist that would hinder an applicant from obtaining or running fingerprints of associated persons?

[58] Applicants may already have this information on their employees, but may not have a CCO, as required pursuant to new Section 15F(k) of the Act, until the effective date of rules the Commission may promulgate under Section 15F(k). Security-based swap dealers and major security-based swap participants could be conditionally registered even if a CCO has not signed each associated person's questionnaire or application.

Q–80. Should the Commission instead treat the provisions of Section 15F(b)(6) as essentially self-executing and permit SBS Entities to determine how best to screen associated persons to ensure they are not subject to a statutory disqualification (provided that they exercise reasonable care in so doing) and require that an SBS Entity create and maintain reasonable policies and procedures for determining whether an associated person is subject to a statutory disqualification? Why or why not?

Q–81. What would be the benefits and risks of this approach?

Q–82. Would this approach be more or less burdensome for SBS Entities to administer?

Q–83. Would SBS Entities nevertheless implement an approach similar to that required under the proposed rule?

Q–84. How might an SBS Entity comply with Section 15F(b)(6) in ways that differ from what is set forth in the proposed rule?

Q–85. Would this alternative policies and procedures approach provide SBS Entities sufficient legal certainty about whether they have properly complied with Section 15F(b)(6)?

Q–86. Should the Commission require that associated persons of SBS Entities that effect or are involved in effecting security-based swaps on behalf of the SBS Entity register directly with it? What would be the costs or benefits involved with registration of such SBS Entity associated persons? What, if any, practical or legal limitations or barriers exist to this approach?

Q–87. Are there other approaches to implementing Section 15F(b)(6) that the Commission should consider? Please explain.

Q–88. Should the Commission take a different view regarding which associated persons should be considered to be ''involved in effecting'' security-based swaps on behalf of the SBS Entity (*see* footnote 34)? If so, should additional categories of associated persons be included or should certain identified categories of associated persons be excluded? For what reason(s)?

2. Alternative Process

Section 15F(b)(6) expressly authorizes the Commission to establish exceptions to this prohibition by rule, regulation, or order.[59] This authority is similar to authority provided to the Commission with respect to the ''traditional'' securities industry, *i.e.,* the industry regulated under the Exchange Act prior to the Dodd-Frank Act amendments. This existing Exchange Act authority permits SROs, subject to Commission review, to allow, among other things, a person subject to a statutory disqualification to associate with a broker-dealer.[60]

Similarly, Commission Rule 193 (Applications by Barred Individuals for Consent to Associate) provides a process by which persons that are not regulated by a SRO (*e.g.,* employees of an investment adviser, an investment company, or a transfer agent) can seek to reenter the traditional securities industry despite previously being barred by the Commission.[61]

The Commission requests comment on whether it should develop an alternative process to allow associated persons of SBS Entities who are subject to a statutory disqualification to effect or be involved in effecting security-based swaps on their behalf.

Q–89. How many SBS Entities and associated persons thereof are likely to be affected if the Commission does not provide an exemptive process?

Q–90. Is it possible that an associated person that is an entity (*i.e.,* not a natural person) that effects or is involved in effecting security-based swaps on behalf of an SBS Entity would be subject to a statutory disqualification? If so, should the Commission consider excepting any such persons from the prohibition in Section 15F(b)(6)? Under what circumstances and why?

Q–91. Should the Commission except such persons globally (*e.g.,* by a blanket rule) or on an individual basis (*e.g.,* via a Rule 193-type process)? What would be the possible costs or benefits of each?

Q–92. Are there certain statutorily disqualified persons who should not be permitted to remain associated with an SBS Dealer or major security-based swap participant based upon the nature of the disqualification?

Q–93. Should there be any differentiation in relief based upon the nature of the person, *e.g.* a natural person or an entity? If so, what type of differentiation and why?

C. Termination of Registration

1. Expiration: Proposed Rule 15Fb3–1

Exchange Act Section 15F(b)(3) provides that ''each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.'' Although there is no Exchange Act parallel, this provision is similar to Commodity Exchange Act Section 6f(a)(1), which provides that ''each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe. * * *'' CFTC Rule 3.10(b) provides, among other things, that persons registered with the CFTC pursuant to CFTC Rule 3.10 ''will continue to be so registered until the effective date of any revocation or withdrawal of such registration.'' Paragraph (a) of proposed Rule 15Fb3–1 would establish the same continuous registration as is set forth in CFTC Rule 3.10(b), and would provide that registered SBS Entities would ''continue to be so registered until the effective date of any cancellation, revocation or withdrawal of such registration or any other event the Commission determines should trigger expiration.''

Q–94. Does CFTC Rule 3.10(b) provide an appropriate model to implement Exchange Act Section 15F(b)(3)? Why or why not?

Q–95. Should the Commission instead allow initial SBS Entity registrations to expire and require SBS Entities to re-register to become an ongoing registrant (while providing a grace period for this re-registration to occur)? If so, what would be an appropriate amount of time before expiration (*e.g.,* one year, two years, five years, or some other time period)?

Q–96. Alternatively, should the Commission allow SBS Entity registrations to expire periodically and require SBS Entities to re-register periodically (*i.e.,* requiring registrants to ''re-up'' indefinitely on a regular basis)? If so, what would be an appropriate amount of time before expiration (*e.g.,* annually, every two years, every five years, or some other time period)? What would be the advantages, disadvantages, costs and benefits of such an approach?

Q–97. Via what mechanism should any such re-registration be facilitated? For instance, should an SBS Entity be required to re-apply by filing a new application? Alternatively, should an SBS Entity be required to re-certify by filing a new Senior Officer Certification?

[59] 15 U.S.C. 78o–10(b)(6).

[60] When such a person seeks admission to or continuance in membership or association, the Commission and the SRO have the opportunity to give special review to such person and to restrict or prevent entry into, or continuance in, the business where appropriate in the public interest and for the protection of investors. *See* Senate Comm. on Banking, Housing, and Urban Affairs, The Securities Act Amendments of 1989, S. Rep. No. 101–105, at 39 (1989); Provision for Notices by Self-Regulatory Organizations of Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons, 42 FR 36409 (Jul. 14, 1977) (adopting rule 19h–1 under the Exchange Act, 17 CFR 240.19h–1, and providing rules for process of filing notices, content of notices, and Commission determination).

[61] 17 CFR 201.193.

Would some other mechanism be more appropriate? How should any such mechanism take into account the initial application and registration of an SBS Entity? How should any such mechanism take into account the SBS Entity's compliance with applicable rules during the period prior to the re-registration? Would any type of non-compliance during such period justify denial of re-registration, or should the nature of the non-compliance and any remedial actions be taken into account?

Q–98. If re-registration is facilitated by re-certification, would the proposed form of Senior Officer Certification on Form SBSE–C be the appropriate or would some other form or language be more appropriate? For instance, should any re-certification for SBS Entities be drafted to more closely follow the certification requirement proposed for municipal advisors (wherein each municipal advisor certifies annually that it has met its regulatory obligations over the prior period)?

Q–99. If periodic re-registration were required, should re-registration be based on an SBS Entity's original registration date or should it be triggered by a calendar date (*e.g.,* on December 31)?

Q–100. Should the same standard of review that applies to ongoing registration apply in the context of re-registration (*see* proposed rule 15Fb2–1(d)(2))? If not, what alternative standard of review would be more appropriate and why?

Q–101. Would any such expiration and re-registration requirement provide the Commission with a greater ability to enforce compliance with applicable regulations? Why or why not?

As discussed in Part I above, under paragraph (b)(1) of proposed Rule 15Fb3–1, conditional registrations granted by the Commission to an SBS Entity that applies for registration during the transitional period in accordance with Rule 15Fb2–1(b) would expire on the Last Compliance Date, unless the SBS Entity files a Senior Officer Certification with the Commission or its designee on or before the Last Compliance Date; in which case its conditional registration would be extended for an additional thirty days (which should allow the Commission staff sufficient time to review the SBS Entity's application and certification and determine whether to grant or deny ongoing registration). Paragraph (b)(2) of proposed Rule 15Fb3–1 would provide that conditional registrations granted by the Commission to major security-based swap participants that file applications for registration after the Last Compliance Date would expire four months after the major security-based swap participant files its completed application with the Commission unless the major security-based swap participant files a Senior Officer Certification with the Commission or its designee within that four month period; in which case its conditional registration would be extended for an additional thirty days. Pursuant to paragraph (c) of proposed Rule 15Fb3–1, the Commission could extend conditional registration for good cause.

Q–102. Would these timeframes be sufficient to allow conditional registrants to complete—and the Commission to grant or deny—ongoing registration? Why or why not?

Q–103. What circumstances should the Commission consider in determining whether good cause exists to extend an SBS Entity's conditional registration? Why? Should these circumstances include situations in which the Commission may need additional time to review an SBS Entity's application and certification? Why or why not?

Q–104. Should the Commission require that an SBS Entity follow a particular process to request an extension of the SBS Entity's conditional registration? For instance, should an SBS Entity be required to submit a letter requesting an extension and setting forth the reasons why an extension is necessary? If so, what process would be appropriate and why?

2. Withdrawal: Proposed Rule 15Fb3–2

Proposed Rule 15Fb3–2 would provide a process by which an SBS Entity could withdraw from registration with the Commission.[62] The proposed rule would require an SBS Entity to file a notice of withdrawal from registration electronically on Form SBSE–W (described in more detail below) in accordance with the instructions to the Form. It also would require that an SBS Entity amend its Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, in accordance with proposed Rule 15Fb2–3 to update any inaccurate information prior to filing its notice of withdrawal from registration.

Paragraph (b) of proposed Rule 15Fb3–2 would provide that a notice of withdrawal from registration filed by an SBS Entity would generally become effective on the 60th day after the SBS Entity files Form SBSE–W. However, based on its experience with registered broker-dealers, the Commission recognizes that there may be circumstances in which it would be advisable to provide flexibility in scheduling the termination of business operations to registered entities seeking to withdraw from registration. Further, the Commission may determine that it would be appropriate for a registered entity that is under investigation by the Commission to maintain its registered status in order to allow the Commission to conclude a pending investigation without prematurely instituting a proceeding to impose conditions on the registered entity's withdrawal. In such instances, it may better serve the interests of all parties to have the registered entity consent to an extension of the effective date of the registered entity's withdrawal from registration beyond the general 60-day period provided for in the proposed rule. It also may be appropriate to permit the Commission to extend the effective date for a period if it determines, by order, that it is necessary or appropriate in the public interest or for the protection of investors.

Thus, paragraph (b) of proposed Rule 15Fb3–2 would identify specific situations in which notices of withdrawal from registration will not become effective on the 60th day. These would include situations where (1) The Commission determines that a shorter period is appropriate, (2) the SBS Entity consents to a longer period, (3) the Commission, by order, determines that a longer period is necessary or appropriate in the public interest or for the protection of investors, and (4) the Form SBSE–W is filed subsequent to the date of the issuance of a Commission order instituting proceedings to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the SBS Entity. Finally, paragraph (b) of proposed Rule 15Fb3–2 would provide that if the Commission institutes proceedings prior to the effective date of Form SBSE–W (1) To censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the SBS Entity, or (2) to impose terms or conditions upon the SBS Entity's withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

The Commission requests comment on all aspects of proposed Rule 15Fb3–2.

Q–105. Would the proposed withdrawal process be workable for SBS Entities? Are the proposed timeframes reasonable for these entities? Why or why not?

[62] This provision is similar to Exchange Act Rule 15b6–1, which has historically worked well to facilitate broker-dealer withdrawals.

Q–106. Under what other circumstances, if any, should the Commission shorten or lengthen the timeframe for withdrawal?

3. Cancellation and Revocation: Proposed Rule 15Fb3–3

Proposed Rule 15Fb3–3 would provide the Commission with the ability to either cancel or revoke a registered SBS Entity's registration. More specifically, paragraph (a) of proposed Rule 15Fb3–3 would allow the Commission to cancel an SBS Entity's registration if the Commission finds that it is no longer in existence or has ceased to do business as an SBS Entity.[63] The cancellation process outlined in paragraph (a) is intended to be ministerial in nature, and not a means to revoke without due process the registration of an SBS Entity that may have violated federal securities laws. This provision is designed to help the Commission allocate its examination and other resources to entities that are actively engaged in business regulated by the Commission.

Paragraph (b) of proposed Rule 15Fb3–3 cross-references the Exchange Act to clarify that the Commission shall censure, place limitations on the activities, functions, or operations of, or revoke (on a permanent or temporary basis) the registration of any SBS Dealer or major security-based swap participant that has registered with the Commission if it makes a finding as specified in Section 15F(l)(2) of the Exchange Act.[64]

Q–107. Is the proposed provision for cancellation of registration appropriate in the context of SBS Entities? Why or why not?

Q–108. Would there be occasion for SBS Entities to have an extended pause in their businesses such that they might appear to have ceased to do business? If so, should the Commission provide that such entities could notify the Commission of their intent to stay in business, notwithstanding their lack of current activities? Should such entities later inform the Commission when they become active?

Q–109. Should there be a time limit on how long such an SBS Entity could retain its registration with the Commission while it is in a ''dormant'' state?

Q–110. Does the proposed provision for revocation in paragraph (b) provide sufficient procedural safeguards for registered SBS Entities? If not, what procedures could be added to provide additional safeguards?

D. Special Requirements for Nonresident SBS Entities

Proposed Rule 15Fb2–4 would require, among other things, that nonresident SBS Entities that are required to register with the Commission[65] (1) Appoint an agent for service of process in the United States (other than the Commission or a Commission member, official or employee) upon whom may be served any process, pleadings, or other papers in any action brought against the nonresident SBS Entity, (2) furnish the Commission with the identity and address of its agent for services of process, (3) certify that the firm can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission, and (4) provide the Commission with an opinion of counsel concurring that the firm can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission.

Paragraph (a) of proposed Rule 15Fb2–4 would define the term ''nonresident security-based swap dealer'' and ''nonresident major security-based swap participant,'' for purposes of Rule 15Fb2–4. Under this definition, an SBS Entity that is incorporated any place that is not in the United States would be considered to be a nonresident. In addition, an SBS Entity that has its principal place of business in any place not in the United States would be considered to be a nonresident.

Q–111. Should the terms ''nonresident security-based swap dealer'' and ''nonresident major security-based swap participant'' be defined differently and, if so, how should the definitions be amended and why?

1. United States Agent for Service of Process

Paragraphs (b)(1) and (2) of proposed Rule 15Fb2–4 would require that each nonresident SBS Entity registered or registering with the Commission obtain a written irrevocable consent and power of attorney appointing an agent for service of process in the United States (other than the Commission or a Commission member, official or employee) upon whom may be served any process, pleadings, or other papers in any action brought against the nonresident SBS Entity and furnish the Commission with the identity and address of its agent for services of process on Schedule F[66] to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable.[67] These requirements are important to facilitate the Commission and others (for example, the U.S. Department of Justice and any other agency with the power to enforce the Exchange Act) to serve process on a nonresident SBS Entity to enforce the Exchange Act. Paragraph (b)(4) of the proposed rule also would require that registered nonresident SBS Entities must promptly appoint a successor agent if it discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on its behalf.[68] Further, proposed paragraph (b)(3) would require that registered SBS Entities promptly inform the Commission, through an amendment of the Schedule F of Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, of any change to either its agent for service of process or the name or address of its existing agent for service of process. Finally, paragraph (b)(5) of proposed Rule 15Fb2–4 would require that the registered nonresident

[63] This provision is similar to Exchange Act Section 15(b)(5).

[64] 15 U.S.C. 78o–10(l).

[65] The Commission has received questions as to how the registration requirements for SBS Entities would apply to non-U.S. persons. The Commission is continuing to consider the application of Title VII of the Dodd-Frank Act to non-U.S. persons and intends to address these issues in a separate release, and notes that the proposals described herein with respect to nonresident SBS Entities will be informed by the considerations and comments raised in connection with that release. *See, e.g.,* Letter from Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, and UBS AG to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, SEC, and Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (Jan. 11, 2011); Letter from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers, to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC (Jan. 10, 2011); Letter from Barclays Bank PLC, BNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBC, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, The Toronto-Dominion Bank, and UBS AG to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, SEC, and Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (Feb. 17, 2011); and Letter from Laura J. Schisgall, Managing Director and Senior Counsel, Société Générale, to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC (Feb. 18, 2011). The Commission is also considering the approach outlined in the letter from Katsunori Mikuniya, Commissioner & Chief Executive, Financial Services Agency, Government of Japan, to Gary Gensler, Chairman, U.S. Commodity Futures Trading Commission (Apr. 1, 2011).

[66] The Schedule F is discussed more fully below as part of the discussion of the Forms.

[67] Paragraphs (b)(1) and (b)(2) of proposed Rule 15Fb2–4, respectively.

[68] Paragraph (b)(3) of proposed Rule 15Fb2–4.

SBS Entity maintain, as part of its books and records, the agreement identified in paragraph (b)(1) for at least three years after the agreement is terminated.

The Commission requests comment on all aspects of the requirement for nonresident SBS Entities to appoint an agent in the United States to receive service of process, pleadings or papers in any action brought against the nonresident SBS Entity.

Q–112. Should only certain types of entities (such as law firms) be allowed to act as U.S. agent for service of process?

Q–113. Should these requirements be expanded to require nonresident SBS Entities to appoint a U.S. agent for purposes of all potential legal proceedings, including those from non-governmental entities, or is this already adequately addressed by contract?

Q–114. Should the Commission require nonresident SBS Entities to provide the Commission with additional information not required of U.S. SBS Entities, such as verification of any non-U.S. registrations?

Q–115. Is the three year time frame for which an SBS Entity would be required to maintain, as part of its books and records, the agreement appointing its agent for service of process appropriate? Would a longer or shorter time period be more appropriate?

2. Access to Books and Records of Nonresident SBS Entity

Proposed Rule 15Fb2–4(c)(1), regarding access to books and records, would require that each nonresident SBS Entity registering with the Commission [69] provide an opinion of counsel and certify on Schedule F of Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, that it can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission.[70] The Commission preliminarily believes that the nonresident SBS Entity certification and supporting opinion of counsel is important to confirm that each nonresident SBS Entity located overseas has taken the necessary steps to be in the position to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission. To effectively fulfill its regulatory oversight responsibilities with respect to nonresident SBS Entities registered with it, the Commission must have access to those entities' records and the ability to examine them; however, certain foreign jurisdictions may have laws that complicate the ability of financial institutions such as nonresident SBS Entities located in their jurisdictions from sharing and/or transferring certain information including personal financial data of individuals that the financial institutions come to possess from third persons (*e.g.,* personal data relating to the identity of market participants or their customers). The required certification and opinion of counsel regarding the nonresident SBS Entity's ability to provide prompt access to books and records and to be subject to inspection and examination will allow the Commission to better evaluate a nonresident SBS Entity's ability to meet the requirements of registration and ongoing supervision. Failure to make this certification or provide an opinion of counsel may be a basis for the Commission to deny an application for registration.

Paragraph (c)(2) of proposed Rule 15Fb2–4 would require that registered nonresident SBS Entities re-certify, on Schedule F to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, within 90 days after any changes in the legal or regulatory framework that would impact the nonresident SBS Entity's ability to provide, or the manner in which it provides, the Commission prompt access to its books and records or impacts the Commission's ability to inspect and examine the nonresident SBS Entity. The re-certification would be required to include a revised opinion of counsel describing how, as a matter of law, the entity will continue to meet its obligations to provide the Commission with prompt access to its books and records and to be subject to Commission inspection and examination under the new regulatory regime. If a registered nonresident SBS Entity becomes unable to comply with this certification because of such changes, or otherwise, then this may be a basis for the Commission to revoke the nonresident SBS Entity's registration.

The Commission requests comment on all aspects of the certification and opinion of counsel requirements contained in paragraph (c) of proposed Rule 15Fb2–4.

Q–116. Will this certification requirement provide the Commission with adequate assurance that nonresident SBS Entities will be able to provide the Commission with access to records?

Q–117. Should the Commission specify that the opinion of counsel contain any additional information? For instance, should the requirement clarify that the opinion of counsel reference the applicable local law or, in the case of an amendment, the manner in which the local law was amended?

Q–118. As described above, certain foreign jurisdictions may have laws that complicate the ability of financial institutions such as nonresident SBS Entities located in their jurisdictions from sharing and/or transferring certain information. What impact may the requirement that a nonresident SBS Entity obtain and submit the described opinion of counsel have on a nonresident SBS Entity's ability to register in the United States in such circumstances or otherwise? Are there circumstances where it would be impossible or impractical for the nonresident SBS Entity to obtain the opinion of counsel? Would a nonresident SBS Entity need to cease doing business in the United States or with U.S. persons solely because of this requirement? Why or why not?

Q–119. If the described opinion of counsel were not required, what alternatives would the Commission have to assure that it is able to access a registered nonresident SBS Entity's books and records and examine the registered nonresident SBS Entity in order to effectively fulfill its oversight responsibilities? What are the relative advantages or disadvantages of any such alternatives?

Q–120. Should the requirement that an SBS Entity obtain an amended opinion of counsel and re-certify its ability to provide the Commission with access to records be limited in any way?

Q–121. The Commission has received three comment letters containing alternative suggestions as to how the Commission should accommodate a foreign bank with a U.S. affiliate that organizes its business so that it could engage in security-based swap transactions with U.S. investors while being subject to a more limited regulatory regime under the Exchange Act in recognition that it is subject to regulation in its home country.[71] The

[69] *See supra* note 65.

[70] In accordance with Proposed Rule 15Fb1–1(b), the SBS Entity will need to maintain a manually signed copy of this certification as part of its books and records until at least three years after the certification has been replaced or is no longer effective.

[71] *See* letter to Mr. David A. Stawick, Secretary, CFTC, Ms. Elizabeth M. Murphy, Secretary, Commission, and Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System from Davis Polk & Wardwell LLP, on behalf of Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Société Générale and UBS AG, dated January 11, 2011 (*http://www.sec.gov/comments/s7-39-10/s73910-9.pdf*); letter to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated January 10, 2011 (*http://www.sec.gov/comments/s7-39-10/*

Commission requests comment regarding whether the requirement that an applicant provide an opinion of counsel should be amended to recognize or facilitate such arrangements. If so, why and in what way should the requirement be modified? If not, why? Would an amended requirement provide the Commission with adequate assurance that nonresident SBS Entities will be able to provide the Commission with sufficient access to records?

E. Special Situations

1. Succession: Proposed Rule 15Fb2–5

Proposed Rule 15Fb2–5 would provide a process through which an SBS Entity could succeed to the business of another SBS Entity.[72] Consistent with the use of the term in connection with broker-dealer registration, we propose to consider a ''succession'' to mean that a successor firm acquires or assumes substantially all of the assets and liabilities of the predecessor firm.[73]

Proposed Rule 15Fb2–5 would provide that, if an SBS Entity succeeds to and continues the business of another SBS Entity, the registration of the predecessor SBS Entity will remain effective as the registration of the successor if the successor files an application for registration in accordance with Rule 15Fb2–1 within 30 days after such succession, and the predecessor files a notice of withdrawal from registration on Form SBSE–W.

Paragraph (b) of Proposed Rule 15Fb2–5 would allow a successor firm that succeeds to the business of another for minor reasons, where the ownership or control of the SBS Entity does not change (*e.g.,* solely because it is changing its date or state of incorporation, form of organization, or the composition of a partnership), to simply amend the registration of the predecessor SBS Entity on Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, within 30 days after the change.

Q–122. Are these proposed successor rules appropriate for SBS Entities?

Q–123. Should the concept of succession be the same as used in the context of broker-dealer registration? Commenters should explain why any differences would be appropriate.

Q–124. Are the timeframes provided, which seem to work well in the broker-dealer context, appropriate with respect to SBS Entity succession?

2. Insolvency: Proposed Rule 15Fb2–6

Proposed Rule 15Fb2–6 would provide a process through which an executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy or other fiduciary appointed or qualified by order, judgment or decree of a court of competent jurisdiction could continue the business of an SBS Entity.[74] This is important to allow a fiduciary time to close-out positions and/or wind down an SBS Entity's business. Under the proposed rule, the fiduciary would be required to file with the Commission, within 30 days after entering upon the performance of his or her duties, an amended Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, indicating the fiduciary's position with respect to management of the SBS Entity, along with a copy of the order, judgment, decree, or other document appointing the fiduciary.

Q–125. Is proposed Rule 15Fb2–6 appropriate for SBS Entities? If another process would be more appropriate, please describe it.

Q–126. Should fiduciaries be able to continue the business of an SBS Entity to facilitate an orderly liquidation? If not, why?

Q–127. Is the proposed 30-day timeframe, which is consistent with the Rule 15b1–4 requirement for broker-dealer fiduciaries, sufficient for an SBS Entity fiduciary to make the required filing with the Commission?

Q–128. Do the close-out provisions in the agreements between the parties provide sufficient ability for counterparties to close-out open positions in the event of an SBS Entity default so that a fiduciary would not be needed? Please explain.

F. Technical Rules

1. Electronic Signatures

Proposed Rule 15Fb1–1 would specify the format required for signatures to, or within, electronic submissions (including signatories within the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1, discussed below). In addition, paragraph (b) of proposed Rule 15Fb1–1 would require that each signatory to such an electronic filing manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing either before or at the time the electronic filing is made. Paragraph (b) would also require that the SBS Entity create the manually signed document when the electronic form is submitted, and furnish a copy of such document to the Commission upon request. Paragraph (c) of proposed Rule 15Fb1–1 would prohibit a person required to provide a signature on an electronic submission from having another person sign the form or certification on his or her behalf pursuant to a power of attorney or other form of confirming authority. Finally, paragraph (d) would require that the SBS Entity retain the manually signed document associated with Schedules F and G of Forms SBSE, SBSE–A, or SBSE–BD, as appropriate, until at least three years after the form or certification has been replaced or is no longer effective, and the manually signed document associated with Form SBSE–C until at least three years after the Form was submitted to the Commission.

This proposed rule is based on Section 302 of Regulation S–T,[75] and is designed to require standard formatting of electronic signatures and provide the Commission with the ability to obtain additional documents to verify those signatures. In addition, paragraph (c) of proposed Rule 15Fb1–1 is based on paragraph (d) of Exchange Act Rule 15d–14. The Commission believes that this paragraph is necessary to assure that persons signing certifications can be held responsible for their statements.

The Commission requests comment on all aspects of Rule 15b1–1.

Q–129. Is it adequate to require an SBS Entity to maintain a signed copy of each certification as part of its books and records so that it is available for examiners to review?

Q–130. Should the Commission require SBS Entities to file the original certifications with the Commission?

Q–131. Are the timeframes for retention of manually signed documents appropriate? Why or why not? If not, what timeframe or timeframes may be more appropriate and why?

s73910-8.pdf); and letter to Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, CFTC, John M. Ramsay, Deputy Director, Division of Trading and Markets, Commission, and Mark E. Van Der Weide, Senior Associate Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, dated November 23, 2010 (*http://www.sec.gov/comments/s7-34-10/s73410-3.pdf*).

[72] This proposed rule is based on Exchange Act Rule 15b1–3, which is applicable to registered brokers and dealers and has worked well to facilitate succession of registrants.

[73] *Registration of Successors to Broker-Dealers and Investment Advisers,* Exchange Act Release No. 31661 (Dec. 28, 1992) (58 FR 7 (Jan. 4, 1993)).

[74] The proposed rule is based on Exchange Act Rule 15b1–4, which applies to broker-dealer registrations. We believe this rule has worked well to allow fiduciaries to wind-up broker-dealer businesses without the need to separately register as a broker-dealer.

[75] 17 CFR 232.302.

2. Temporary Rule To Facilitate Paper Filing of Forms

If a technological means to facilitate receipt and retention of applications required to be filed in accordance with Rule 15Fb2–1 is not functional by the time final rules are adopted, proposed temporary Rule 15Fb2–2T would require an SBS Entity to file its application on Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, and all additional documents in paper form by sending it to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, notwithstanding paragraph (c)(1) of Rule 15Fb2–1. In addition, if proposed temporary Rule 15Fb2–2T is adopted, paragraph (b) would require that each applicant must resubmit its Form SBSE, Form SBSE–A, and Form SBSE–BD, as applicable and all additional documents to the Commission electronically within three months of the date such technological means to facilitate receipt and retention of applications becomes functional. Depending on the timing, SBS Entities may also need to file their Forms SBSE–C in paper format and later resubmit those Forms electronically.

Proposed temporary Rule 15Fb2–2T would provide a process for the Commission to receive applications in paper format if a technological means to facilitate receipt and retention of applications cannot be completed before final SBS Entity registration rules are adopted. Further, Proposed temporary Rule 15Fb2–2T would facilitate the transition of data to an electronic format once such a system becomes functional. The benefits of an electronic system outweigh additional costs relating to the need for SBS Entities to file their applications in both paper and electronic form. In addition, requiring that each SBS Entity file its application electronically would assure that each firm can confirm that the data entered into the electronic system is accurate and complete.

The Commission requests comment on proposed temporary rule 15Fb2–2T.

Q–132. Is this paper process practicable?

Q–133. Should the Commission instead allow applicants to submit their applications in PDF form via e-mail?

Q–134. Instead of the process contemplated by paragraph (b) of proposed Rule 15Fb2–2T, should the Commission reduce the paper filings to electronic form instead of the applicants?

G. Forms

1. Form SBSE

Proposed Form SBSE is generally based on Form BD—the consolidated Form used by broker-dealers to register with the Commission, states and SROs. Form BD has been used to gather and organize certain information concerning applicants' business operations to facilitate Commission, state and SRO initial registration decisions, as well as ongoing examination and monitoring of registrations. Because SBS Entities will be subject to many requirements similar to those that affect broker-dealers (*e.g.,* minimum capital, leverage, and business conduct rules and statutory disqualification prohibitions), the Commission believes using Form BD as a template for the registration of SBS Entities is logical and efficient. Key differences from Form BD are outlined below:

- The phrase ''broker or dealer'' was changed to ''security-based swap dealer or major security-based swap participant'' because Form SBSE will be used by firms to register as SBS Entities and not as broker-dealers;
- References to SROs and jurisdictions were removed except where they arose in the context of a contractual relationship or disciplinary proceeding because SBS Entities will generally not be required to register with SROs or states;
- References to branch offices were removed because the SBS business is generally conducted on a more centralized basis and is not effected through branch offices;
- The General Instructions eliminate the instructions for filing the form in paper format because we intend to require that the forms be filed electronically;[76]
- The Explanation of Terms section is substantially the same;[77] however the term ''jurisdiction'' was replaced with the term ''state'' to eliminate potential confusion regarding questions in Item 11 that relate to actions brought in either domestic or foreign jurisdictions and the term ''foreign financial regulatory authority'' was removed because it is now defined in Exchange Act Section 3(a)(52);
- Item 1–J of Form SBSE would elicit the name and contact information for the Chief Compliance Officer designated by the applicant in accordance with Exchange Act Section 15F(k) (broker-dealers are not now required to provide this information on Form BD);
- Item 2b of Form SBSE would elicit information, if a firm is registering as a major security-based swap participant, regarding whether the firm is registering because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position, which will assist the staff in evaluating its application;
- Item 3 of Form SBSE would elicit whether the SBS Entity intends to use mathematical models to calculate any applicable capital or margin or to price customer or proprietary positions (whether or not for regulatory purposes), which will assist the staff in considering what types of examinations may be required;
- Item 4 of Form SBSE would elicit whether the applicant is subject to regulation by a prudential regulator[78] because the extent of the Commission's regulatory responsibilities for entities subject to regulation by a prudential regulator differ;
- In addition to eliciting information regarding recordkeeping arrangements, Item 8 would also query whether the applicant has any arrangement under which any other person, firm or organization executes, trades, custodies, clears or settles on behalf of the applicant (including any SRO or swap execution facility in which the applicant is a member). This information is designed to provide the Commission with an understanding of the SBS Entity's business relationships.
- References to the Securities Investor Protection Corporation in the ''Execution'' section have been eliminated because SBS Entities are not required to become members of SIPC[79] and references to surety bonding and service of process in each state has also been eliminated because Form SBSE does not facilitate registration with states (as the Form BD does);
- Form SBSE would require disclosure of whether the applicant is registering as an SBS dealer or major security-based swap participant, the applicant's legal status, whether the applicant is succeeding to the business

[76] If a technological means to facilitate the receipt and retention of applications is not finalized by the time final rules are adopted and the Commission must adopt proposed Rule 15Fb2–2T, instructions regarding paper filing would be re-inserted.

[77] The Explanation of Terms section includes definitions of the terms applicant, control, state, person, self-regulatory organization, successor, charged, control affiliate, enjoined, felony, found, investment or investment-related, involved, minor rule violation, misdemeanor, order, and proceeding.

[78] The term ''prudential regulator'' is now defined at 15 U.S.C. 78c(a)(74).

[79] Only SBS Entities that are also registered as a broker-dealer would be SIPC members. SBS Entities that are also registered as a broker-dealer will be required to file Form SBSE–BD and not Form SBSE.

of another SBS Entity, and the applicant's control relationships;[80] and

• Form SBSE would elicit a description of the applicant's business in a text box rather than through the use of a list of possible types of business.

Proposed Form SBSE, like Form BD, would elicit information regarding criminal disclosures, regulatory action disclosures, civil judicial disclosures, and financial disclosures. As with Form BD, ''yes'' answers to these questions would require that the applicant file additional information on disclosure reporting pages (or ''DRPs'') as a supplement to the Form. As with Form BD, Form SBSE would also elicit information on whether the applicant is registered with the Commission as an investment adviser, registered with the CFTC as an FCM, or whether it is engaged in any other investment-related, non-securities business.

Schedules A and B, which elicit information regarding direct and indirect owners and executive officers, would be largely unchanged (with the exception of the header, the elimination of a request for social security numbers in the tables): however, the table in Schedule A has been expanded to elicit information regarding prior investment-related experience of individual owners who are not otherwise registered through CRD or IARD to provide the Commission an understanding of each owner's background and qualifications in light of the fact that they will not be individually registered as is the case with owners of broker-dealers. Schedule C would be eliminated because electronic filing of the forms would make it unnecessary. Schedule D would be amended slightly to address differences between the security-based swap business and the broker-dealer business (*e.g.,* there are no ''introducing and clearing arrangements''). In addition, Section IV in Item D has been expanded to elicit additional information regarding the nature of the execution, trading, custody, clearing or settlement arrangement, as well as information regarding any prior investment-related experience of individual control persons who are not otherwise registered through CRD or IARD. This information is designed to provide the Commission with an understanding of the SBS Entity's business relationships and each control person's respective background and qualifications in light of the fact that they will not be individually registered as is the case with owners of broker-dealers. The staff understands that SBS Entities may conduct security-based swap business from multiple locations; however, those that would register with the Commission using Form SBSE likely would not refer to those locations as ''branches.'' Consequently, Schedule E of Form SBSE[81] would solicit information regarding locations rather than branches.

The proposed form would also include two additional schedules to be used by SBS Entities—Schedules F and G. Schedule F must be submitted by nonresident SBS Entities pursuant to proposed Rule 15Fb2–4 to provide the Commission with information regarding its appointed U.S. agent for service of process and to certify that it is able to provide the Commission with prompt access to its books and records.[82]

Schedule G would be required to be submitted by all SBS Entities pursuant to proposed Rule 15Fb6–1(a). Schedule G would provide each SBS Entity with a method to certify that none of its associated persons that are effecting or involved in effecting security-based swaps on its behalf is subject to statutory disqualification. This Schedule is designed to provide the Commission with assurance that the SBS Entity is compliant with Section 15F(b)(6) of the Exchange Act. The Form would require that the firm's Chief Compliance Officer sign Schedule G.

The Commission intends to use the information disclosed by applicants in Form SBSE (including the Schedules and DRPs) to determine whether the applicant meets the standards for registration, and to fulfill its oversight responsibilities.

The Commission requests comment on all aspects of Form SBSE.

Q–135. Should the registration form for SBS Entities be based on Form BD, CFTC Form 7–R, or some other form? Please describe the reasons for choosing a particular form over another.

Q–136. How many firms may apply for registration as SBS Entities?

Q–137. Should any of the instructions or questions on Form SBSE be amended to recognize particular characteristics of the business of SBS Entities?

Q–138. Are any of the proposed questions on Form SBSE inapplicable to the SBS business?

Q–139. Should any questions be added to Form SBSE to elicit information that is unique to the SBS business or to the SBS Entities that engage in that business?

Q–140. Is proposed new Schedule F the best method to collect information regarding a nonresident SBS Entity's agent for service of process? If not, what other method could the Commission utilize?

Q–141. Is the requirement that an SBS Entity certify on new Schedule F that it can, as a matter of law, provide the Commission with access to its books and records and allow the Commission to conduct onsite inspections the best method to assure the Commission is able to have such access? If not, what other method could the Commission utilize?

Q–142. Is it appropriate to require a nonresident SBS Entities to also submit an opinion of counsel opining on this issue?

Q–143. Is proposed new Schedule G the best method to assure that an SBS Entity is complying with Section 15F(b)(6) of the Exchange Act? If not, what other method could the Commission utilize?

Q–144. Would the Form SBSE disclosure requirements present any unique issues for financial institutions not previously subject to similar disclosure requirements? If so, please describe.

Q–145. Should Form SBSE include additional Schedules in which the applicant could provide more detailed information regarding its business (*e.g.,* a business plan, descriptions of the types of products the applicant will offer, the types of counterparties it will have, information regarding the applicant's operational, supervisory and compliance infrastructure, its major vendors, its clearing arrangements), similar to what the Commission typically requires of other types of applicants (*e.g.,* clearing agencies and national securities exchanges)? If so, what specific types of information should be required?

[80] These questions are similar to questions that appear on pages 2 and 3 of the Form BD.

[81] Schedule E of Form BD has been replaced by Form BR, which is designed to enable broker-dealers to register their branch office locations electronically with SROs and states. *See, Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (''Form BR''),* Exchange Act Release No. 52543 (Sep. 30, 2005), 70 FR 58771 (Oct. 7, 2005); and *Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Proposed Uniform Branch Office Registration Form (''Form BR'') and Amendments to the Uniform Application for Securities Industry Registration or Transfer (''Form U4'') and the Uniform Termination Notice for Securities Industry Registration (''Form U5''),* Exchange Act Release No. 52544 (Sep. 30, 2005), 70 FR 58764 (Oct. 7, 2005).

[82] Nonresident broker-dealers must presently file one of four similar forms (Form 7–M, Form 8–M, Form 9–M or Form 10–M, depending on the broker-dealer's form or organization) to appoint an agent for service of process.

Q–146. If there are changes in this type of information over time, how frequently should the registrant be required to update the relevant schedules?

2. Form SBSE–A

CEA Section 4s(c) and Exchange Act Section 15F(c) require that persons that engage in both swap business and security-based swap business must separately register with each agency. However, the staff is proposing that applicants that are not registered with the Commission as broker-dealers, but that are registered or registering with the CFTC as either a swap dealer or major swap participant, file their application for registration on an alternative to Form SBSE, or Form SBSE–A. Form SBSE–A is a shorter form and is intended to make it easier for dual applicants to file with both agencies. As part of its application, a firm filing with the Commission on Form SBSE–A would need to provide the Commission with a copy of the form it files with the CFTC to register as a swap dealer or major swap participant. Form SBSE–A is designed to provide the Commission with data, not included on the form the applicant must file with the CFTC, that the Commission believes it will need to adequately review an application for registration.[83] While some information elicited via Form SBSE–A also may be elicited by the CFTC's form, it will be helpful for the Commission to receive this information directly to allow the Commission to match the Form SBSE–A with the CFTC Form and to coordinate the information elicited through Form SBSE–A with other information the Commission may have on the applicant. The Commission believes that requiring that these applicants use Form SBSE–A would reduce the costs and burdens associated with filing distinctly different forms to register with both the Commission and CFTC.

Proposed Form SBSE–A is loosely based on Form SBSE, which, as described above is based on Form BD (the Form used by broker-dealers to register with the Commission). As discussed more fully above, the Commission has used Form BD to gather information necessary for it and the SROs to determine whether to grant broker-dealer registration to an applicant. Key differences from Form SBSE are outlined below:

- The General Instructions have been modified to identify the Form and Schedules to be used to register as an SBS Entity and to eliminate the instructions for filing in paper format because we intend to require that the forms be filed electronically;[84] and
- To reduce potential confusion regarding the use of two forms,[85] the initial instruction in the Explanation of Terms section states that terms used in Form SBSE–A that are defined in CFTC Form 7–R shall have the same meaning as set forth in that form, and terms not otherwise defined in CFTC Form 7–R have the same meaning as in Form SBSE.

Item 1.C. on Form SBSE–A would elicit the firm's NFA number. Items 2 through 13 of proposed Form SBSE–A would require that the applicant identify the capacity in which it is seeking to register with the Commission, the capacity in which it is registered with or seeking to register with the CFTC, certain control and business relationships, succession and other basic information regarding the firm's business. These questions are similar to information elicited via Form SBSE, which elicit information not otherwise elicited through Form 7–R but which the Commission believes is useful to facilitate its oversight of regulated entities.

Item 2b of Form SBSE–A would elicit information, if a firm is requesting registration as a major security-based swap participant, regarding whether the firm is registering because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position, which will assist the staff in evaluating its application. Item 3 of Form SBSE–A would elicit whether the SBS Entity intended to use mathematical models to calculate capital or margin or to price customer or proprietary positions because this would highlight for staff the need for a more extensive review. Item 5 of Form SBSE would elicit whether the applicant is subject to regulation by a prudential regulator because the extent of the Commission's regulatory responsibilities for entities subject to regulation by a prudential regulator differ.[86]

Items fourteen and fifteen on Form SBSE–A would elicit information regarding ''principals.'' The definition of ''principal'' in CFTC Form 7–R is similar to the definition of control affiliate in Form BD. Form BD requires that an applicant file substantial information on its control affiliates. We understand that the CFTC presently requires that individual principals of entities registered with the CFTC file separate registrations with the CFTC. Consequently, the CFTC would have information on those individuals regarding any situations that would cause those individuals to be statutorily disqualified without requiring that the applicant include that information in its application. In recognition of this method and to decrease duplication, item thirteen would require that an applicant identify how many individual principals it has. Further, the applicant would need to list those principals on proposed new Schedule A to Form SBSE–A and provide information regarding those individual principals similar to the information provided on Schedule A of Form SBSE. Item fifteen asks whether any principals of the applicant that are entities effect or are involved in effecting security-based swaps on behalf of the applicant. If the question is answered in the affirmative, the applicant would need to provide additional information on Schedule B with respect to those entities. This information is designed help the Commission better understand the relationship between the applicant and its principals in order to assure compliance with Section 15F(b)(6) of the Exchange Act and to police for manipulation and fraud.

As discussed above, Schedule A of Form SBSE–A would require that an applicant list all principals that are individuals and provide some basic information regarding each (*e.g.,* the person's title, NFA number, and prior investment-related experience). Much of this information is provided to the Commission via Form BD for broker-dealers, and the CFTC would already have this information on control persons but, without new Schedule A to Form SBSE–A, the Commission would not otherwise have this information. This information is designed to help the Commission better understand the relationship between the applicant and its principals and a basic background of those principals in order to assure compliance with Section 15F(b)(6) of the Exchange Act and to police for manipulation and fraud.

Schedule B would elicit information regarding other business in which the applicant is engaged, business

[83] The CFTC has proposed that swap dealers and major swap participants file their applications on Form 7–R and accompanying Form 8–R. Also, *see supra* note 10. Consequently, the Commission's assessment of what information applicants should be required to provide on Form SBSE–A was based on Form 7–R. If the CFTC's application form for swap dealers or major swap participants deviates substantially from Form 7–R, the Commission will need to re-assess the information it would need to collect through Form SBSE–A. Form 8–R is the Form used for registration of individuals.

[84] *See* paragraph (c) of proposed Rule 15Fb2–1.

[85] One to register with the CFTC as a swap dealer or major swap participant and one to register with the Commission as an SBS Entity.

[86] *See, e.g.,* 15 U.S.C. 78o–10(e).

arrangements, successions, and principals that are not identified in Schedule A, and is based loosely on Schedule D to Form BD. Schedule C would elicit information regarding principals that are identified in Schedule B that would cause those persons to be statutorily disqualified, and is based on Item 11 in Form BD.[87] The applicant would need to file a DRP for every ''yes'' answer in Schedule C. The Schedules F and G to Form SBSE–A are the same Schedules as described above in the section regarding Form SBSE.

The Commission intends to use the information disclosed in Form SBSE–A to determine whether applicants meet the standards for registration and to fulfill its oversight responsibilities.

Q–147. Is Form SBSE–A properly tailored to decrease costs for dual registration while still providing the Commission with information necessary on which to base its decision to grant or deny registration?

Q–148. What are the comparative costs or benefits with respect to filing Form SBSE versus filing Form SBSE–A for entities filing as both swap entities with the CFTC and SBS Entities with the Commission?

Q–149. How many firms expect to apply for registration as SBS Entities and what is the likelihood that those entities will also register with the CFTC as swap dealers or major swap participants?

Q–150. Will the benefit of being able to file the same form with the Commission as filed with the CFTC be outweighed by the requirement to file those forms, as well as additional schedules and documents, with more than one agency or entity or through more than one electronic system?

Q–151. Should FCMs registered with the CFTC that are not registered or registering with the CFTC as either a swap dealer or a major swap participant be allowed to register with the Commission using Form SBSE–A?

Q–152. Are any such FCMs likely to register with the Commission as an SBS Entity?

Q–153. Would it be more cost effective for the Commission to obtain the data applicants file with the CFTC electronically from the CFTC or its designee rather than having the applicant file a copy of that form with the Commission?

Q–154. Should any of the instructions or questions on Form SBSE–A be amended to recognize particular characteristics of the business of SBS Entities?

Q–155. Are any of the proposed questions inapplicable to the SBS business?

Q–156. Should any questions be added to elicit information that is unique to the SBS business or to the SBS Entities that engage in that business?

3. Form SBSE–BD

Similar to the Form SBSE–A, the staff is proposing that applicants that are also registered or registering with the Commission as broker-dealers file their application for registration on an alternative to Form SBSE, or Form SBSE–BD.[88] In addition, any entity that is registered or registering with the Commission as a broker-dealer and that is also registered or registering with the CFTC as a swap dealer or major swap participant would be required to use the Form SBSE–BD. Form SBSE–BD is based on Form BD, but is designed to provide the Commission with data not included on the Form BD (to which the Commission has access). The Commission believes that requiring that these applicants use Form SBSE–BD would reduce the costs and burdens on applicants that are already registered or registering with the Commission as broker-dealers.

The proposed Form SBSE–BD would consist of a single page that would elicit information not included on Form BD, such as the capacity in which the applicant is registering, whether the entity also is registering with the CFTC and, if so, in what capacity the firm is registering with the CFTC, if a firm is requesting registration as a major security-based swap participant—whether the firm is registering because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position, whether the SBS Entity intends to use mathematical models to calculate capital or margin or to price customer or proprietary positions, whether the firm is subject to oversight by a prudential regulator and information regarding the applicant's chief compliance officer. Form SBSE–BD would also require that applicants submit Schedules F and G, described more fully above.

The Commission intends to use the information disclosed in Form SBSE–BD to determine whether applicants meet the standards for registration, and to fulfill its oversight responsibilities.

Q–157. What will the comparative costs or benefits be with respect to filing Form SBSE versus filing Form SBSE–BD for registered broker-dealers filing as SBS Entities with the Commission?

Q–158. How many firms expect to apply for registration as SBS Entities and whether those entities are already registered with the Commission as broker-dealers?

Q–159. Should any of the instructions or questions be amended to recognize particular characteristics of the business of SBS Entities?

Q–160. Are any of the proposed questions inapplicable to the SBS business?

Q–161. Should any questions be added to elicit information that is unique to the SBS business or to the SBS Entities that engage in that business?

4. Form SBSE–C

Proposed Form SBSE–C is designed to provide SBS Entities with a standard format and process through which to file the Senior Officer Certification required pursuant to proposed Rule 15Fb2–1(b). Form SBSE–C would need to be filed by all SBS Entities. As described above, SBS Entities that submitted their applications during the transitional period would need to file this certification either before the Last Compliance Date or their conditional registration would expire. Major securities-based swap participants that submitted their applications after the Last Compliance Date would need to file this certification within four months after filing a completed application or their conditional registration would expire. SBS Dealers that file applications after the Last Compliance Date would need to file both an application and a certification simultaneously to be considered for ongoing registration.

Form SBSE–C includes instructions both requiring electronic submission and explaining how the form should be filed electronically.

Form SBSE–C would elicit the applicant's name, date, and SEC number, along with the signature, name and title of the senior officer signing the certification. The Commission intends to use the certification provided by Form SBSE–C in determining whether applicants meet the standards for ongoing registration.

The Commission requests comment on the Form SBSE–C.

Q–162. Should Form SBSE–C require that SBS Entities provide any additional

[87] Any differences between Schedule B to Form SBSE–A and Schedule D to Form SBSE and between Schedule C of Form SBSE–A and Item 11 in Form SBSE recognize the fact that Form SBSE–A has been tailored to collect information not otherwise elicited via Form 7–R which the Commission has found to be helpful to facilitate its oversight of the entities it regulates.

[88] Over-the-counter derivatives dealers, a limited form of broker-dealer established by the Commission in 1998, could also file on Form SBSE–BD.

information? If so, how should the form be amended?

Q–163. Should the instructions to Form SBSE–C be amended?

5. Form SBSE–W

Proposed Form SBSE–W is loosely based on Form BDW (the Form used by broker-dealers to withdraw from registration with the Commission). The Commission has found Form BDW to be an effective vehicle for gathering information necessary for it and the SROs to determine whether it is appropriate to allow a registered broker-dealer to withdraw from registration. Because SBS Entities will be subject to many requirements similar to those that affect broker-dealers (*e.g.,* minimum capital, leverage, and business conduct rules and statutory disqualification prohibitions), the Commission believes using Form BDW as a template for the request for withdrawal from registration of SBS Entities is logical and efficient. Key differences from Form BDW are outlined below:

- The distinction regarding full and partial withdrawal was eliminated from the Form SBSE–W as it is not relevant to the SBS business; and
- Item 4 was added to elicit information regarding the entity's reason for withdrawal from registration because we believe this information would be useful when considering a registered SBS Entity's request to withdraw from registration.

The purpose of proposed Form SBSE–W is to allow the Commission to determine whether it is in the public interest to permit a registered SBS Entity to withdraw from registration.

The Commission requests comment on the Form SBSE–W.

Q–164. Given that the Commission has proposed to use different forms for registration of certain types of applicants, should different types of forms also be provided for withdrawals from registration? If so, how should the form or forms be amended?

Q–165. Should the instructions to Form SBSE–W be amended? If so, how?

6. Tagged Data Formats

As part of the Commission's longstanding efforts to (1) Improve the accuracy of financial and other filed information, (2) increase the transparency and usefulness of information, and (3) facilitate analysis of information provided to the Commission via reports, we have begun requiring that entities data-tag information contained in electronic filings.[89] Data becomes machine readable when it is labeled, or ''tagged,'' using a computer markup language that can be processed by software programs for analysis. Such computer markup languages (such as eXtensible Markup Language (XML) and eXtensible Business Reporting Language (XBRL)) use standard sets of definitions, or ''taxonomies,'' that translate text-based information in Commission filings into structured data that can be retrieved, searched, and analyzed through automated means.

In addition to using the data provided via proposed Forms SBSE, SBSE–A, and SBSE–BD to determine whether to grant or deny registration, the Commission will make this data public. The fact that counterparties of SBS Entities would have access to additional, standardized information could improve competition amongst SBS Entities and would enable counterparties and the marketplace to expend less time and money to independently obtain and compile information on SBS Entities to use in making such choices. Thus, the Commission intends to tag the information in a machine readable format using a data standard that is freely available, and that is consistent and compatible with the tagged data formats already in use for SEC filings, to enable users of that data to retrieve, search, and analyze the data through automated means.

Q–166. What tagged data language (*e.g.,* XML, XBRL) would be most appropriate to be used for the required data to be provided via proposed Forms SBSE, SBSE–A, SBSE–BD, SBSE–C, and SBSE–W?

H. Alternative Approaches Considered

The Commission considered alternative approaches to registration of SBS Entities. One possibility would be to adopt joint registration forms with the CFTC, so that SBS Entities could register with both agencies using the same forms. While there could be benefits to this approach, we believe that the Commission's streamlined approach will achieve many of the same benefits.

Another possibility would be for the CFTC to require swap dealers and major swap participants to register using the Commission's forms, or for the Commission to require SBS Entities to register using the CFTC's forms. While this approach might streamline the registration process for regulated entities, particularly those that intend to engage in both swaps and SBS business, it would be more difficult for the agencies to implement given the Commissions' finite resources. Further, differences between the Commodity Exchange Act and the Exchange Act and the means to facilitate registration may justify differences in the forms.

III. Request for Comment

In addition to the questions described above, we are requesting comments on all aspects of proposed rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, including with respect to the following questions:

Q–167. Should the Commissions continue to consider whether to develop a joint registration form?

In addition, Title VII of the Dodd-Frank Act requires that the SEC consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability, to the extent possible, and states that in adopting rules, the CFTC and SEC shall treat functionally or economically similar products or entities in a similar manner.

The CFTC is adopting rules related to registration of swap dealers and major swap participants as required under Section 731 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets, and as such, appropriately may be proposing alternative regulatory requirements, we request comments on the impact of any differences between the Commission's approach to the registration process for SBS Entities and CFTC's approach to the registration of swap dealers and major swap participants. Specifically:

Q–168. Do the regulatory approaches under the Commission's proposed rulemaking pursuant to Section 764 of the Dodd-Frank Act and the CFTC's proposed rulemaking pursuant to Section 731 of the Dodd-Frank Act result in duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or result in gaps between those regimes?

Q–169. If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized?

Q–170. Do commenters believe the approaches proposed by the Commission and the CFTC to register

[89] *See* Regulation S–T, 17 CFR 232. *See also Electronic Filing and Revision of Form D,* Securities Act Release No. 8891 (Feb. 6, 2008) (73 FR 10592 (Feb. 27, 2008)); *Interactive Data To Improve Financial Reporting,* Securities Act Release No. 9002 (Jan. 30, 2009) (74 FR 6776 (Feb 10, 2009)); and *Interactive Data for Mutual Fund Risk/Return Summary,* Securities Act Release No. 9006 (Feb. 11, 2009) (74 FR 7748 (Feb 19, 2009)); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009) (74 FR 63832 (Dec. 4, 2009)); and *Money Market Fund Reform,* Investment Company Release No. 29132 (Feb. 23, 2010 (75 FR 10060 (Mar. 4, 2010)).

SBS Entities and swap dealers and major swap participants are comparable? If not, why?

Q–171. Do commenters believe there are approaches that would make the registration of SBS Entities and swap dealers and major swap participants more comparable? If so, what?

Q–172. Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from our proposal? Is so, which one and why?

We request commenters to provide data, to the extent possible, supporting any such suggested approaches.

The Commission is cognizant that the proposed rules discussed herein, as well as other proposals that the Commission may consider in the coming months to implement the Dodd-Frank Act, if adopted, could significantly affect—and be significantly affected by—the nature and scope of the security-based swaps market in a number of ways. For example, the Commission recognizes that if the measures proposed in this release are adopted and are too onerous for new entrants, they could hinder the further development of a market for security-based swaps by unduly discouraging competition and the formation of new SBS Dealers and major security-based swap participants. On the other hand, if the Commission adopts rules that are too permissive, the Commission may grant registration to firms that may have insufficient capacity, policies, procedures, or risk management systems. The Commission is also mindful that the further development of the security-based swaps market may alter the calculus for future regulation of SBS Dealers and major security-based swap participants. As commenters review this release, they are urged to consider generally the role that regulation may play in fostering or limiting the development of the market for security-based swaps (or, vice versa, the role that market developments may play in changing the nature and implications of regulation) and specifically to focus on this issue with respect to the proposals to register SBS Dealers and major security-based swap participants.

IV. Paperwork Reduction Act

Certain provisions of proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). The Commission has submitted the information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title of this collection is ''Registration Rules for Security-Based Swap Entities.'' We are applying for a new OMB Control Number for this collection in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13.

A. Summary of Collection of Information

As required by Exchange Act Section 15F, the Commission is proposing Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W to facilitate registration of, certification by, and withdrawal of SBS Entities.

Pursuant to paragraph (a) of proposed Rule 15Fb2–1, each SBS Entity would be required to file an application to register with the Commission. The Commission has sought to reduce burdens and costs associated with the application process by providing alternate registration forms for SBS Entities that are registered or registering either with the CFTC as swap dealers or major swap participants or with the Commission as broker-dealers. The alternative forms (Form SBSE–A, and Form SBSE–BD) are both shorter and should require that an SBS Entity expend less effort to research, complete, and file. It is anticipated that each SBS Entity would only need to research, complete, and file one of the proposed Forms.

Proposed Rule 15Fb2–3 would require that SBS Entities promptly amend their applications if they find that the information contained therein has become inaccurate. While SBS Entities may need to update their Forms periodically, each firm will only need to amend that aspect of the Form that has become inaccurate.

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity have a knowledgeable senior officer, after due inquiry, make an attestation on Form SBSE–C. As discussed more fully above, the Commission is proposing to require that a senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination. This certification process is designed to allow SBS Entities to register with the Commission quickly so that they are not required to suspend their security-based swap business, while providing the Commission with a basis to take final action on SBS Entity registration.

Proposed Rule 15Fb6–1 would require that SBS Entities obtain a questionnaire or application for employment executed by each of its associated persons who is involved in effecting security-based swaps on behalf of the SBS Entity that contains certain, specified information.[90] The proposed rule further would provide that the questionnaire or application shall serve as a basis for a background check of the associated person and be signed by the SBS Dealer's or major security-based swap participant's Chief Compliance Officer (or his or her designee). Proposed Rule 15Fb6–1 would require that each SBS Entity retain these employment questionnaires or applications until at least three years after the associated person has terminated his or her association with the SBS Entity. Finally, the CCO would need to certify (on Schedule G to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable) that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity.

Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity must have in place at all times an agreement with a United States person appointing that person as the firm's U.S. agent for service of process. In addition, Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity obtain an opinion of counsel stating that it can, as a matter of law, provide the Commission with access to records and the ability to conduct onsite examinations. These entities also must file an additional schedule (Schedule F) with their Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, to identify the firm's U.S. agent for service of process and to certify that the firm can, as a matter of law, provide the Commission with access to its books and records. In addition, each nonresident SBS Entity would be required to maintain its written agreement appointing a U.S. agent for service of process until at least three years after the agreement is terminated.

Pursuant to proposed Rule 15Fb1–1, each signatory to an electronic filing would be required to, when the

[90] *See supra* notes 55 and 56.

electronic filing is made, manually sign a signature page or other document adopting his or her signature that appears in typed form within the electronic filing. The SBS Entity would need to retain the manually-signed page until at least three years after the form or certification has been replaced or is no longer effective.

Proposed Rule 15Fb3–2 would require that an SBS Entity seeking to withdraw from Commission registration must file Form SBSE–W. Given that the cost and effort to register as an SBS Entity likely will be significant, the Commission believes that entities will not enter and exit this business regularly. Further, the Commission believes it is unlikely that any SBS Entity will seek to withdraw from registration within the first year.

Proposed temporary Rule 15Fb2–2T would only be adopted if a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted. Pursuant to proposed temporary Rule 15Fb2–2T, each SBS Entity would need to file its application and certification in paper form. Proposed temporary Rule 15Fb2–2T also would require that each SBS Entity resubmit its application and certification in electronic form once a technological means to receive such documents becomes functional.

B. Proposed Use of Information

Information collected pursuant to proposed Rules 15Fb1–1 through 15Fb6–1 and through Forms SBSE, SBSE–A, SBSE–BD, and SBSE–C would allow the Commission to determine whether applicants meet the standards for registration, and to fulfill its oversight responsibilities. Further, Rule 15Fb3–2 and Form SBSE–W would allow the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal.

In addition, information collected pursuant to proposed Forms SBSE, SBSE–A, SBSE–BD, and SBSE–C would be made publicly available.

C. Respondents

Proposed Rule 15Fb1–1 through 15Fb6–1 would set forth rules to facilitate registration with the Commission of entities that fit the definition of SBS Dealer or major security-based swap participant.[91] Forms SBSE, SBSE–A, and SBSE–BD, as applicable, are applications through which SBS Entities would register with the Commission.

The Commission preliminarily believes, based on data obtained from DTCC and conversations with market participants, that approximately fifty entities may fit within the definition of SBS Dealer and up to five entities may fit within the definition of major security-based swap participant.[92] Further, the staff estimates, based on its experience and understanding of the unregulated swaps and security-based swaps markets, that the majority of firms that may register as SBS Entities (thirty-five) also will be engaged in the swaps business and will register with the CFTC as swap dealers or major swap participants.[93] In addition, persons holding securities positions may find it beneficial to hedge those positions with security-based swaps, so it may be beneficial for a broker-dealer to become an SBS Entity so that it can provide this option to its customers. Thus, Commission staff estimates that approximately sixteen broker-dealers will seek to register as SBS Entities.[94] Finally, given the costs of being a registered entity it may be less likely for an entity that is not otherwise registered with the CFTC or the Commission to register as an SBS Entity. Consequently, the Commission staff estimates that only four firms not otherwise registered with the CFTC or the Commission will seek to become an SBS Entity.

The Commission seeks comment on the reasonableness and accuracy of its estimates as to the number of participants in the security-based swap market that will be required to register with the Commission pursuant to proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, and SBSE–BD, as applicable.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Burden Associated With Filing Application Forms

Proposed Rule 15Fb2–1 would require that each SBS Entity register with the Commission by filing an application. The Commission has attempted to reduce the burden associated with the application process by providing multiple forms for SBS Entities to use to register (Form SBSE, Form SBSE–A, or Form SBSE–BD). It is anticipated that each SBS Entity will only need to research, complete, and file one form.

While it is likely that the time necessary to complete these forms would vary depending on the nature and complexity of the entity's business, the Commission staff estimates (based on its experience relative to Form BD) that the average time necessary for an SBS Entity to research the questions, and complete and file a Form SBSE (including the Schedules[95] and DRPs) would be approximately one work week or forty hours.[96] As discussed above, the Commission estimates that approximately four firms would need to register using Form SBSE. Consequently, the total burden associated with filing Forms SBSE would be approximately 160 hours.[97]

The Commission staff believes that, as Form SBSE–A is shorter than the Form SBSE, it should take an SBS Entity approximately 80% of the time that it would take to research, complete, and file a Form SBSE (including the Schedules[98] and DRPs), or thirty two

[91] *See supra* notes 5–7.

[92] In the Intermediary Definitions Release, the Commission and the CFTC proposed rules to define a number of terms used in Title VII, including, among others, ''security-based swap dealer'' and ''major security-based swap participant.'' *See supra* note 5. As part of that proposal, the Commission preliminarily estimated that approximately 50 entities may be required to register as security-based swap dealers under the proposed rules. *See* Intermediary Definitions Release, n. 188 (75 FR 80174, at 80209 (Dec. 10, 2010)). We further estimated that no more than ten entities would have security-based swap positions large enough that they would have to monitor whether they meet the thresholds defining a major security-based swap participant. *See* Intermediary Definitions Release, (75 FR 80174, at 80207–8 (Dec. 10, 2010)). For purposes of these proposed rules, we conservatively estimate that, of the ten entities that would need to monitor their positions to determine whether they cross any of the definitional thresholds, five may actually meet the definition of ''major security-based swap participant.'' Depending on capital and other requirements for SBS Dealers and how businesses choose to respond to such requirements, the actual number of SBS Dealers may be significantly fewer. *See also Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859, at 3868 (Jan. 21, 2011); and *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396, (Jul. 18, 2011), *as corrected by* Exchange Act Release No. 64766, 76 FR 46668 (Aug. 3, 2011).

[93] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396, (Jul. 18, 2011), *as corrected by* Exchange Act Release No. 64766, 76 FR 46668 (Aug. 3, 2011).

[94] *Id.*

[95] Except Schedules F and G, which are dealt with separately below.

[96] The staff has previously estimated that the average time necessary for a broker-dealer to complete and file Form BD, the Form upon which Form SBSE was based, would be approximately three hours (and that estimate has been subject to notice and comment. *Broker-Dealer Registration and Reporting,* Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586.) However, some SBS Entities may not previously have been subject to regulation and thus may need more time to research the answers to complete Form SBSE and its schedules and DRPs.

[97] (40 hours × 4 SBS Entities) = 160 hours total.

[98] *See supra* note 95.

hours. As discussed above, the Commission estimates that approximately thirty-five firms would also be registered with the CFTC and therefore would need to register using Form SBSE–A. Consequently, the total burden associated with filing Forms SBSE would be approximately 1,120 hours.

The Commission staff believes that, as Form SBSE–BD is shorter than either Form SBSE or Form SBSE–A and broker-dealers who would be filing Form SBSE–BD are familiar with Commission terminology and forms, researching, completing, and filing a Form SBSE–BD should take an SBS Entity approximately 25% of the time that it would take to research, complete, and file a Form SBSE (including the Schedules [99]), or ten hours. As discussed above, the Commission estimates that approximately sixteen SBS Entities would need to register using Form SBSE–BD. Consequently, the total burden associated with filing Forms SBSE–BD would be approximately 160 hours.[100]

2. Burden Associated With Amending Application Forms

Proposed Rule 15Fb2–3 would require that SBS Entities amend their applications if they find that the information contained therein has become inaccurate. While SBS Entities may need to update their Forms periodically, each firm will only need to amend that aspect of the Form that has become inaccurate. Further, it likely will not cost a significant amount to make such changes because each firm will have already completed Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, and will only need to amend that aspect of the Form that has become inaccurate. Based on the number of amendments the Commission receives annually on Form BD,[101] the Commission estimates that each SBS Entity will file approximately three amendments annually. While it is likely that the time necessary to file an amendment to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, may vary depending on the nature and complexity of the information to be amended, the staff estimates, based on experience relative to Form BD, that it likely would take an SBS Entity, on average, approximately one hour to amend its application each time it files an amendment. Consequently, the total burden associated with amending Forms SBSE, SBSE–A, and SBSE–BD, as applicable, would be approximately 165 hours.[102]

3. Burden Associated With Certification

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity have a knowledgeable senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, and has documented the process by which he or she has reached such determination. Each SBS Entity would need to provide this certification on Form SBSE–C only once. The Commission believes that the majority of the cost associated with this certification would arise from the review the senior officer conducts, or has others conduct, prior to certifying that the SBS Entity has the requisite operational, financial, and compliance capabilities. The senior officer would also need to certify that he or she has documented this process.

The Commission understands (based on the staff's experience with broker-dealers and other regulated entities) that, in satisfying other certification requirements, SBS Entities may use different processes, depending on the facts and circumstances of their business. Some SBS Entities may develop more or less robust process than others and, as a result, may incur higher or lower than average costs. Some SBS Entities may use a sub-certification process whereby the senior officer will not certify a firm-wide statement unless and until other persons responsible for certain activities in turn certify to the senior officer that the standard has been met, while other firms may use an internal or external audit-type process whereby a senior officer may choose to employ a third party to review an area subject to a firm-wide certification before submitting the certification. There may be other processes an SBS Entity could use to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities that we have not specifically identified here. Many factors outside of the Commission's control [103] may determine whether an SBS Entity might choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification. For purposes of this PRA, we will estimate that approximately half, or twenty-eight of the SBS Entities, may use an internal process and the other half, or twenty-seven of the SBS Entities, will use an external process.

The Commission believes that, regardless of whether an SBS Entity may choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification, the burden associated with having a senior officer sign a certification likely would be approximately five hours.[104] The Commission has previously estimated that it would take a senior officer approximately twenty hours to review, document, and update compliance procedures,[105] which the staff believes would be analogous to reviewing documents provided either by subordinates or a third party to gain comfort necessary to sign the Senior Officer Certification.

Commission staff estimates, based on its experience relative to the securities and over-the-counter derivatives industries, that if a senior officer opted to conduct an internal review of the SBS Entity's operational, financial, and compliance capabilities, it would take approximately one hundred and seventy five additional hours for other SBS Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with sub-certifications or other documents he or she may request to obtain the necessary comfort before signing the Senior Officer Certification. Consequently, the Commission estimates that the one-time burden for the twenty-eight SBS Entities that utilize an internal review process would be approximately 5,600 hours for other SBS Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with documents, and for the senior officer to review those

[99] *Id.*

[100] (10 hours × 16 SBS Entities) = 160 hours total.

[101] On March 1, 2010 there were 5,163 broker-dealers registered with the Commission (based on Form BD data). The Commission received 20,666, 17,839, 16,702, 16,365, and 17,247 amended Forms BD during the fiscal years ending 9/30/2005, 9/30/2006, 9/30/2007, 9/30/2008 and 9/30/2009, respectively. ((20,666 + 17,839 + 16,702 + 16,365 + 17,247)/5 years)/5,163 broker-dealers = 3.44 amendments per broker-dealer per year.

[102] 1 hour × three per year × 55 SBS Entities = 165 hours.

[103] For instance, such factors could include: costs; how comfortable the senior officer may be with his or her subordinates within the SBS Entity's control structure; and how knowledgeable a senior officer may be regarding the SBS Entity's capabilities.

[104] *See, e.g., Risk Management Controls for Brokers or Dealers With Market Access,* Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792, at 69816 (Nov. 15, 2010).

[105] *Id.*

documents and sign the Senior Officer Certification.[106]

The Commission has previously estimated that the burden associated with obtaining an internal control report from a third party would cost, on average, approximately $250,000.[107] The staff believes that an internal control report would be roughly analogous to a third party review of each SBS Entity capability included in the Senior Officer Certification; however, the staff believes the cost of a third party review of an SBS Entity's capabilities likely would be less than the cost of three separate internal control reviews because the third party review of capabilities would not require an accountant's opinion and because some economies of scale likely could be achieved when a third party reviews three capabilities for a single SBS Entity. Consequently, the staff estimates that the cost for an SBS Entity to obtain a third party review to provide its senior officer with the necessary comfort to sign the Senior Officer Certification would be approximately $600,000. Thus, the Commission estimates that the one-time burden for the twenty-seven SBS Entities that utilize an external review process would be approximately 675 hours [108] for the senior officer to review documents provided by the third party to gain the necessary comfort and to sign the Senior Officer Certification, and $16,200,000 to have a third party review the SBS Entity's operational, financial, and compliance capabilities and provide the SBS Entity with evidence sufficient to make the senior officer sufficiently comfortable to sign the Senior Officer Certification.

Thus, the total burden for all SBS Entities associated with the Senior Officer Certification would be approximately 6,275 hours and $16,200,000.

4. Burdens Relating to Associated Persons

Proposed Rule 15Fb6–1 would require an SBS Entity to obtain a questionnaire or application for employment executed by each of its associated persons who is involved in effecting security-based swaps on behalf of the SBS Entity that contains certain, specified information. The proposed rule further would provide that the questionnaire or application must be reviewed and signed by the SBS Dealer's or major security-based swap participant's Chief Compliance Officer. Finally, the CCO would need to certify (on Schedule G of its Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable) that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity.[109] The Commission estimates (based on the staff's experience relative to the securities and OTC derivatives industries) that SBS Entities each have, on average, twenty-five associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity. The Commission believes that the information SBS Entities would need to obtain through these questionnaires is standard in the financial services industry, and is already collected by firms registered with the CFTC and the SEC. In addition, SBS Entities that are registered with the Commission or the CFTC must already perform background checks on their employees because of the prohibitions from employment of statutorily disqualified persons in the CEA and the Exchange Act.

The Commission staff estimates, based on its experience relative to the securities industry, that the average time necessary for an SBS Entity to review its employment questionnaire or application to verify that it contains all of the required information and to update the questionnaire would be approximately three hours. As SBS Entities that are already registered with the Commission or the CFTC already collect this information, the Commission estimates that the cost to all SBS Entities to review employment questionnaires or applications, verify that they contain all of the required information and update the questionnaires or applications, as necessary, would be approximately 12 hours.[110]

As discussed above, the Commission staff believes that most financial services firms already collect all or most of the information proposed Rule 15Fb6–1 would require that they collect. Consequently, the Commission estimates that the burden to require an SBS Entity's existing associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity to provide those few categories of information that they did not originally provide on their employment questionnaires or applications would be approximately one hour each.[111] As SBS Entities that are already registered with the Commission and the CFTC already collect this information from employees, the Commission estimates that the burden to all SBS Entities to obtain additional information from relevant associated persons, would be approximately 100 hours.[112]

The Commission staff estimates, based on the staff's experience relative to the securities industry, that it would take a CCO approximately one hour to review and sign a relevant employee's employment record. Consequently, the Commission estimates that the total burden to all SBS Entities to have their CCOs review and sign each associated person's employment record would be approximately 1,375 hours.[113]

On an ongoing basis, if employee turnover at an SBS Entity averages 12%,[114] each SBS Entity would need to perform background checks and have their CCO review and approve in writing three new associated persons' employment records per year. As stated

[106] (5 hours + 20 hours + 175 hours) × 28 SBS Entities = 5,600 hours.

[107] *See, e.g., Custody of Funds or Securities of Clients by Investment Advisers,* Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456, at 1473 (Jan. 11, 2010). Depending on the facts and circumstances relating to an SBS Entity's business, third party service providers may use different methods to assess each of an SBS Entity's capabilities and report their findings to the SBS Entity, which may affect the cost of the review and the amount a third party charges an SBS Entity for this review.

[108] (5 hours + 20 hours) × 27 SBS Entities = 675 hours.

[109] *See supra* notes 55 and 56.

[110] 3 hours × 4 SBS Entities that are not registered with the Commission or CFTC = 12 hours.

[111] Commission staff believes that, as most firms already collect all or most of the information already, it likely would not take employees more than an hour each, on average, to provide any additional information. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. As the categories of employees that could be required to provide additional information is diverse (*see supra* notes 55 and 56) the weighted-average cost of 46 of the positions included in Securities Industry and Financial Markets Association's (''SIFMA'') publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of an Attorney is approximately $260/hour. 1 hour × 25 associated persons × $260 = $6,500.

[112] One hour × 4 SBS Entities that are not registered with the Commission or CFTC × 25 associated persons effecting or involved in effecting security-based swaps on behalf of the SBS Entity = 100 hours.

[113] One hour × 25 associated persons × 55 SBS Entities = 1,375 hours.

[114] The staff notes that the Bureau of Labor Statistics Labor Turnover Survey indicates that turnover is presently in the range of 3.2%, however the staff believes that the present economic situation has likely driven turnover to a historically low level and that this broad statistic likely does not adequately represent actual turnover in the financial services sector. Consequently, the staff believes, based on its experience, that a higher number may be more appropriate.

above, the Commission estimates that the burden to have an SBS Entity's CCO review and sign each associated person's employment record would be approximately one hour. Thus, the ongoing annual burden to each SBS Entity would be approximately three hours [115] and the total cost to all SBS Entities to comply with Rule 15Fb6–1 on an ongoing basis would be approximately 165 hours annually.[116]

The Commission believes that as the CCO would already have reviewed and signed each employee's employment record, signing the required certification will not take a significant amount of time. Thus, Commission staff estimates, based on its experience relative to the securities industry, that it would take a CCO approximately one hour to certify on Schedule G that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. Consequently, the Commission staff estimates that the total burden to all SBS Entities to complete this certification on Schedule G would be approximately 55 hours.[117]

5. Burdens on Nonresident SBS Entities

The Commission estimates, based on conversations with industry participants, that approximately 40 percent or 22 SBS Entities will be nonresident SBS Entities. Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity file an additional schedule (Schedule F) with their Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, to identify its U.S. agent for service of process and to certify that the firm can, as a matter of law, provide the Commission with access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission.

Commission staff conservatively estimates, based on its experience relative to the securities industry and Form BD, that the average time necessary for a nonresident SBS Entity to complete and file Schedule F would be approximately one hour. Thus, the Commission estimates that the total burden for all nonresident SBS Entities approximately to complete and file Schedule F would be approximately 22 hours.[118]

In addition, nonresident SBS Entities would incur outside legal costs associated with obtaining an opinion of counsel. In previous releases, the Commission estimated that firms with a similar requirement would incur, on average, approximately $900 in outside legal costs to obtain an opinion of counsel.[119] This estimate originally related to the cost a foreign bank issuer would incur to obtain a legal opinion to provide to the Commission when seeking an exemption from the requirement to make certain additional disclosures.[120] Although the legal opinion for foreign bank issuers also would address privacy laws in the issuer's home jurisdiction that may preclude certain disclosures, upon further reflection, we believe that the legal opinion required for nonresident SBS Entities pursuant to the proposed rule would likely require additional research and analysis to prepare. Based on staff experience, the Commission estimates that each nonresident SBS Entity would incur, on average, approximately $25,000 in outside legal costs to obtain the necessary opinion of counsel, and that the total cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately $550,000.[121]

6. Burden Related to Retention of Manually Signed Signature Pages

Pursuant to proposed Rule 15Fb1–1, each signatory to an electronic filing must, when the electronic filing is made, manually sign a signature page or other document adopting his or her signature that appears in typed form within the electronic filing. This manually signed page must be retained by the SBS Entity until at least three years after the form or certification has been replaced or is no longer effective. It is likely that each SBS Entity would need to maintain at least three pages with manually signed signatures (the execution page of Form SBSE, SBSE–A, or SBSE–BD, as applicable, Schedule G, and the Form SBSE–C certification). In addition, nonresident SBS Entities also would need to retain a manually signed copy of Schedule F. As so few pages would need to be retained, the staff believes the burden associated with retaining them would not be significant. Thus, the Commission estimates that it would take each SBS Entity approximately 10 minutes annually to assure that these pages are retained, or a total of approximately 9 hours annually for all SBS Entities.[122]

7. Burden Associated With Filing Withdrawal Form

Given that the cost and effort to register as an SBS Entity will be significant, the Commission believes that entities will not enter and exit this business regularly. As the Form SBSE–W is only one page and consists of information readily available to SBS Entities, the staff estimates (based on experience relative to Form BD–W) that it likely would take an SBS Entity, on average, approximately one hour to complete and file a Form SBSE–W. While the Commission believes it is unlikely that any SBS Entity will withdraw from registration often or within the first year, solely for purposes of this PRA the Commission estimates that one SBS Entity may file Form SBSE–W to withdraw from registration annually and the total burden associated with completing and filing Form SBSE–W would be approximately one hour each year.

8. Burden Associated With Proposed Temporary Rule 15Fb2–2T

Proposed temporary Rule 15Fb2–2T would only be adopted if a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted. Pursuant to proposed temporary Rule 15Fb2–2T, each SBS Entity would need to file its application and certification in paper form, and then resubmit its application and certification in electronic form once a technological means to receive such documents becomes functional.

The burden associated with completing and filing the forms once are discussed above. Thus, the additional burden associated with proposed temporary Rule 15Fb2–2T relate to electronic resubmission of the form.

The staff estimates that the costs associated with resubmitting each of the forms would be minimal, but would be contingent on the length of the form. Further, the additional time to file the certification (which consists of a single page) would not vary relative to the form required to be filed, and would not add significantly to the times required to file the registration forms. The

[115] One hour × three associated persons = three hours.

[116] Three hours × 55 SBS Entities = 165 hours.

[117] One hour × 55 SBS Entities = 55 hours.

[118] 1 hour × 22 nonresident SBS Entities = 22 hours.

[119] *Registration and Regulation of Security-Based Swap Execution Facilities,* Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011); *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010); *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004), 69 FR 24016 (Apr. 30, 2004). The $900 figure is based on an estimate of $400 an hour for legal services.

[120] *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004).

[121] $25,000 × 22 SBS Entities = $550,000.

[122] (10 minutes × 55 SBS Entities)/60 minutes = 9.17 hours.

Commission staff preliminarily estimates, based on the staff's experience relative to the securities industry and Form BD, that the average time necessary for an SBS Entity to resubmit a Form SBSE would be approximately four hours. As Forms SBSE–A and SBSE–BD are shorter than Form SBSE, the Commission staff preliminarily estimates that resubmitting Form SBSE–A would take approximately two hours, and that resubmitting Form SBSE–BD would take approximately one hour. Thus, the Commission estimates that the total burden to all SBS Entities to resubmit their Forms SBSE, SBSE–A, or SBSE–BD, as applicable, would be approximately 102 hours.[123]

9. Request for Comment on Burden Estimates

The Commission seeks comment on the recordkeeping and reporting collection of information burdens associated with proposed Rule 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, and SBSE–BD, as applicable.

Q–173. What burdens, if any, would respondents incur with respect to system design, programming, expanding systems capacity, and establishing compliance programs to comply with proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, as applicable?

Q–174. Is it likely that SBS Entities will complete Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, as applicable, themselves or is it more likely that they would obtain assistance in completing these forms from some outside entity (*e.g.,* outside counsel)? If an SBS Entity obtains assistance in completing the forms from an outside entity, what type of entity may be utilized and what may the relative costs to employ such an entity for this purpose be?

Q–175. Would there be different or additional burdens associated with the collection of information under Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W, as applicable, that a respondent does not currently undertake in the ordinary course of business that the Commission has failed to identify? If so, please both describe and quantify any additional burden(s).

Q–176. Are the burden and cost estimates regarding the review necessary to support the Senior Officer Certification appropriate? Are there other processes a senior officer may utilize to gain the necessary comfort to sign the Senior Officer Certification? If so, what other processes might be used and what are the advantages, burdens and/or costs of those other processes? Also, is the Commission's estimate accurate regarding how many SBS Entities may utilize an external, as opposed to an internal, review process?

Q–177. Would nonresident SBS Entities incur greater or lesser costs for the opinion of counsel? Would the cost more likely be closer to $900, as previously estimated? Are the costs likely to exceed $25,000?

E. Retention Period of Recordkeeping Requirements

Proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W would require that each respondent retain certain records and information for three years.

F. Collection of Information Is Mandatory

Any collections of information required pursuant to proposed Rules 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C would be mandatory to permit the Commission to determine whether applicants meet the standards for registration, and to fulfill its oversight responsibilities.

The collections of information required pursuant to proposed Rule 15Fb3–2 and Form SBSE–W would be mandatory to allow the Commission to determine whether it is in the public interest to allow an SBS Entity to withdraw from registration.

The collections of information required pursuant to proposed Rule 15Fb2–2T would be mandatory to provide a process for the Commission to facilitate registration of SBS Entities if an electronic system to facilitate registration is not functional by the time final registration rules are adopted.

G. Confidentiality

The Commission intends to make the information collected pursuant to proposed Rule 15Fb1–1 through 15Fb6–1 and Forms SBSE, SBSE–A, SBSE–BD, SBSE–C and SBSE–W public.

H. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information shall have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–40–11. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7–40–11, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549–1090. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Economic Analysis

In response to the recent financial crisis, Congress passed the Dodd-Frank Act in July of 2010. Among other things, the Dodd-Frank Act is designed to strengthen oversight, improve consumer protections, and reduce systemic risks throughout the financial system. Title VII of the Dodd-Frank Act specifically addresses the OTC derivatives markets, including the market for security-based swaps, and requires the Commission to undertake a number of rulemakings to establish a regulatory framework for SBS Entities.

In promulgating the provisions of Section 764 of the Dodd-Frank Act, Congress established a mandatory registration regime for SBS Entities but left the form and manner of such registration within the discretion of the Commission. In determining the form and manner of such registration, the Commission may require ''such information, as the Commission

[123] (2 hours × 35 SBS Entities already registered with the CFTC) + (1 hour × 16 SBS Entities already registered with the Commission) + (4 hours × 4 SBS Entities not otherwise registered with either the Commission or the CFTC) = 102 hours.

considers necessary concerning the business in which the applicant is or will be engaged.'' [124] The Dodd-Frank Act also requires that SBS Entities ''continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.'' [125] Section 764 also provides that registrations ''shall expire at such time as the Commission may prescribe by rule,'' [126] and prohibits SBS Entities from allowing persons associated with it that are ''subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the [SBS Entity if the entity] knew, or in the exercise of reasonable care should have known, of the statutory disqualification.'' [127] Finally, the Dodd-Frank Act provides the Commission with additional broad authority to effect registration and regulation of SBS Entities.[128]

Today, the Commission is proposing new rules and forms that provide a process for registration of SBS Entities. This process would require that SBS Entities apply for registration by submitting a Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable. Further, this process would allow SBS Entities to register conditionally or on an ongoing basis, as necessary. In addition, each SBS Entity seeking ongoing registration would need to submit to the Commission a certification on Form SBSE–C, signed by a knowledgeable senior officer.

In drafting these rules the Commission sought to design a registration process that is similar to other registration processes administered by the Commission. To the extent market participants are familiar with these existing registration processes, we believe that using similar processes to register SBS Entities would create efficiencies for market participants. Many of the proposed rules were drafted based on rules applicable to broker-dealers. Similarly, the draft forms were based on Forms BD and BDW. However, the Commission also has sought to assure that the staff has information sufficient to make a determination as to whether registration should be granted or denied. Thus, the Form SBSE differs from Form BD in that it requests information specific to the SBS business and does not request information specific to the broker-dealer business. The Commission also sought to assure that the proposed rules, the forms, and the process generally are as clear as possible so as to minimize confusion. The Commission has sought to minimize, to the extent possible, duplication and costs that the rules may impose on firms. Finally, burdens and costs that have been estimated for PRA purposes are included in the broader costs and benefits discussion that follows because we believe, as the registration process would largely be forms-based, it is appropriate to include them. The Commission is sensitive to the costs and benefits imposed by its rules.

A. Benefits

The proposed rules and forms described in this section would be issued pursuant to a specific grant of rulemaking authority in the Dodd-Frank Act. As indicated above, the forms were based on Forms BD and BDW, which broker-dealers are familiar with and which are similar to the Form 7–R that futures and commodities firms use to register with the CFTC. Significantly, the Commission is proposing the use of multiple registration forms to limit the amount of duplication and costs imposed on firms already registered with the Commission as a broker-dealer or with the CFTC as a swap dealer or major swap participant. The Commission considered using only one form to facilitate registration, but we believe using multiple forms would provide a benefit to firms because it would reduce the costs to register.

In addition the proposed use of multiple forms is designed to allow firms already registered with the SEC as broker-dealers or registered or registering with the CFTC as swap dealers or swap participants to submit or utilize forms they have already completed to facilitate registration with the Commission. This use of existing forms would allow the Commission to obtain the information it needs to determine whether to grant registration without requiring the applicant to duplicate substantially the same information that they have already provided to regulators for another purpose.

The proposed rules and forms would require that SBS Entities provide certain standardized data (including disciplinary information) to the Commission. The Commission would then make this information public. This would provide SBS counterparties and the marketplace with additional, comparable information on all SBS Entities (for instance, by highlighting previously unrecognized comparative strengths and weaknesses) which would allow them to make more informed choices with respect to counterparties and collateral. The Commission also believes that this may promote competition by leveling the playing field for market participants who may have disparate access to information regarding each SBS Entity. In addition, making such standardized information on SBS Entities public would enable counterparties and the marketplace to expend less time and money to independently obtain and compile information on SBS Entities to use in making such choices.

Requiring the reporting of standardized information through these forms also will allow the Commission to identify the risk characteristics of each SBS Entity, which should help the Commission focus examinations and other oversight resources more efficiently and effectively.

Once SBS Entities are registered, they will be subject to standardized requirements that set a baseline level of, among other things, internal controls, capital and margin levels for all SBS Entities. The registration and regulation of SBS Entities also may promote capital formation by providing market participants with certain, uniform information regarding registered SBS Entities (as described above) and assuring market participants that registered SBS Entities meet established standards. By facilitating oversight of SBS Entities, registration and regulation of these entities also could increase counterparty trust, and may encourage more counterparties and eligible contract participants to enter the SBS marketplace. It also may be beneficial if SBS entities that are not capable of meeting, or are unwilling to meet, their regulatory obligations exit the market.

B. Costs

Although the Commission believes that registration and regulation of SBS Entities would result in significant benefits to customers of and counterparties to SBS Entities, investors, eligible contract participants and the market for SBS, the Commission recognizes that the proposed registration rules and forms would also entail costs.

The Commission preliminarily estimates that SBS Entities would incur costs associated with: (i) Researching, completing, and filing the forms, (ii) reviewing, completing and submitting the required certification, and documenting the review process, (iii) obtaining or compiling the required questionnaires or employment applications, having the CCO review the questionnaires and certify that no relevant associated person is subject to

[124] 15 U.S.C. 78o–10(b)(2)(A).

[125] 15 U.S.C. 78o–10(b)(2)(B).

[126] 15 U.S.C. 78o–10(b)(3).

[127] 15 U.S.C. 78o–10(b)(6).

[128] 15 U.S.C. 78o–10(b)(4) and (d).

statutory disqualification, (iv) the requirements that nonresident SBS Entities obtain an agreement for U.S. service of process and an opinion of counsel stating that they can provide the Commission with access to records, (v) the requirement to retain manually signed signature pages, and (vi) the requirements associated with filing forms in paper format and resubmitting those forms electronically if the Commission does not have a technological means to receive applications electronically by the time final registration rules are adopted.

The Commission preliminarily believes that the proposed amendments may impose a burden on competition for smaller SBS Entities to the extent that they impose relatively fixed costs, which could represent a higher percentage of net income for smaller SBS Entities. Registration costs may also impact those SBS Entities that are not already registered under another area of their business model to a greater degree than they would impact SBS Entities that have previously registered under another regulatory regime. The SBS Entity registration requirement may cause some market participants that are not capable of meeting their operational, financial and/or regulatory obligations to exit the market. However, the Commission believes that any reduction in competition resulting from an exit from the market by SBS Entities that are not capable of meeting, or that are unwilling to meet, their regulatory obligations is a necessary and appropriate burden on competition.

1. Costs Attributable to Filing the Forms

Proposed Rule 15Fb2–1 would require that each SBS Entity register with the Commission by filing Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable. Firms must file these forms electronically, which also should reduce the associated costs because SBS Entities will not incur costs associated with copying or postage. The Commission preliminarily believes that it would cost each SBS Entity approximately $11,800 to complete and file the Form SBSE (including the Schedules [129] and DRPs).[130] As stated previously, the Commission has attempted to reduce costs associated with the application process by providing multiple forms for SBS Entities to use to register. The alternative forms (Form SBSE–A, and Form SBSE–BD) are both shorter and should require that an SBS Entity expend less effort to research, complete, and file. Consequently, the Commission preliminarily believes that it would cost each firm approximately $9,440 to complete Form SBSE–A [131] (including the Schedules [132] and DRPs) and approximately $2,950 to complete Form SBSE–BD (including the Schedules).[133] It is anticipated that each SBS Entity will only need to research, complete, and file one Form, and that it will update that Form, as necessary, as described below.

The Commission preliminarily believes, based on its understanding of the security-based swap market and conversations with industry participants, that approximately fifty firms will fit the definition of SBS dealer and approximately five firms will fit the definition of major security-based swap participant. Further, based on its understanding of the securities-based swap market, the Commission believes that the majority of firms that may register as SBS Entities also will be engaged in the swaps business and will register with the CFTC as swap dealers or major swap participants. In addition, persons holding securities positions may find it beneficial to hedge those positions with security-based swaps, so it may be beneficial for a broker-dealer to become an SBS Entity so that it can provide this option to its customers. However, given the costs of being a registered entity, it may be less likely for an entity that is not otherwise registered to register as an SBS Entity. Consequently, the Commission believes that thirty-five SBS Entities will register with the Commission using Form SBSE–A, twelve SBS Entities will register with the Commission using Form SBSE–BD, and eight SBS Entities will register with the Commission using Form SBSE. Thus, the total estimated cost to all entities to research, complete, and file Forms to register as SBS Entities would be approximately $424,800.[134]

Proposed Rule 15Fb2–3 would require that SBS Entities amend their applications if they find that the information contained therein has become inaccurate. While SBS Entities may need to update their Forms periodically, it likely would not cost a significant amount to make such changes because each firm will have already completed Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable, and would only need to amend that aspect of the Form that has become inaccurate. Based on the number of amendments the Commission receives annually on Form BD,[135] the Commission estimates that each SBS Entity would file approximately three amendments annually. Consequently, the Commission estimates that the cost for each SBS Entity to complete and file amendments to its forms is

[129] *See supra* note 95.

[130] The staff has previously estimated that the average time necessary for a broker-dealer to complete and file Form BD, the Form upon which Form SBSE was based, would be approximately three hours (and that estimate was been subject to notice and comment. *Broker-Dealer Registration and Reporting,* Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586.) However, SBS Entities have not previously been subject to regulation and may need significantly more time to research the answers to complete Form SBSE and its schedules and DRPs. Thus, while it is likely that the time necessary to complete Form SBSE would vary depending on the nature and complexity of the entity's business, Commission staff estimates that the average time necessary for an SBS Entity to research the questions, and complete and file a Form SBSE would be approximately one work week or forty hours. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 40 hours × $295 = $11,800.

[131] The Commission staff believes that, as Form SBSE–A is shorter than the Form SBSE, it should take an SBS Entity less time to research the questions, and complete and file a Form SBSE–A. Thus, while it is likely that the time necessary to complete Form SBSE–A would vary depending on the nature and complexity of the entity's business, the staff estimates that researching, completing, and filing Form SBSE–A would take approximately 80% of the time that it would take to research, complete, and file a Form SBSE, or thirty two hours. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE–A, and that the pay scales for broker-dealers and SBS Entities would likely be similar. *See supra* note 130. 32 hours × $295 = $9,440.

[132] *See supra* note 95.

[133] *See supra* note 95. The Commission staff believes that, as Form SBSE–BD is shorter than either Form SBSE or Form SBSE–A, it should take an SBS Entity less time to research the questions, and complete and file a Form SBSE–BD. In addition, broker-dealers who would be filing Form SBSE–BD are familiar with Commission terminology and Forms. Thus, while it is likely that the time necessary to complete Form SBSE–BD would vary depending on the nature and complexity of the entity's business, the staff estimates that researching, completing, and filing Form SBSE–BD would take approximately 25% of the time that it would take to research, complete, and file a Form SBSE, or ten hours. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE–BD. *See supra* note 130. 10 hours × $295 = $2,950.

[134] $424,800 = (35 × $9,440) + (16 × $2,950) + (4 × $11,800).

[135] On March 1, 2010 there were 5,163 broker-dealers registered with the Commission (based on Form BD data). The Commission received 20,666, 17,839, 16,702, 16,365, and 17,247 amended Forms BD during the fiscal years ending 9/30/2005, 9/30/2006, 9/30/2007, 9/30/2008 and 9/30/2009, respectively. ((20,666 + 17,839 + 16,702 + 16,365 + 17,247)/5 years)/5,163 broker-dealers = 3.44 amendments per broker-dealer per year.

approximately $885.[136] Thus, the Commission estimates that it would cost all SBS Entities approximately $48,675 annually to complete and file these amendments.[137]

Proposed Rule 15Fb3–1 would require an SBS Entity seeking to withdraw from Commission registration to file Form SBSE–W. Given that the cost and effort to register as an SBS Entity will be significant, the Commission believes that entities will not enter and exit this business regularly. Further, the Commission believes it is unlikely that any SBS Entity will withdraw from registration within the first year. However, there will be a cost associated with withdrawing from registration as an SBS Entity must file a Form SBSE–W to do so. As the Form SBSE–W is only one page and consists of information readily available to SBS Entities, the Commission estimates that the cost for an SBS Entity to complete and file a Form SBSE–W would be approximately $295.[138]

The Dodd-Frank Act clearly requires registration of SBS Entities. All other entities that register with the Commission do so by filing some type of application, which may be a standardized form (*e.g.,* Form TA–1, Form ADV and Form BD). The Commission generally requires that registered entities amend these forms to correct inaccurate information either as necessary or periodically. Further, all other entities that with to withdraw from Commission registration must file some type of notice with the Commission, which may be a standardized form (*see, e.g.,* Form TA–W, Form ADVW, and Form BDW). Thus, it is likely that Congress contemplated or intended that the Commission establish this type of registration regime. The Commission believes the use of conditional registration and the certification process using Form SBSE–C is a reasonable and relatively low cost method to assure that firms have operational, financial and compliance capabilities to act as SBS Entities and implement adequate procedures to comply with federal securities laws and provide the Commission with a basis to take final action on SBS Entity registration.

2. Costs of Certification

Paragraph (b) of proposed Rule 15Fb2–1 would require that each SBS Entity have a knowledgeable senior officer certify that, after due inquiry, he or she has reasonably determined that the SBS Entity has the operational, financial, and compliance capabilities to act as an SBS Dealer or major security-based swap participant, as applicable, and has documented the process by which he or she has reached such determination. Each SBS Entity would need to provide this certification on Form SBSE–C only once. The Commission believes that the majority of the cost associated with this certification would arise from the review the senior officer conducts, or has others conduct, prior to certifying that the SBS Entity has the requisite operational, financial, and compliance capabilities.[139] The senior officer would also need to certify that he or she has documented this process.

The Commission understands (based on the staff's experience with broker-dealers and other regulated entities) that, in satisfying other certification requirements, SBS Entities may use different processes, depending on the facts and circumstances of their business. Some SBS Entities may develop more or less robust process than others and, as a result, may incur higher or lower than average costs. Some SBS Entities may use a sub-certification process whereby the senior officer will not certify a firm-wide statement unless and until other persons responsible for certain activities in turn certify to the senior officer that the standard has been met, while other firms may use an internal or external audit-type process whereby a senior officer may choose to employ a third party to review an area subject to a firm-wide certification before submitting the certification. There may be other processes an SBS Entity could use to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities that we have not specifically identified here. Many factors outside of the Commission's control[140] may determine whether an SBS Entity might choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification. For purposes of this economic analysis, we will estimate that approximately half, or twenty-eight of the SBS Entities, may use an internal process and the other half, or twenty-seven of the SBS Entities, will use an external process.

The Commission believes that, regardless of whether an SBS Entity may choose to utilize an internal process, as opposed to an external process, to serve as a basis for the Senior Officer Certification, it will cost approximately $10,450 on average for a senior officer to review documents provided either by subordinates or by a third party to gain the comfort necessary to sign and to sign the Senior Officer Certification.[141] The Commission estimates that, if an SBS Entity opted to conduct an internal review of the SBS Entity's operational, financial and compliance capabilities, it will cost each SBS Entity approximately an additional $73,150[142] for other SBS

[136] While it is likely that the time necessary to file an amendment to Form SBSE, Form SBSE–A, or Form SBSE–BD, as applicable may vary depending on the nature and complexity of the information to be amended, the staff estimates, based on experience, that it likely would take an SBS Entity, on average, approximately one hour to amend its application each time it files an amendment. The staff believes that an SBS Entity would have a Compliance Manager complete and file amendments to the SBS Entity's forms, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 1 hours × $295 × three per year = $885.

[137] $885 × 55 SBS Entities = $48,675.

[138] The staff estimates, based on experience, that it likely would take an SBS Entity, on average, approximately one hour to complete and file a Form SBSE–W. The staff believes that an SBS Entity would have a Compliance Manager complete and file Form SBSE–W, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 1 hour × $295 = $295.

[139] *See supra* note 42.

[140] *See supra* note 103.

[141] The Commission has previously estimated that the burden associated with having a senior officer sign a certification likely would be approximately five hours. *See supra* note 104. The Commission has also estimated that it would take a senior officer approximately twenty hours to review, document, and update compliance procedures, (*Id.*) which the staff believes would be analogous to reviewing documents provided either by subordinates or a third party to gain comfort necessary to sign the Senior Officer Certification, and to document this review. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar, and that the pay of a Chief Compliance Officer likely would be similar to the amount paid to other senior officers. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. 25 hours × $418 = $10,450.

[142] Commission staff estimates, based on its experience relative to the securities and OTC derivatives industries, that if a senior officer opted to conduct an internal review of the SBS Entity's operational, financial, and compliance capabilities, it would take approximately one hundred and seventy five additional hours for other SBS Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with whatever sub-certifications or other documents he or she may request to obtain the necessary comfort before signing the Senior

Continued

Entity employees to assess the SBS Entity's operational, financial, and compliance capabilities and provide the senior officer with whatever sub-certifications or other documents he or she may request to obtain the necessary comfort before signing the Senior Officer Certification. Alternatively, if an SBS Entity opted to conduct an external review of the SBS Entity's operational, financial and compliance capabilities, the Commission estimates that it will cost each SBS Entity approximately an additional $600,000.[143] Thus, the Commission estimates that this certification requirement will cost all SBS Entities a total of approximately $18,822,950.[144]

In addition to these costs, there may be additional costs and benefits relating to certification that are more difficult to quantify. For instance, the requirement to certify as to capabilities may impose costs on SBS Entities relating to the legal uncertainty and potential liability that arises from the possibility that a regulator may find that the certification was inaccurate or false. However, a potential benefit would be to focus senior officers' attention to assuring that an SBS Entity conducts its business in accordance with the certification language. In addition, the more robust the process and meaningful the review of an SBS Entity's capabilities, the more likely that review will fulfill the Commission's goals in proposing the Senior Officer Certification requirement, and the more likely the process will help the SBS Entity to strengthen its capabilities, processes and controls which could serve to decrease operational, financial, and compliance risks.

In addition, the Senior Officer Certification is designed to help assure the Commission, potential investors in, customers of, and counterparties to an SBS Entity that the SBS Entity has the requisite capabilities to act in that capacity. By providing this assurance after a senior officer has performed due inquiry, the Senior Officer Certification requirement also could prevent entities who may be more likely to fail because they do not have the requisite capabilities from registering with the Commission, which could help prevent disorderly and unstable markets. Further, the Senior Officer Certification may enhance market participants' ability to assess the counterparty credit risk associated with a particular SBS Entity counterparty. In this way, the Senior Officer Certification should help to protect market participants from SBS Entities that are not competent to engage in that business, lack the financial resources to do so, or are unable or unwilling to comply with applicable law.

3. Costs Relating to Associated Persons

The Dodd-Frank Act makes it unlawful for SBS Entities to permit any associated person subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf if it knew or, in the exercise of reasonable care should have known, of the statutory disqualification. Proposed Rule 15Fb6–1 would require that SBS Entities obtain a questionnaire or application for employment executed by each of its associated persons who is involved in effecting security based swaps on behalf of the SBS Entity that contains certain, specified information. The proposed rule further would provide that the questionnaire or application must be reviewed and signed by the SBS Dealer's or major security-based swap participant's Chief Compliance Officer. Finally, the CCO would need to certify that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security based swaps on behalf of the SBS Entity.[145] The Commission estimates, based on the staff's experience in dealing with entities that likely will need to register as SBS Entities, that SBS Entities each have, on average, 25 associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity. The Commission believes that the information SBS Entities would need to obtain through these questionnaires is fairly standard in the financial services industry, and is already collected by firms registered with the CFTC and the SEC. In addition, SBS Entities that are registered with the Commission or the CFTC must already perform background checks on their employees because of the prohibitions from employment of statutorily disqualified persons in the CEA and the Exchange Act.

The Commission estimates that the cost for each SBS Entity to review its employment questionnaire or application to verify that it contains all of the required information and to update the questionnaire, as necessary, to obtain any information not presently included on that questionnaire would be approximately $950.[146] As SBS Entities that are already registered with the Commission and the CFTC already collect this information, the Commission estimates that the cost to all SBS Entities to review employment questionnaire or application forms, verify that they contain all of the required information and update the questionnaire or application forms, as necessary, would be approximately $3,800.[147]

The Commission estimates that the cost to require an SBS Entity's existing associated persons that effect or are

Officer Certification. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar, and that the pay of a Chief Compliance Officer likely would be similar to the amount paid to other senior officers. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. For purposes of this estimate, we will assume that those a senior officer may consult with are paid at approximately the same level. 175 hours × $418 = $73,150.

[143] The Commission has previously estimated that the burden associated with obtaining an internal control report from a third party would cost approximately $250,000. *See supra* note 107. The staff believes that an internal control report would be roughly analogous to a third party review of each SBS Entity capability included in the Senior Officer Certification; however, the staff believes the cost of a third party review of an SBS Entity's capabilities likely would be less than the cost of three separate internal control reviews because the third party review of capabilities would not require an accountant's opinion and because some economies of scale likely could be achieved when a third party reviews three capabilities for a single SBS Entity. Depending on the facts and circumstances of an SBS Entity's business, third party service providers may use different methods to assess each of an SBS Entity's capabilities and report their findings to the SBS Entity, which may affect the cost of the review and the amount a third party charges an SBS Entity for this review. Consequently, the staff estimates that the cost for an SBS Entity to obtain a third party review to provide its senior officer with the necessary comfort to sign the Senior Officer Certification would be approximately $600,000 to have a third party review the SBS Entity's operational, financial, and compliance capabilities and provide the SBS Entity with evidence sufficient to make the senior officer sufficiently comfortable to sign the Senior Officer Certification.

[144] ($10,450 × 55 SBS Entities) + ($73,150 × 28 SBS Entities) + ($600,000 × 27 SBS Entities) = $574,750 + $2,048,200 + $16,200,000 = $18,822,950.

[145] *See supra* notes 55 and 56.

[146] Commission staff estimates, based on its experience, that the average time necessary for an SBS Entity to review its employment questionnaire or application to verify that it contains all of the required information and to update the questionnaire would be approximately three hours. The staff believes that an SBS Entity would have an Attorney perform this review and update, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of an Attorney is approximately $316/hour. 3 hours × $316 = $948.

[147] $950 × 4 SBS Entities that are not registered with the Commission or CFTC = $3,800.

involved in effecting security-based swaps on behalf of the SBS Entity to provide those few categories of information that they did not originally provide on their employment questionnaires or applications would be approximately $6,500.[148] As SBS Entities that are already registered with the Commission and the CFTC already collect this information from employees, the Commission estimates that the cost to all SBS Entities to obtain additional information from relevant associated persons, would be approximately $52,000.[149]

The Commission estimates that the cost to have an SBS Entity's CCO review and sign each associated person's employment record would be approximately $418.[150] The Commission estimates that the cost to all SBS Entities to have their CCOs review and sign each associated person's employment record would be approximately $574,750.[151]

On an ongoing basis, if employee turnover at an SBS Entity averages 12%, each SBS Entity would need to perform background checks and have its CCO review and sign three new associated persons' employment records per year. As stated above, the Commission estimates that the cost to have an SBS Entity's CCO review and sign each associated person's employment record would be approximately $418. Thus, the cost of each new associated person would be approximately $418, the ongoing annual cost to each SBS Entity would be approximately $1,254 [152] and the total cost to all SBS Entities to comply with Rule 15Fb6–1 on an ongoing basis would be approximately $68,970.[153]

The Commission believes that as the CCO would already have reviewed and signed each employee's employment record, signing the certification on Schedule G will not take a significant amount of time. Thus, the Commission estimates that the cost for each SBS Entity to have its CCO certify on Schedule G that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification would be approximately $418.[154] Consequently, the total cost for all SBS Entities to have their CCO sign this certification on Schedule G would be approximately $22,990.[155]

The Commission believes that, in order to comply with the prohibition in the Dodd-Frank Act from having statutorily disqualified associated persons that effect or are involved in effecting security-based swaps, SBS Entities would need to at least obtain the information required by proposed Rule 15Fb6–1 and perform a background check. Having the CCO approve the employment applications and provide the Commission with a certification would provide the Commission with a degree of comfort that the SBS Entity is complying with the prohibition in the Act and aid it in its oversight of SBS Entities.

4. Costs to Nonresident SBS Entities

The Commission estimates, based on conversations with industry participants, that approximately 40 percent or twenty-two SBS Entities will be nonresident SBS Entities. Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity must obtain an agreement with a United States person appointing that person as the firm's U.S. agent for service of process. In addition, Proposed Rule 15Fb2–4 would require that each nonresident SBS Entity obtain an opinion of counsel stating that it can provide the Commission with access to records. These entities also must file an additional schedule (Schedule F) with their Form SBSE, Form SBSE–A, or Form SBSE–BD, as appropriate, to identify the firm's U.S. agent for service of process and to certify that the firm can, as a matter of law, provide the Commission with access to its books and records.

The Commission estimates, based on internet research,[156] that it would cost each nonresident SBS Entity approximately $125 annually to appoint and maintain a relationship with a U.S. agent for service of process. Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately $2,750 per year.[157]

In addition, nonresident SBS Entities would incur outside legal costs associated with obtaining an opinion of counsel. In previous releases, the Commission estimated that firms with a similar requirement would incur, on average, approximately $900 in outside legal costs to obtain an opinion of counsel.[158] This estimate originally related to the cost a foreign bank issuer would incur to obtain a legal opinion to provide to the Commission when seeking an exemption from the requirement to make certain additional disclosures.[159] Although the legal opinion for foreign bank issuers also would address privacy laws in the issuer's home jurisdiction that may preclude certain disclosures, upon further reflection, we believe that the legal opinion required for nonresident SBS Entities pursuant to the proposed rule would likely require additional research and analysis to prepare. Based on staff experience, the Commission estimates that each nonresident SBS Entity would incur, on average,

[148] Commission staff believes that, as most firms already collect all or most of the information already, it likely would not take employees more than an hour each, on average, to provide any additional information. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. As the categories of employees that could be required to provide additional information is diverse (*see supra* notes 55 and 56) the weighted-average cost of 46 of the positions included in SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of an Attorney is approximately $260/hour. 1 hour × 25 associated persons × $260 = $6,500.

[149] $6,500 × 4 SBS Entities that are not registered with the Commission or CFTC = $26,000.

[150] Commission staff estimates, based on staff experience, that it would take a CCO approximately one hour to review and approve a relevant employee's employment record. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. 1 hour × $418 = $418.

[151] $418 × 25 associated persons × 55 SBS Entities = $574,750.

[152] $418 × 3 associated persons = $1,254.

[153] $1,254 × 55 SBS Entities = $68,970.

[154] Commission staff conservatively estimates that it would take a CCO approximately one hour to certify that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification. The staff believes the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Chief Compliance Officer is approximately $418/hour. 1 hour × $418 = $418.

[155] $418 × 55 SBS Entities = $22,990.

[156] *See, e.g., http://www.incnow.com/registered_agent.shtml,* and *http://www.ailcorp.com/registeredagent.htm.* The staff sought Web sites that provided pricing information and a comprehensive description of their registered agent services.

[157] $125 per nonresident SBS Entity × 22 nonresident SBS Entities = $2,750.

[158] *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010); 75 FR 77306 (Dec. 10, 2010); *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004). The $900 figure is based on an estimate of $400 an hour for legal services.

[159] *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k),* Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004).

approximately $25,000 in outside legal costs to obtain the necessary opinion of counsel, and that the total cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately $550,000.[160]

The Commission estimates that it would cost each nonresident SBS Entity approximately $295 to complete Schedule F.[161] Thus, the Commission estimates that the total cost for all nonresident SBS Entities approximately $6,490.[162]

While the Dodd-Frank Act does not distinguish between resident and nonresident SBS Entities, it clearly contemplates Commission oversight of registered SBS Entities. The Commission's experience with other nonresident registrants has led the staff to believe that these requirements are necessary and appropriate to allow the Commission to adequately oversee nonresident SBS Entities.

5. Costs of Retaining Manually Signed Signature Pages

Pursuant to proposed Rule 15Fb1–1, each signatory to an electronic filing would be required to, when the electronic filing is made, manually sign a signature page or other document adopting his or her signature that appears in typed form within the electronic filing. Each SBS Entity must retain these manually signed pages until at least three years after the form or certification has been replaced or is no longer effective. It is likely that each SBS Entity would need to maintain at least three pages with manually signed signatures (the execution page of Form SBSE, SBSE–A, or SBSE–BD, as applicable, Schedule G, and the Form SBSE–C certification). In addition, nonresident SBS Entities also will need to retain a manually signed copy of Schedule F. As so few pages would need to be maintained pursuant to proposed Rule 15Fb1–1, Commission staff does not believe the costs associated with retaining them would be significant. Thus, the Commission estimates that it would cost each SBS Entity approximately $49.17 annually assure that it is complying with the requirement to retain these manually signed signature pages,[163] or a total of approximately $2,704 annually for all SBS Entities.[164]

6. Costs Associated With Proposed Temporary Rule 15Fb2–2T

Proposed temporary Rule 15Fb2–2T would only be adopted if a technological means to facilitate receipt and retention of applications is not functional by the time final rules are adopted. Pursuant to proposed temporary Rule 15Fb2–2T, each SBS Entity would need to file its application and certification in paper form. Proposed temporary Rule 15Fb2–2T also would require that each SBS Entity resubmit its application and certification in electronic form once a technological means to receive such documents becomes functional.

The costs associated with completing the forms are discussed above. Thus, the additional costs associated with proposed temporary Rule 15Fb2–2T would include the postage cost to send a paper form and the personnel costs associated with later resubmitting the form electronically.

The postage costs likely would be driven by the number of pages each SBS Entity would need to send, which could vary significantly depending on the number of DRPs each firm must include with its Form. The staff conservatively estimates that each SBS Entity may incur, on average, approximately $5 to send its form to the Commission. As the certification consists of a one page Form SBSE–C, the staff estimates that it likely would cost an SBS Entity approximately $.50 to send its certification to the Commission. The Commission hopes that it will have a technological means to receive these forms functional relatively quickly; however each SBS Entity may also need to file an amendment before that occurs. As any amendment would likely include few pages because the SBS Entity only would need to provide updates to those items which become inaccurate, the staff estimates that it would cost each SBS Entity approximately $.50 to send an amendment to the Commission. Consequently, the total postage cost to each SBS Entity associated with proposed temporary Rule 15Fb2–2T would be approximately $6, and the total postage costs associated with proposed temporary Rule 15Fb2–2T would be approximately $330.

The staff estimates that the costs associated with filing each of the forms would be minimal, but would be contingent on the length of the form. The Commission preliminarily believes that it would cost each SBS Entity approximately $1,180 to resubmit the Form SBSE.[165] As Forms SBSE–A and SBSE–BD are shorter than Form SBSE, the Commission preliminarily believes that it would cost each SBS Entity approximately $590 to resubmit the Form SBSE–A,[166] and $295 to resubmit the Form SBSE–BD.[167] Thus, the Commission estimates that the total cost to all SBS Entities to resubmit their Form SBSE, SBSE–A, or SBSE–BD, as applicable, would be approximately $33,630.[168]

C. Request for Comment

The Commission requests data to quantify and estimates of the costs and the value of the benefits of the proposed rules described above. The Commission specifically requests the following data or estimates with respect to the number

[160] $25,000 × 22 SBS Entities = $550,000.

[161] Commission staff conservatively estimates, based on staff experience, that the average time necessary for an SBS Entity to complete and file Schedule F would be approximately one hour. The staff believes that an SBS Entity would have a Compliance Manager complete and file Schedule F with its Form SBSE, Form SBSE–A, or form SBSE–BD, as appropriate, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 1 hour × $295 = $295.

[162] $295 per nonresident SBS Entity × 22 nonresident SBS Entities = $6,490.

[163] Commission staff conservatively estimates, based on staff experience, that the average time necessary for an SBS Entity to assure that it is complying with the requirement to retain these pages would be approximately ten minutes. The staff believes that an SBS Entity would have a Compliance Manager to assure that it is complying with the requirement to retain these pages, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 10 minutes × $295 = $49.17.

[164] $49.17 per SBS Entity × 55 SBS Entities = $2,704.17.

[165] Commission staff estimates, based on staff experience, that the average time necessary for an SBS Entity to file a Form SBSE would be approximately four hours. The staff believes that an SBS Entity would have a Compliance Manager file the firm's application on Form SBSE, and that the pay scales for broker-dealers and SBS Entities would likely be similar. According to the SIFMA publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, the hourly cost of a Compliance Manager is approximately $295/hour. 4 hours × $295 = $1,180.

[166] Commission staff estimates that filing Form SBSE–A would take approximately two hours. The staff believes that an SBS Entity would have a Compliance Manager file the form's application on Form SBSE–A, and that the pay scales for broker-dealers and SBS Entities would likely be similar. 2 hours × $295 = $590.

[167] Commission staff estimates that filing Form SBSE–BD would take approximately one hour. The staff believes that an SBS Entity would have a Compliance Manager complete and file the form's application on Form SBSE–BD. 1 hour × $295 = $295.

[168] ($590 × 35) + ($295 × 16) + ($1,180 × 4) = $30,090.

of persons that act as SBS Dealers and major security-based swap participants. The Commission specifically requests comment on the following:

Q–178. Are the estimates of the number of registrants that would be required to submit each form and the estimates of the costs associated with completing the forms and amendments are reasonable? If not, why not?

Q–179. Should the Commission require different and/or additional information to be provided on the proposed forms?

Q–180. Would additional benefits accrue if the Commission required different or additional information and, if so, what would these requirements entail?

Q–181. What other processes might an SBS Entity use to provide a basis for a senior officer's reasonable determination that the SBS Entity has the requisite capabilities that we may not have considered, and what would be the advantages, disadvantages, costs and benefits of those other processes?

Q–182. Are there additional costs or benefits related to registration information that the Commission should consider?

The Commission solicits comments on the costs and benefits related to the limited recordkeeping requirements of these proposed registration rules. The Commission specifically requests comment on the following:

Q–183. Should the Commission require different and/or additional information to be maintained by SBS Entities?

Q–184. Would additional benefits accrue if the Commission imposed different or additional recordkeeping requirements and, if so, what would these requirements entail?

Q–185. Are there additional costs or benefits related to recordkeeping that the Commission should consider?

We request comment on all aspects of the costs and benefits of the proposed rules and forms, particularly any effect our proposed rules may have on efficiency, competition, and capital formation. Commentators should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed rule.

Q–186. What would be the competitive or anticompetitive effects of the proposed rules and forms on any market participants if the proposals are adopted as proposed?

Q–187. Would proposed Rules 15Fb1–1 through 15Fb6–1 and the proposed forms place a burden on competition?

Q–188. What may be the effect of the proposal on efficiency, competition, and capital formation?

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') [169] the Commission must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review.

Q–189. What may be the potential impact of these proposed registration rules and forms for SBS Entities? Please include empirical data on (a) The potential annual effect of the proposed registration rules and forms on the economy; (b) any increase in costs or prices for consumers or individual industries associated with the proposed registration rules and forms; and (c) any potential effect the proposed registration rules and forms may have on competition, investment or innovation.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [170] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [171] of the Administrative Procedure Act,[172] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [173] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have a significant economic impact on a substantial number of small entities.[174]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (i) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [175] or (ii) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[176] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[177] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) for entities in credit intermediation and related activities,[178] entities with $175 million or less in assets or, (ii) for non-depository credit intermediation and certain other activities,[179] $7 million or less in annual receipts; (iii) for entities in financial investments and related activities,[180] entities with $7 million or less in annual receipts; (iv) for insurance carriers and entities in related

[169] Public Law 104–121, Tit. II, 110 Stat. 857 (1996).

[170] 5 U.S.C. 601 *et seq.*

[171] 5 U.S.C. 603(a).

[172] 5 U.S.C. 551 *et seq.*

[173] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See Statement of Management on Internal Control,* Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982).

[174] *See* 5 U.S.C. 605(b).

[175] *See* 17 CFR 240.0–10(a).

[176] *See* 17 CFR 240.17a–5(d).

[177] *See* 17 CFR 240.0–10(c).

[178] Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing. Subsector 522.

[179] Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation. Subsector 522.

[180] Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. Subsector 523.

activities,[181] entities with $7 million or less in annual receipts; and (v) for funds, trusts, and other financial vehicles,[182] entities with $7 million or less in annual receipts.[183]

Based on the Commission's existing information about the security-based swap market, the Commission preliminarily believes that the market, while broad in scope, is largely dominated by entities such as those that would be covered by the ''security-based swap dealer'' and ''major security-based swap market participant'' definitions. Subject to certain exceptions, Exchange Act Section 3(a)(71)(A) defines ''security-based swap dealer'' to mean any person who: (i) Holds itself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.[184] Exchange Act Section 3(a)(67)(A) defines ''major security-based swap participant'' to be as any person: (i) Who is not an SBS Dealer; and (ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; (II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or (III) that is a financial entity that (aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking regulator; and (bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.[185]

Based on feedback from industry participants about the security-based swap markets, the Commission preliminarily believes that entities that will qualify as SBS Dealers and major security-based swap market participants, whether registered broker-dealers or not, exceed the thresholds defining ''small entities'' set out above. Thus, the Commission believes it is unlikely that the proposed SBS Entity registration rules and forms would have a significant economic impact any small entity.

For the foregoing reasons, the Commission certifies that the proposed SBS Entity registration rules and forms would not have a significant economic impact on any small entity for purposes of the RFA.

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

VIII. Statutory Basis and Text of Proposed Rules

The Commission is proposing Rule 15Fb1–1 through 15Fb6–1 pursuant to Sections 15F(a) through (d), 17(a), 23(a) and 30 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Parts 240 and 249

Registration, Reporting and recordkeeping requirements, Securities, Security-based swaps, Security-based swap dealers, Security-based swap participants, Forms.

In accordance with the foregoing, the Securities and Exchange Commission is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

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

1. The general authority citation for Part 240 is revised to read as follows:

Authority: 12 U.S.C. 5221(e)(3); 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; and Pub. L. 111–203, § 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

2. Add an undesignated center heading and §§ 240.15Fb1–1 through 240.15Fb6–1 to read as follows:

Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

Sec.

240.15Fb1–1 Signatures.
240.15Fb2–1 Registration of security-based swap dealers and major security-based swap participants.
240.15Fb2–2T Temporary filing requirement.
240.15Fb2–3 Amendments to application for registration.
240.15Fb2–4 Nonresident security-based swap dealers and major security-based swap participants.
240.15Fb2–5 Registration of successor to registered security-based swap dealer or major security-based swap participant.
240.15Fb2–6 Registration of fiduciaries.
240.15Fb3–1 Duration of registration.
240.15Fb3–2 Withdrawal from registration.
240.15Fb3–3 Cancellation and revocation of registration.
240.15Fb6–1 Reports regarding associated persons.

* * * * *

§ 240.15Fb1–1 Signatures.

(a) Required signatures to, or within, any electronic submission (including, without limitation, signatories within the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1) must be in typed form rather than manual format. Signatures in an HTML, XML or XBRL document that are not required may, but are not required to, be presented in a graphic or image file within the electronic filing. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letters or series of letters of characters comprising a name, executed, adopted or authorized as a signature.

(b) Each signatory to an electronic filing (including, without limitation, each signatory to the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is

[181] Including direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities. Subsector 524.

[182] Including pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles. Subsector 525.

[183] *See* 13 CFR 121.201 (Jan. 1, 2010).

[184] *See supra* note 6.

[185] *See supra* note 7.

made. Upon request, the security-based swap dealer or major security-based swap participant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph (b).

(c) A person required to provide a signature on an electronic submission (including, without limitation, each signatory to the forms and certifications required by §§ 240.15Fb2–1, 240.15Fb2–4 and 240.15Fb6–1) may not have the form or certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each manually signed signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing—

(1) On Schedules F and G to Form SBSE (§ 249.1600 of this chapter), SBSE–A (§ 249.1600a. of this chapter), or SBSE–BD (§ 249.1600b of this chapter), as appropriate, shall be retained by the filer until at least three years after the form or certification has been replaced or is no longer effective;

(2) On Form SBSE–C (§ 249.1600c of this chapter) shall be retained by the filer until at least three years after the Form was filed with the Commission.

§ 240.15Fb2–1 Registration of security-based swap dealers and major security-based swap participants.

(a) *Application.* An application for registration of a security-based swap dealer or a major security-based swap participant that is filed pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall be filed on Form SBSE (§ 249.1600 of this chapter) or Form SBSE–A (§ 249.1600a of this chapter) or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, in accordance with this section and the instructions to the forms.

(b) *Certification.*

(1) *Form of certification.* A knowledgeable senior officer shall certify on Form SBSE–C (§ 249.1600c of this chapter) that, after due inquiry, he or she has reasonably determined that the security-based swap dealer or major security-based swap participant has the operational, financial, and compliance capabilities to act as a security-based swap dealer or major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination.

(2) *Timing of filing of certification.*

(i) *Conditional registration.*

(A) *Prior to the last compliance date.* Each security-based swap dealer or major security-based swap participant that files a completed application in accordance with paragraph (a) of this section before the last compliance date (as defined in paragraph (e) of this section) must file the certification described in paragraph (b)(1) of this section on or before such last compliance date.

(B) *Major security-based swap participants.* Each major security-based swap participant that files a completed application in accordance with paragraph (a) of this section after the last compliance date must file the certification described in paragraph (b)(1) of this section within four months after it files its completed application.

(ii) *Ongoing registration.* Each security-based swap dealer that files a completed application in accordance with paragraph (a) of this section after the last compliance date must file the certification described in paragraph (b)(1) of this section at the time it files its application.

(c) *Filing.*

(1) *Electronic filing.* Every application for registration and certification of a security-based swap dealer or major security-based swap participant and any additional registration documents shall be filed electronically with the Commission or its designee.

(2) *Effective date of filing.*

(i) *Application.* An application of a security-based swap dealer or a major security-based swap participant submitted pursuant to paragraph (a) of this section shall be considered filed when a complete Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, and all required additional documents are submitted electronically with the Commission or its designee;

(ii) *Certification.* A certification of a security-based swap dealer or a major security-based swap participant submitted pursuant to paragraph (b) of this section shall be considered filed when a complete Form SBSE–C (§ 249.1600c of this chapter) is submitted electronically with the Commission or its designee.

(d) *Commission decision.*

(1) *Conditional registration.* The Commission may deny or grant registration to a security-based swap dealer or major security-based swap participant on a conditional basis. The Commission will grant conditional registration if it finds that the security-based swap dealer's or major security-based swap participant's application is complete; *Except that,* the Commission may institute proceedings to determine whether conditional registration should be denied if the applicant is subject to a statutory disqualification (as defined in 15 U.S.C. 78c(a)(39)) or if the Commission is aware of inaccurate statements in the application. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission shall grant or deny such registration.

(2) *Ongoing registration.* The Commission may grant or deny ongoing registration based on a security-based swap dealer's or major security-based swap participant's application (filed pursuant to paragraph (a) of this section) and certification (filed pursuant to paragraph (b) of this section). A conditionally registered security-based swap dealer or major security-based swap participant need not submit a new application to apply for ongoing registration, but must amend its application, as required pursuant to § 240.15Fb2–3. The Commission will grant ongoing registration if it finds that the requirements of Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) are satisfied; *Except that,* the Commission may institute proceedings to determine whether ongoing registration should be denied if it does not make such finding or if the applicant is subject to a statutory disqualification (as defined in 15 U.S.C. 78c(a)(39)) or the Commission is aware of inaccurate statements in the application or certification. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission shall grant or deny such registration.

(e) *Definition.* For purposes of this section, the term *last compliance date* shall mean the latest date, designated by the Commission, by which security-based swap dealers and major security-based swap participant must comply with any of the initial rules promulgated under Section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10).

§ 240.15Fb2–2T Temporary filing requirement.

(a) *Paper filing.* If a technological means to facilitate receipt and retention of applications required to be filed in accordance with § 240.15Fb2–1 is not functional on or before [*date to be determined*], each applicant for registration as a security-based swap dealer or major security-based swap participant must, notwithstanding § 240.15Fb2–1(c)(1), file its application on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of

this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as applicable, any additional documents, and Form SBSE–C (§ 249.1600c of this chapter) in paper form by sending it to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

(b) *Transitional resubmission requirement.* Each applicant must resubmit its Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), and Form SBSE–BD (§ 249.1600b of this chapter), as applicable, any additional documents, and Form SBSE–C (§ 249.1600c of this chapter) to the Commission electronically within three months of the date such technological means to facilitate receipt and retention of applications becomes functional.

§ 240.15Fb2–3 Amendments to application for registration.

If a security-based swap dealer or a major security-based swap participant finds that the information contained in its application for registration (as described in § 240.15Fb2–1(a)), or in any amendment thereto, is or has become inaccurate for any reason, the security-based swap dealer or a major security-based swap participant shall promptly file an amendment electronically with the Commission/its designee on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, to correct such information.

§ 240.15Fb2–4 Nonresident security-based swap dealers and major security-based swap participants.

(a) *Definition.* For purposes of this section, the terms *nonresident security-based swap dealer* and *nonresident major security-based swap participant* shall mean:

(1) In the case of an individual, one who resides, or has his or her principal place of business, in any place not in the United States;

(2) In the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; or

(3) In the case of a partnership or other unincorporated organization or association, one having its principal place of business outside the United States.

(b) *Power of attorney.*

(1) Each nonresident security-based swap dealer and nonresident major security-based swap participant registered or applying for registration pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall obtain a written irrevocable consent and power of attorney appointing an agent in the United States, other than the Commission or a Commission member, official or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the nonresident security-based swap dealer or nonresident major security-based swap participant to enforce the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). This consent and power of attorney must be signed by the nonresident security-based swap dealer or nonresident major security-based swap participant and the named agent(s) for service of process.

(2) Each nonresident security-based swap dealer and nonresident major security-based swap participant registered or applying for registration pursuant to section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall, at the time of filing its application on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, furnish to the Commission the name and address of its United States agent for service of process on Schedule F to the appropriate form.

(3) Any change of a nonresident security-based swap dealer's and nonresident major security-based swap participant's agent for service of process and any change of name or address of a nonresident security-based swap dealer's and nonresident major security-based swap participant's existing agent for service of process shall be communicated promptly to the Commission through amendment of the Schedule F of Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate.

(4) Each nonresident security-based swap dealer and nonresident major security-based swap participant must promptly appoint a successor agent for service of process if the nonresident security-based swap dealer and nonresident major security-based swap participant discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the nonresident security-based swap dealer or nonresident major security-based swap participant.

(5) Each nonresident security-based swap dealer and nonresident major security-based swap participant must maintain, as part of its books and records, the agreement identified in paragraph (b)(1) of this section for at least three years after the agreement is terminated.

(c) *Access to books and records.*

(1) *Certification and opinion of counsel.* Any nonresident security-based swap dealer and nonresident major security-based swap participant applying for registration pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b) shall certify on Schedule F of Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, and provide an opinion of counsel that the nonresident security-based swap dealer and nonresident major security-based swap participant can, as a matter of law, provide the Commission with prompt access to the books and records of such nonresident security-based swap dealer and nonresident major security-based swap participant, and can, as a matter of law, submit to onsite inspection and examination by the Commission.

(2) *Amendments.* The nonresident security-based swap dealer and nonresident major security-based swap participant shall re-certify, on Schedule F to Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as applicable, within 90 days after any changes in the legal or regulatory framework that would impact the nonresident security-based swap dealer's or nonresident major security-based swap participant's ability to, or the manner in which it provides the Commission with prompt access to its books and records, or impacts the Commission's ability to inspect and examine the nonresident security-based swap dealer or nonresident major security-based swap participant. The re-certification shall be accompanied by a revised opinion of counsel describing how, as a matter of law, the nonresident security-based swap dealer or nonresident major security-based swap participant will continue to meet its obligations to provide the Commission with prompt access to its books and records and to be subject to Commission inspection and examination under the new regulatory regime.

§ 240.15Fb2–5 Registration of successor to registered security-based swap dealer or a major security-based swap participant.

(a) In the event that a security-based swap dealer or major security-based swap participant succeeds to and continues the business of a security-

based swap dealer or major security-based swap participant registered pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration in accordance with § 240.15Fb2–1, and the predecessor files a notice of withdrawal from registration on Form SBSE–W (§ 249.1601 of this chapter).

(b) Notwithstanding paragraph (a) of this section, if a security-based swap dealer or major security-based swap participant succeeds to and continues the business of a registered predecessor security-based swap dealer or major security-based swap participant, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor security-based swap dealer or major security-based swap participant on Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Fb2–6 Registration of fiduciaries.

The registration of a security-based swap dealer or a major security-based swap participant shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such registered security-based swap dealer or a major security-based swap participant; Provided, that such fiduciary files with the Commission, within 30 days after entering upon the performance of his or her duties, an amended Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, indicating the fiduciary's position with respect to management of the firm and, as an additional document, a copy of the order, judgment, decree, or other document appointing the fiduciary.

§ 240.15Fb3–1 Duration of registration.

(a) *General.* A person registered as a security-based swap dealer or major security-based swap participant in accordance with § 240.15Fb2–1 will continue to be so registered until the effective date of any cancellation, revocation or withdrawal of such registration or any other event the Commission determines should trigger expiration.

(b) *Conditional registration.* Notwithstanding paragraph (a) of this section, conditional registration granted by the Commission in accordance with § 240.15Fb2–1(d)(1) shall expire:

(1) *During the transitional period*—on the last compliance date (as that term is defined in § 240.15Fb2–1(e)) for security-based swap dealers and major security-based swap participants that filed a completed application before the last compliance date, unless the security-based swap dealer or major security-based swap participant files with the Commission a certification in accordance with § 240.15Fb2–1(b)(1)(i), in which case conditional registration shall extend an additional thirty days;

(2) *Major security-based swap participants*—four months after the major security-based swap participant files its completed application, unless the major security-based swap participant files with the Commission a certification in accordance with § 240.15Fb2–1(b)(1)(ii); in which case the conditional registration shall extend an additional thirty days.

(c) *Extensions.* The Commission may extend conditional registration for good cause.

§ 240.15Fb3–2 Withdrawal from registration.

(a) Notice of withdrawal from registration as a security-based swap dealer or major security-based swap participant pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall be filed on Form SBSE–W (§ 249.1601 of this chapter) in accordance with the instructions contained therein. Every notice of withdrawal from registration as a security-based swap dealer or major security-based swap participant shall be filed electronically with the Commission or its designee in accordance with applicable filing requirements. Prior to filing a notice of withdrawal from registration on Form SBSE–W, a security-based swap dealer or major security-based swap participant shall amend its Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter) or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, in accordance with § 240.15Fb2–3(a) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a security-based swap dealer or major security-based swap participant pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) shall become effective for all matters (except as provided in this paragraph (b)) on the 60th day after the filing thereof with the Commission or its designee, within such longer period of time as to which such security-based swap dealer or major security-based swap participant consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such security-based swap dealer or major security-based swap participant, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

§ 240.15Fb3–3 Cancellation and revocation of registration.

(a) *Cancellation.* If the Commission finds that any person registered pursuant to § 240.15Fb2–1 is no longer in existence or has ceased to do business as a security-based swap dealer or major security-based swap participant, the Commission shall by order cancel the registration of such person.

(b) *Revocation.* The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission if it makes a finding as specified in Section 15F(l)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(l)(2)).

§ 240.15Fb6–1 Reports regarding associated persons.

(a) *Certification.* No registered security-based swap dealer or major security-based swap participant shall act as a security-based swap dealer or major security-based swap participant unless it has certified electronically on Schedule G of Form SBSE (§ 249.1600 of this chapter), Form SBSE–A (§ 249.1600a of this chapter), or Form SBSE–BD (§ 249.1600b of this chapter), as appropriate, that no person associated with such security-based swap dealer or major security-based swap participant who is effecting or involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)).

(b) To support the certification required by paragraph (a) of this section, each registered security-based swap dealer and registered major security-based swap participant shall obtain a questionnaire or application for employment executed by each of its associated persons who effects or is involved in effecting security based swaps on behalf of the security-based swap dealer or major security-based swap participant which questionnaire or application shall serve as a basis for a background check of the associated person and be reviewed and signed by the security-based swap dealer's or major security-based swap participant's Chief Compliance Officer (designated as required by Section 15F(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(k)) or his or her designee and shall contain at least the following information with respect to the associated person:

(1) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the security-based swap dealer and major security-based swap participant;

(2) The associated person's date of birth;

(3) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(4) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, by any national securities exchange or national securities association, or by any foreign financial regulatory authority including any finding that the associated person either aided or abetted or was a cause of any disciplinary action or had violated any law;

(5) A record of any denial, suspension, expulsion or revocation of membership or registration of any broker, dealer, security-based swap dealer, or major security-based swap participant with which the associated person was associated in any capacity when such action was taken;

(6) A record of any permanent or temporary injunction entered against the associated person or any broker, dealer, security-based swap dealer, or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered;

(7) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities (including security-based swaps), futures or commodities (including swaps), banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(8) A record of any other name or names by which the associated person has been known or which the associated person has used.

(c) Each registered security-based swap dealer and registered major security-based swap participant shall maintain all questionnaires and applications for employment obtained pursuant to paragraph (b) of this section as part of its books and records for at least three years after the associated person has terminated his or her association with the registered security-based swap dealer or registered major security-based swap participant.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Add subpart Q to read as follows:

Subpart Q—Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

Sec.

249.1600 Form SBSE, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.
249.1600a Form SBSE–A, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant that are not also registered or registering with the Commission as a broker or dealer.
249.1600b Form SBSE–BD, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commission as a broker or dealer.
249.1600c Form SBSE–C, for certification by security-based swap dealers and major security-based swap participants.
249.1601 Form SBSE–W, for withdrawal from registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.

§ 249.1600 Form SBSE, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.

This form shall be used for application for registration as a security-based swap dealer or major security-based swap participant by firms that are not registered with the Commission as a broker or dealer and that are not registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) and to amend such an application for registration.

§ 249.1600a Form SBSE–A, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant that are not also registered or registering with the Commission as a broker or dealer.

This form shall be used instead of Form SBSE (§ 249.1600) to apply for registration as a security-based swap dealer or major security-based swap participant by firms that are not registered or registering with the Commission as a broker or dealer but that are registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) and to amend such an application for

registration. An entity that is registered or registering with the Commission as a broker or dealer and is also registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant shall apply for registration as a security-based swap dealer or major security-based swap participant on Form SBSE–BD (§ 249.1600b) and not on this Form SBSE–A.

§ 249.1600b Form SBSE–BD, for application for registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration by firms registered or registering with the Commission as a broker or dealer.

This form shall be used instead of either Form SBSE (§ 249.1600) or SBSE–A (§ 249.1600a) to apply for registration as a security-based swap dealer or major security-based swap participant solely by firms registered or registering with the Commission as a broker or dealer, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) and to amend such an application for registration. An entity that is registered or registering with the Commission as a broker or dealer and is also registered or registering with the Commodity Futures Trading Commission as a swap dealer or major swap participant, the entity shall apply for registration as a security-based swap dealer or major security-based swap participant on this Form SBSE–BD and not on Form SBSE–A.

§ 249.1600c Form SBSE–C, for certification by security-based swap dealers and major security-based swap participants.

This form shall be used to file the certification required pursuant to § 240.15Fb2–1(b) of this chapter.

§ 249.1601 Form SBSE–W, for withdrawal from registration as a security-based swap dealer or major security-based swap participant or to amend such an application for registration.

This form shall be used to withdraw from registration as a security-based swap dealer or major security-based swap participant, pursuant to Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)).

By the Commission.

Dated: October 12, 2011.

Elizabeth M. Murphy,

Secretary.

Note: The following Forms will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

Form SBSE

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants

FORM SBSE INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. **FORM** - Form SBSE is the Application for Registration as either a Security-based Swap Dealer or Major Security-based Swap Participant (collectively, "SBS Entities"). SBS Entities that are not registered with the Commission as broker-dealers nor registered or registering with the Commodity Futures Trading Commission ("CFTC") as a swap dealer or major swap participant must file this form to register with the Securities and Exchange Commission. An applicant must also file Schedules A, B, D, E, F, and G as appropriate. There is no Schedule C.
2. **ELECTRONIC FILING** – The applicant must file Form SBSE through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE electronically to assure the timely acceptance and processing of those filings.[186]
3. **UPDATING** - By law, the *applicant* must promptly update Form SBSE information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason [17 CFR 240.15Fb2-2]. In addition, the *applicant* must update any incomplete or inaccurate information contained on Form SBSE prior to filing a notice of withdrawal from registration on Form SBSE-W [17 CFR 15Fb3-2(a)].
4. **CONTACT EMPLOYEE** - The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
5. **FEDERAL INFORMATION LAW AND REQUIREMENTS -** An agency may not conduct or sponsor, and a *person* is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o-10, 78q and 78w. Filing of this form is mandatory; however, the social security number information, which aids in identifying the applicant, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirements to engage in the security-based swap business. The Commission maintain[s] a file of the information on this form and will make certain information collected via the form publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

B. FILING INSTRUCTIONS

1. **FORMAT**
   a. Sections 1-14 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   b. *Applicant* must complete the execution screen certifying that Form SBSE and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   c. To amend information, the *applicant* must update the appropriate Form SBSE screens.
   d. A paper copy, with original signatures, of the initial Form SBSE filing and amendments to Disclosure Reporting Pages (DRPs) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 12 must be provided on the *applicant's* appropriate DRP.
3. **DIRECT AND INDIRECT OWNERS** - Amend the Direct Owners and Executive Officers screen and the Indirect Owners screen when changes in ownership occur.

The mailing address for questions and correspondence is:

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186 As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

EXPLANATION OF TERMS
(The following terms are italicized throughout this form.)

1. GENERAL

APPLICANT - The security-based swap dealer or major security-based swap participant applying on or amending this form.

CONTROL - The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to *control* that company.

STATE – Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, any other territory of the United States, or any subdivision or regulatory body thereof.

PERSON - An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION (SRO) - Any national securities or futures exchange, registered securities or futures association, registered clearing agency, or derivatives clearing organization.

SUCCESSOR – The term "successor" is defined to be an unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a predecessor security-based swap dealer or major security-based swap participant that ceases its security-based swap activities. [See Exchange Act Rule 15Fb2-5 (17 CFR 240.15Fb2-5]

2. FOR THE PURPOSE OF ITEM 12 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)

CHARGED - Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

CONTROL AFFILIATE – A person named in Items 10 or 11 as a control person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant*, including any current employee of the applicant except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FELONY – For jurisdictions that do not differentiate between a *felony* and a *misdemeanor,* a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

MINOR RULE VIOLATION – A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the SEC or CFTC. A rule violation may be designated as "minor" under a plan if the

sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes).

MISDEMEANOR – For jurisdictions that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

FORM SBSE Page 1 (Execution Page)	Uniform Application for Security-based Swap Dealer and Major Security-based Swap Participant Registration Date:_____ SEC Filer No: _____	Official Use	Official Use Only

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as an SBS Entity, would violate the Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[ ] APPLICATION [ ] AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of the *applicant:*

A. Full name of the *applicant*:

B. Tax Identification No.: Applicant's CIK # (if any):

C. (1) The *business name* under which the *applicant* primarily conducts business, if different from 1A.

(2) List on Schedule D, Page 1, Section I any other name by which the *applicant* conducts business and where it is used.

D. If this filing makes a name change on behalf of an *applicant,* enter the new name and specify whether the change is to the [ ] *applicant's name* (1A) or [ ] business name (1C):

Please check above.

E. *Applicant's* Main Address: (Do not use a P.O. Box)

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

Other business locations must be reported on Schedule E. Security-based swap dealers and major security-based swap participants that do not reside in the United States of America shall designate a U.S. agent for service of process on Schedule F.

F. Mailing Address, if different:

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

G. Business Telephone Number:

H Website/URL:

I. Contact Employee:

Name: Title:

Telephone Number: Email Address:

J. Chief Compliance Officer designated by the *applicant* in accordance with Exchange Act Section 15F(k):

Name: Title:

Telephone Number: Email Address:

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's security-based swap activities, unless the applicant is a nonresident SBS Entity , may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. If the applicant is a nonresident SBS Entity, it must complete Schedule F to designate a U.S. agent for service of process.

The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including schedules attached hereto, and other information filed herewith are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By:

Signature Name and Title of Person Signing on *Applicant's* behalf

This page must always be completed in full.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM SBSE Page 2	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use	Official Use Only

2.	A.	The applicant is registering as a security-based swap dealer: [ ] Yes [ ] No	
	B.	The applicant is registering as a major security-based swap participant: [ ] Yes [ ] No Because it: (check all that apply) [ ] maintains a substantial security-based swap position [ ] has substantial counterparty exposure [ ] is highly leveraged relative to its capital position	
3.		Does the applicant intend to compute capital or margin, or price customer or proprietary positions, using mathematical models? [ ] Yes [ ] No	
4.		Is the *applicant* subject to regulation by a prudential regulator, as defined in Section 1a(39) of the Commodity Exchange Act. [ ] Yes [ ] No If "*yes*," identify the prudential regulator: _____.	
5.		Briefly describe the *applicant's* business: _____	
6.	A.	Indicate legal status of the *applicant*: [ ] Corporation [ ] Limited Liability Company [ ] Other (specify) [ ] Partnership [ ]	
	B.	Month *applicant's* fiscal year ends: [ ]	
	C.	Indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed): State of formation: [ ] Country of formation: [ ] Date of formation: MM/DD/YYYY [ ] *Schedule A and, if applicable, Schedule B must be completed as part of all initial applications.*	
7.		Is the *applicant* at the time of this filing *succeeding* to the business of a currently registered SBS Entity? *If "Yes," complete appropriate items on Schedule D, Page 1, Section III.*	YES [ ] NO [ ]
8.		Does the *applicant* hold or maintain any funds or securities to collateralize counterparty transactions?	[ ] [ ]
9.		Does the *applicant* have any arrangement:	
	A.	With any other *person*, firm, or organization under which any books or records of the *applicant* are kept, maintained, or audited by such other *person*, firm or organization?	[ ] [ ]
	B.	Under which any other person, firm or organization executes, trades, custodies, clears or settles on behalf of the applicant (including any *SRO* or swap execution facility in which the applicant is a member)? *If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.*	[ ] [ ]
10.		Does any *person* directly or indirectly:	
	A.	*Control* the management or policies of the *applicant* through agreement or otherwise?	[ ] [ ]
	B.	Wholly or partially finance the business of the *applicant*? *Do not answer "Yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; or 2) credit extended in the ordinary course of business by suppliers, banks, and others.* *If "Yes" to any part of Item 10, complete appropriate items on Schedule D, Page 1, Section IV.*	[ ] [ ]
11.	A.	Directly or indirectly, does the *applicant control*, is the *applicant controlled* by, or is the *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business? *If "Yes" to item 11A, complete appropriate items on Schedule D, Page 2, Section V.*	[ ] [ ]
	B.	Directly or indirectly, is applicant controlled by any bank holding company or does applicant control, is applicant controlled by, or is applicant under common control with any bank (as defined in 15 U.S.C. 78c(a)(6)) or any foreign bank? *If "Yes" to item 11B, complete appropriate items on Schedule D, Page 3, Section VI.*	[ ] [ ]

FORM SBSE Page 3	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

	12. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 12. Refer to the Explanation of Terms section of Form SBSE Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE	A. In the past ten years has the *applicant* or a *control affiliate*:		
	(1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*?	YES [ ] NO [ ]	
	(2) Been charged with a *felony*	[ ] [ ]	
	B. In the past ten years has the *applicant* or a *control affiliate*:		
	(1) Been convicted of or pled guilty or or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	[ ] [ ]	
	(2) Been *charged* with a *misdemeanor* specified in 12B(1)?	[ ] [ ]	
REGULATORY ACTION DISCLOSURE	C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
	(1) *Found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ] [ ]	
	(2) *Found* the *applicant* or a *control affiliate* to have been involved in a violation of its regulations or statutes?	[ ] [ ]	
	(3) *Found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, revoked, or restricted?	[ ] [ ]	
	(4) Entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	[ ] [ ]	
	(5) Imposed a civil money penalty on the *applicant* or a *control affiliate*, or ordered the *applicant* or a *control affiliate* to cease and desist from any activity?	[ ] [ ]	
	D. Has any other federal regulatory agency, state regulatory agency, or *foreign financial regulatory authority*:		
	(1) Ever found the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	[ ] [ ]	
	(2) Ever found the *applicant* or a *control affiliate* to have been involved in a violation of *investment-related* regulations or statutes?	[ ] [ ]	
	(3) Ever found the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ] [ ]	
	(4) In the past ten years, entered an order against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	[ ] [ ]	
	(5) Ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by order, prevented it from associating with an *investment-related* business or restricted its activities?	[ ] [ ]	
	E. Has any *self-regulatory organization*:		
	(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ] [ ]	
	(2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and exchange Commission)?	[ ] [ ]	
	(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ] [ ]	
	(4) Disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	[ ] [ ]	
	F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	[ ] [ ]	
	G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 12C, D, or E?	[ ] [ ]	

FORM SBSE Page 4	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use	Official Use Only

			YES	NO
CIVIL JUDICIAL DISCLOSURE	H.	(1) Has any domestic or foreign civil judicial court:		
		(a) In the past ten years, enjoined the *applicant* or a *control affiliate* in connection with any investment-related activity?	[ ]	[ ]
		(b) Ever *found* that the *applicant* or a *control affiliate* was involved in a violation of *investment-related* statutes or regulations?	[ ]	[ ]
		(c) Ever dismissed, pursuant to a settlement agreement, an *investment-related* civil judicial action brought against the *applicant* or *control affiliate* by a state or f*oreign financial regulatory authority*?	[ ]	[ ]
		(2) Is the *applicant* or a *control affiliate* now the subject of any civil judicial *proceeding* that could result in a "yes" answer to any part of 12H(1)?	[ ]	[ ]
FINANCIAL DISCLOSURE	I.	In the past ten years has the *applicant* or a *control affiliate* ever been a securities firm or a futures firm, or a control affiliate of a securities firm or a futures firm that:		
		(1) Has been the subject of a bankruptcy petition?	[ ]	[ ]
		(2) Has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	[ ]	[ ]
13.		Is the *applicant* registered with the Commission as an investment adviser or municipal securities advisor or with the CFTC as a commodity trading adviser? If "yes," provide all unique identification numbers assigned to the firm relating to this business on Schedule D, Page 1, Section II.	[ ]	[ ]
14.	A.	Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account? If "yes," provide all unique identification numbers assigned to the firm relating to this business on Schedule D, Page 1, Section II.	[ ]	[ ]
	B.	Does *applicant* engage in any other investment-related, non-securities business? If "yes," provide all unique identification numbers assigned to the firm relating to this business and describe each other business briefly on Schedule D, Page 1, Section II.	[ ]	[ ]

Schedule A of FORM SBSE **DIRECT OWNERS AND EXECUTIVE OFFICERS** (Answer for Form SBSE Item 3)	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

1. Use Schedule A to provide information on the **direct** owners and executive officers of the applicant. Use Schedule B to provide information on **indirect** owners. **Complete each column.**

2. List below the names of:

   (a) Each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or function;

   (b) In the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934).

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence, or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) In the case of an *applicant* that is a partnership, **all** general partners, and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) In the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant*'s capital, the trust and each trustee.

   (e) In the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the applicant required to be reported on Schedule B? [ ] Yes [ ] No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership Codes are:

   NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
   A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

7. (a) In the "Control Person" column, enter "Yes" if *person* has *control* as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".

   (b) In the "PR " column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	Control Person		CRD and/or IARD No. If None, IRS Tax No.	Official Use Only
			MM	YYYY			PR		
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service)								
	For individuals not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								

Schedule B of FORM SBSE **INDIRECT OWNERS** (Answer for Form SBSE Item 3)	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

1. Use Schedule B to provide information on the **indirect** owners of the *applicant*. Use Schedule A to provide information on **direct** owners. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:

   (a) In the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation.
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence, or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (b) In the case of an owner that is a partnership, **all** general partners, and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and

   (c) In the case of an owner that is a trust, the trust and each trustee.

   (d) In the case of an owner that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Status" column by status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership Codes are:
   C - 25% but less than 50% D - 50% but less than 75% E - 75% or more F - Other General Partners

7. (a) In the "Control Person" column, enter "Yes" if *person* has *control* as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".

   (b) In the "PR " column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	Control Person		CRD and/or IARD No. If None, IRS Tax No.	Official Use Only
				MM	YYYY			PR		

Schedule D of FORM SBSE Page 1	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

Use Schedule D Page 1 to report details for items listed below.
This is an [ ] INITIAL [ ] AMENDED detail filing for the Form SBSE items checked below:

Section I *Other Business Names*

(Check if applicable) [ ] Item 1C(2)
List each of the "other" names and the *state(s) or country(ies)* in which they are used.

1. Name	State/Country	2. Name	State/Country
3. Name	State/Country	4. Name	State/Country

Section II *Other Business*

(Check if applicable) [ ] Item 13 [ ] Item 14A [ ] Item 14B
Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Unique Identification Number(s):	*Assigning Regulator(s)/Entity(s):*

Briefly describe any other investment-related, non-securities business. Use reverse side of this sheet for additional comments if necessary.

Section III *Successions*

(Check if applicable) [ ] Item 7

Date of Succession MM DD YYYY / /	*Name of Predecessor*
IRS Employer Number (if any)	SEC File Number (if any)

Briefly describe details of the succession including any assets or liabilities not assumed by the successor. Use reverse side of this sheet for additional comments if necessary.

Section IV *Record Maintenance Arrangements / Business Arrangements / Control Persons / Financings*

(Check one) [ ] Item 9A [ ] Item 9B [ ] Item 10A [ ] Item 10B
Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement, enter the effective date of the change.

Firm or Organization Name	SEC File, CRD, NFA, IARD, and/or CIK Number (if any)	
Business Address *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Individual Name	CRD, NFA, and/or IARD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Briefly describe the nature of the arrangement with respect to books or records (ITEM 9A); the nature of the execution, trading, custody, clearing or settlement arrangement (ITEM 9B);the nature of the control or agreement (ITEM 10A); or the method and amount of financing (ITEM 10B). Use reverse side of this sheet for additional comments if necessary.

For ITEM 10A ONLY - If the control person is an individual not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service).

Schedule D of FORM SBSE Page 2	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

Use this Schedule D Page 2 to report details for Item 11A. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an [ ] INITIAL [ ] AMENDED detail filing for Form SBSE Item 11A

[ ] 11A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

Section V ***Complete this section for control issues relating to ITEM 11A only.***

The details supplied relate to:

1.	Partnership, Corporation, or Organization Name	CRD Number (if any)

(*check only one*)

This Partnership, Corporation, or Organization [ ] *controls applicant* [ ] is *controlled* by *applicant* [ ] is under common *control* with *applicant*

Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Is Partnership, Corporation or Organization a foreign entity" [ ] Yes [ ] No	If Yes, provide country of domicile or incorporation"	Check "Yes" or "No" for activities of this partnership Corporation, or organization: ▶ Securities [ ] Yes [ ] No Activities:	Investment Advisory [ ] Yes [ ] No Activities:

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2.	Partnership, Corporation, or Organization Name	CRD Number (if any)

(*check only one*)

This Partnership, Corporation, or Organization [ ] *controls applicant* [ ] is *controlled* by *applicant* [ ] is under common *control* with *applicant*

Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Is Partnership, Corporation or Organization a foreign entity" [ ] Yes [ ] No	If Yes, provide country of domicile or incorporation"	Check "Yes" or "No" for activities of this partnership Corporation, or organization: ▶ Securities [ ] Yes [ ] No Activities:	Investment Advisory [ ] Yes [ ] No Activities:

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3.	Partnership, Corporation, or Organization Name	CRD Number (if any)

(*check only one*)

This Partnership, Corporation, or Organization [ ] *controls applicant* [ ] is *controlled* by *applicant* [ ] is under common *control* with *applicant*

Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Is Partnership, Corporation or Organization a foreign entity" [ ] Yes [ ] No	If Yes, provide country of domicile or incorporation"	Check "Yes" or "No" for activities of this partnership Corporation, or organization: ▶ Securities [ ] Yes [ ] No Activities:	Investment Advisory [ ] Yes [ ] No Activities:

Briefly describe the control relationship. Use reverse side of this sheet for additional comments if necessary.

If applicant has more than 3 organizations to report, complete additional schedule D Page 2s.

Schedule D of FORM SBSE Page 3	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**	Official Use Only

Use Schedule D Page 3 to report details for Item 11B. Report only new information or changes/updates to previously submitted details. Do not report previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an [ ] INITIAL [ ] AMENDED detail filing for Form SBSE Item 11B

[ ] 11B. Directly or indirectly, is applicant controlled by any bank holding company or does applicant control, is applicant controlled by, or is applicant under common control with any bank (as defined in 15 U.S.C. 78c(a)(6)) or any foreign bank?

Section VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

2.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

3.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.*)	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

4.	Financial Institution Name	CRD Number (if applicable)
Institution Type (*e.g., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, foreign bank.)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Business Address (Street, City, State/Country, Zip + 4/Postal Code	If foreign, country of domicile or incorporation	
Briefly describe the control relationship. Use reverse side of this sheet for additional comments, if necessary.		

If applicant has more than 4 organizations/institutions to report, complete additional Schedule D page 3s.

Schedule E of FORM SBSE Page 1	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use

INSTRUCTIONS

General: Use this schedule to identify other business locations of the *applicant.* Repeat Items 1-6 for each other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary.

Specific:

Item 1. Specify only one box. Check "Add" when the applicant is filing the initial notice to inform the Commission that it has opened another business location, "Delete'' when the applicant closes another business location, and "Amendment" to indicate any other change to previously filed information.

Item 2. Complete this item for all entries. Provide the date that the other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 3. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 4. Complete this item only when the *applicant* changes the address of an existing other business location.

Item 5. If the other business location occupies or shares space on premises within a bank, or other financial institution, enter the name of the institution in the space provided.

Item 6. Complete this item for all entries. Enter the name of the associated person who is responsible for the operations of, and is physically at, this location.

1. Check only one box: [ ] Add [ ] Delete [ ] Amendment
2. Effective Date:
3. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
4. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
5. Institution Name:
6. Responsible Associated Person:

1. Check only one box: [ ] Add [ ] Delete [ ] Amendment
2. Effective Date:
3. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
4. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
5. Institution Name:
6. Responsible Associated Person:

1. Check only one box: [ ] Add [ ] Delete [ ] Amendment
2. Effective Date:
3. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
4. Street:
   P.O. Box (if applicable), Suite, Floor:
   City, State/Country, Zip Code +4/Postal Code:
5. Institution Name:
6. Responsible Associated Person:

Schedule F of FORM SBSE **NONRESIDENT SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS**	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

Each nonresident security-based swap dealer and non-resident security-based swap participant shall use Schedule F to identify its United States agent for service of process and the certify that it can

(1) provide the Commission with prompt access to its books and records, and

(2) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the *applicant* may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2. Certification regarding access to records:

Applicant can as a matter of law;

(1) provide the Commission with prompt access to its books and records, and

(2) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form SBSE a copy of the opinion of counsel it is required to obtain in accordance with paragraph (c)(2) or (c)(3) of Exchange Act Rule 15Fb2-4, as appropriate [paragraphs (c)(2) or (c)(3) of 17 CFR 240.15Fb2-4.

Signature:

Name and Title:

Date:

Schedule G of FORM SBSE **CERTIFICATION ON STATUTORY DISQUALIFICATION**	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	**Official Use**

Use Schedule G to certify that none of the *applicant's* associated persons is subject to statutory disqualification (as that term is defined in Section 3(a)(39) of the Exchange Act [15 U.S.C. 78c(a)(39)].

Instructions: This certification must be signed by the *applicant's* Chief Compliance Officer designated pursuant to Exchange Act Section 15F(k) or by his or her designee.

For purposes of this Form, the term *associated person* shall have the meaning as specified in Section 3(a)(70) of the Exchange Act [15 U.S.C. 78c(a)(70)].

This is a: [ ] CERTIFICATION [ ] RE-CERTIFICATION

The *applicant* certifies that it has

(a) performed background checks on all of its *associated persons* who effect or are involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf, and

(b) determined that no *associated person* who effects or is involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(39)].

Applicant Name:	Date:
Signature of Chief Compliance Officer or Designee:	
Name of Chief Compliance Officer or Designee:	If Designee, Title of Designee:

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items 12A and 12B*** of Form SBSE;

Check **[√]** item(s) being responded to:

12A. In the past ten years has the applicant or a control affiliate:

[ ] (1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?

[ ] (2) Been charged with a felony?

12B. In the past ten years has the applicant or a control affiliate:

[ ] (1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

[ ] (2) Been charged with a misdemeanor specified in 12B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

Applicants must attach a copy of each applicable court document (*i.e.*, criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) if not previously submitted through CRD (as they could be in the case of a *control affiliate* registered through CRD). Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP (SBSE) is being filed is (are):

[ ] The *Applicant*

[ ] *Applicant* and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

SBSE DRP – CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the applicant or control affiliate exercise(d) control: Enter organization name, whether or not the organization was an investment-related business and the applicant's or control affiliate's position, title or relationship.

_____

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case number).

_____

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

A. Date First Charged (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

_____

_____

_____

C. Current status of the Event? [ ] Pending [ ] On Appeal [ ] Final

D. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Disposition Disclosure Detail: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

_____

_____

_____

_____

_____

_____

5. Provide a brief summary of the circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the char(s) occurred. (The information must fit within the space provided.)

_____

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items 12C, 12D, 12E, 12F, or 12G*** of Form SBSE;

Check **[√]** item(s) being responded to:

12C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

[ ] (1) Found the applicant or a control affiliate to have made a false statement or omission?

[ ] (2) Found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes?

[ ] (3) the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, revoked, or restricted?

[ ] (4) Entered an order against the applicant or a control affiliate in connection with investment-related activity?

[ ] (5) Imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity?

12D. Has any other federal regulatory agency, state regulatory agency, or foreign financial regulatory authority:

[ ] (1) Ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical?

[ ] (2) Ever found the applicant or a control affiliate to have been involved in a violation of investment-related regulations or statutes?

[ ] (3) Ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) In the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity?

[ ] (5) Ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?

12E. Has any self-regulatory organization or commodities exchange ever:

[ ] (1) found the applicant or a control affiliate to have made a false statement or omission?

[ ] (2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and exchange Commission)?

[ ] (3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) Disciplined the applicant or a control affiliate by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

12F. [ ] Has the applicant's or a control affiliate's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

12G. [ ] Is the applicant or a control affiliate now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 12C, 12D, 12E, 12F or 12G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

[ ] The *Applicant*

[ ] Applicant and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

SBSE DRP – CONTROL AFFILIATE

CRD NUMBER	This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

PART II

1. Regulatory Action initiated by:

[ ] SEC [ ] Other Federal [ ] State [ ] SRO [ ] Foreign

(Full name of regulator, foreign financial regulatory authority, federal, state or SRO)

2. Principal Sanction: (check appropriate item)

[ ] Civil and Administrative Penalty(ies)/Fine(s)
[ ] Bar
[ ] Cease and Desist
[ ] Censure
[ ] Denial
[ ] Disgorgement
[ ] Expulsion
[ ] Injunction
[ ] Prohibition
[ ] Reprimand
[ ] Restitution
[ ] Revocation
[ ] Suspension
[ ] Undertaking
[ ] Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. Control Affiliate Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) – Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

_____
_____
_____
_____

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, regulatory action appealed to: (SEC, SRO, Federal or State Court) and Date Appeal Filed:

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)

[ ] Acceptance, Waiver & Consent (AWC) [ ] Consent [ ] Settled
[ ] Decision & Order of Offer of Settlement [ ] Dismissed [ ] Stipulation and Consent
[ ] Decision [ ] Order [ ] Vacated

11. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

12. A. Were any of the following Sanctions Ordered? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions Ordered:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against applicant or control affiliate, date paid and if any portion of penalty was waived.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (BD)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items 12H*** of Form BD;

Check **[√]** item(s) being responded to:

12H(1) Has any domestic or foreign civil judicial court:

[ ] (a) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity?

[ ] (b) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?

[ ] (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil judicial action brought against the applicant or a control affiliate by a state or foreign financial regulatory authority?

12H(2) [ ] Is the applicant or a control affiliate now the subject of any civil judicial proceeding that could result in a "yes" answer to any part of 12H(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

[ ] The *Applicant*

[ ] Applicant and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

DRP SBSE – CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

PART II

1. Court Action initiated by: (Name of regulator, foreign financial regulatory authority, SRO, commodities exchange, agency, firm, private plaintiff, etc.)

2. Principal Relief Sought: (check appropriate item)

[ ] Cease and Desist
[ ] Civil Penalty(ies)/Fine(s)
[ ] Disgorgement
[ ] Injunction
[ ] Money Damages (Private/Civil Complaint)
[ ] Restitution
[ ] Restraining Order
[ ] Other _____

Other Relief Sought:

3. Filing Date of Court Action (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) - Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case Number):

6. Control Affiliate Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil judicial action. (The information must fit within the space provided.):

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

[ ] Consent [ ] Judgement Rendered [ ] Settled
[ ] Dismissed [ ] Opinion [ ] Withdrawn [ ] Other _____

12. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

13. Resolution Detail

A. Were any of the following Sanctions Ordered or Relief Granted? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against applicant or control affiliate, date paid and if any portion of penalty was waived.

14. Provide a brief summary of details related to action(s), allegation(s), disposition(s), and/or finding(s) disclosed above. (The information must fit within the space provided.)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (SBSE)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Questions 12l*** on Form SBSE;

Check **[√]** item(s) being responded to:

12l In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

[ ] (1) has been the subject of a bankruptcy petition?

[ ] (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person* or entity for whom this DRP (SBSE) is being filed is:

[ ] The *Applicant*

[ ] Applicant and one or more *control affiliate(s)*

[ ] One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Applicant*

BD DRP – CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is [ ] Firm [ ] Individual

Registered: [ ] Yes [ ] No

NAME (For individuals, Last, First, Middle)

[ ] This DRP should be removed from the SBS Entity's record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

[ ] Bankruptcy [ ] Declaration [ ] Receivership

[ ] Compromise [ ] Liquidated [ ] Other _____

2. Action Date (MM/DD/YYYY) _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

(continued)

3. If the financial action relates to an organization over which the *applicant* or the *control affiliate* exercise(d) *control*, enter organization name and the applicant's or control affiliate's position, title or relationship:

_____

Was the Organization investment-related? [ ] Yes [ ] No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

_____

5. Is action currently pending? [ ] Yes [ ] No

6. If not pending, provide Disposition Type: (check appropriate item)

[ ] Direct Payment Procedure [ ] Dismissed [ ] Satisfied/Released

[ ] Discharged [ ] Dissolved [ ] SIPA Trustee Appointed [ ] Other _____

7. Disposition Date (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

_____
_____
_____
_____
_____

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently open? [ ] Yes [ ] No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

10. Provide details of any status/disposition. Include details of creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

_____
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Form SBSE-A

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered or Registering with the Commodity Futures Trading Commission as a Swap Dealer or Major Swap Participant

FORM SBSE-A INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. **FORM** - Form SBSE-A is the Application for Registration as either a Security-based Swap Dealer or Major Security-based Swap Participant (collectively, "SBS Entities") by an entity that is not registered or registering with the Commission as a broker-dealer but is registered or registering with the Commodity Futures Trading Commission ("CFTC") as a swap dealer or major swap participant. **These SBS Entities must file this form and a copy of the Form 7-R they file with the CFTC (or its designee) to register with the Securities and Exchange Commission.** An applicant must also file Schedules A, B, C, F, and G, as appropriate. There are no Schedules D, or E. An entity that is registered with the Commission as a broker-dealer and also is registered or registering with the Commodity Futures Trading Commission ("CFTC") as a swap dealer or major swap participant should file Form SBSE-BD to register with the Commission as an SBS Entity.
2. **ELECTRONIC FILING** - This Form SBSE-A must be filed electronically with the Commission through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE-A electronically to assure the timely acceptance and processing of those filings.[187] Additional documents shall be attached to this electronic application.
3. **UPDATING** - By law, the *applicant* must promptly update Form SBSE-A information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason [17 CFR 240.15Fb2-2]. In addition, the applicant must update any incomplete or inaccurate information contained on Form SBSE-A prior to filing a notice of withdrawal from registration on Form SBSE-W [17 CFR 15Fb3-2(a)].
4. **CONTACT EMPLOYEE** - The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **FEDERAL INFORMATION LAW AND REQUIREMENTS -** An agency may not conduct or sponsor, and a *person* is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o-10, 78q and 78w. Filing of this form is mandatory; however, the social security number information, which aids in identifying the applicant, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirement to engage in the security-based swap business. The Commission maintain[s] a file of the information on this form and will make certain information collected via the form publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

C. FILING INSTRUCTIONS

1. **FORMAT**
   a. Items 1-16 and the accompanying Schedules and DRP pages must be answered and all fields requiring a response must be completed before the filing will be accepted.
   b. *Applicant* must complete the execution screen certifying that Form SBSE-A and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   c. To amend information, the *applicant* must update the appropriate Form SBSE-A screens.
   d. A paper copy, with original signatures, of the initial Form SBSE-A filing [and amendments to Disclosure Reporting Pages (DRPs)] must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning a *principal* that relates to the occurrence of an event reportable in Schedule C must be provided on the appropriate DRP.

The mailing address for questions and correspondence is:

---

[187] As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

EXPLANATION OF TERMS
(The following terms are italicized throughout this form.)

1. GENERAL

Terms used in this Form SBSE-A that are defined in the form the CFTC requires that swap dealers and major swap participants use to apply for registration with the CFTC shall have the same meaning as set forth in that form.

APPLICANT - The security-based swap dealer or major security-based swap participant applying on or amending this form.

CONTROL - The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to *control* that company.

JURISDICTION - A state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any subdivision or regulatory body thereof.

SUCCESSOR –The term "successor" is defined to be an unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a predecessor security-based swap dealer or major security-based swap participants that ceases its security-based swap activities. [See Exchange Act Rule 15b2-5 (17 CFR 240.15Fb2-5)]

3. FOR THE PURPOSE OF SCHEDULE C AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)

FOREIGN FINANCIAL REGULATORY AUTHORITY - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *financial services industry-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

FINANCIAL SERVICES INDUSTRY-RELATED – Pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency). (This definition is used solely for the purpose of Form SBSE-A.)

INVOLVED - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

ORDER - A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

PROCEEDING - Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

FORM SBSE-A Page 1 (Execution Page)	**Application for Registration as a Security-based Swap Dealer and Major Security-based Swap Participant that is Registered or Registering with the CFTC as a Swap Dealer or Major Swap Participant** Date:_____ *Applicant* NFA Number: _____	**Official Use**	Official Use Only

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as an SBS Entity, would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[ ] APPLICATION [ ] AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of the *applicant:*

A. Full name of the *applicant*:

B. IRS Empl. Ident. No.:

C. Applicant's NFA ID #: Applicant's CIK # (if any):

D. *Applicant's* Main Address: (Do not use a P.O. Box)

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

E. Mailing Address, if different:

Number and Street 1: Number and Street 2:

City: State: Country: Zip/Postal Code:

F. Business Telephone Number:

G Website/URL:

H. Contact Employee:

Name: Title:

Telephone Number: Email Address:

I. Chief Compliance Officer designated by the *applicant* in accordance with Exchange Act Section 15F(k):

Name: Title:

Telephone Number: Email Address:

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's security-based swap activities, unless the applicant is a nonresident SBS Entity , may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. If the applicant is a nonresident SBS Entity, it must complete Schedule F to designate a U.S. agent for service of process.

The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including schedules attached hereto, and other information filed herewith are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By: Signature Name and Title of Person Signing on *Applicant's* behalf

This page must always be completed in full.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM SBSE-A Page 2	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**	Official Use Only

2. A. The *applicant* is registering as a security-based swap dealer: [ ] Yes [ ] No

   B. The *applicant* is registering as a major security-based swap participant: [ ] Yes [ ] No
   Because it: (check all that apply)
   [ ] maintains a substantial security-based swap position
   [ ] has substantial counterparty exposure [ ] is highly leveraged relative to its capital position

3. Does the *applicant* intend to compute capital or margin, or price customer or proprietary positions, using mathematical models? [ ] Yes [ ] No

4. A. The *applicant* is currently registered with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant

   B. The *applicant* is registering with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant

5. Briefly describe the *applicant's* business: _____
   _____
   _____
   _____
   _____

		YES	NO
6.	Is the *applicant* subject to regulation by a prudential regulator, as defined in Section 1a(39) of the Commodity Exchange Act. If "*yes*," identify the prudential regulator: _____.	[ ]	[ ]
7.	Is the *applicant* registered with the Commission as an investment adviser? Applicant's IARD #: _____	[ ]	[ ]
8. A.	Is the *applicant* registered with the Commodity Futures Trading Commission in any capacity other than as a swap dealer or major swap participant?	[ ]	[ ]
B.	If "yes," as a: [ ] Futures Commission Merchant [ ] Introducing Broker [ ] Commodity Pool Operator [ ] Other: _____		
9.	Does *applicant* engage in any other non-securities, *financial services industry-related* business? *If "yes," describe each other business briefly on Schedule B, Section I.*	[ ]	[ ]
10.	Does the *applicant* hold or maintain any funds or securities to collateralize counterparty transactions?	[ ]	[ ]
11.	Does the *applicant* have any arrangement:		
A.	With any other *person*, firm, or organization under which any books or records of the *applicant* are kept, maintained, or audited by such other *person*, firm or organization?	[ ]	[ ]
B.	Under which such other person, firm or organization executes, trades, custodies, clears or settles on behalf of the applicant (including any *SRO* in which the applicant is a member)? *If "yes" to any part of Item 11, complete appropriate items on Schedule B, Section II.*	[ ]	[ ]
12.	Does any *person* directly or indirectly *control* the management or policies of the *applicant* through agreement or otherwise? *If "yes," complete appropriate item on Schedule B, Section II.*	[ ]	[ ]
13.	Does any *person* directly or indirectly finance (wholly or partially) the business of the *applicant*? *Do not answer "Yes" to Item 13 if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; or 2) credit extended in the ordinary course of business by suppliers, banks, and others.* *If "yes," complete appropriate item on Schedule B, Section II.*	[ ]	[ ]
14.	Is the *applicant* at the time of this filing *succeeding* to the business of a currently registered SBS Entity? *If "yes," complete appropriate items on Schedule B, Section III.*	[ ]	[ ]
15.	The applicant has _____ principals who are individuals. *Please list all principals who are individuals on Schedule A.*		
16.	Does any principal not identified in Item 15 and Schedule A effect, or is any principal not identified in Item 15 and Schedule A involved in effecting security-based swaps on behalf of the applicant, or will such principals effect or be involved in effecting such business on the applicant's behalf? *If "yes," complete appropriate item on Schedule B, Section IV.*		

Schedule A of FORM SBSE **PRINCIPALS THAT ARE INDIVIDUALS** (Answer for Form SBSE-A Item 15)	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**

Use Schedule A to identify all principals of the applicant who are individuals.

Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

Ownership Codes are:

NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

	FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Title or Status	Date Title or Status Acquired		Date Individual began working for applicant		Does person have an ownership interest in the applicant	If yes, include ownership code	NFA Identification No., CRD No. and/or IARD No.	Official Use Only
			MM	YYYY	MM	YYYY				
1.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
2.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
3.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
4.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
5.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
6.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
7.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
8.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
9.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								
10.							Y / N			
		For individuals not presently registered through NFA, CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service):								

Schedule B of FORM SBSE-A Page 1	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**	Official Use Only

Use this Schedule B to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an [ ] INITIAL [ ] AMENDED detail filing for the Form SBSE-A items checked below:

Section I *Other Business*

Item 9: Does *applicant* engage in any other non-securities, *financial services industry-related* business?

Unique Identification Number(s):	*Assigning Regulator(s)/Entity(s):*

Briefly describe any other *financial services industry-related*, non-securities business in which the applicant is engaged:

Section II *Record Maintenance Arrangements / Business Arrangements / Control Persons / Financings*

(Check one) [ ] Item 11A [ ] Item 11B [ ] Item 12 [ ] Item 13

Applicant must complete a separate Schedule B Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement, enter the effective date of the change.

Firm or Organization Name	SEC File, CRD, NFA, IARD, and/or CIK Number (if any)	
Business Address *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /
Individual Name	CRD, NFA, and/or IARD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip + 4 Postal Code)*	Effective Date MM DD YYYY / /	Termination Date MM DD YYYY / /

Briefly describe the nature of the arrangement with respect to books or records (ITEM 11A); the nature of the execution, trading, custody, clearing or settlement arrangement (ITEM 11B); the nature of the control or agreement (ITEM 12); or the method and amount of financing (ITEM 13). Use reverse side of this sheet for additional comments if necessary.

For ITEM 12 ONLY - If the control person is an individual not presently registered through CRD or IARD, describe prior *investment-related* experience (e.g., for each prior position - employer, job title, and dates of service).

Section III *Successions*

Item 14: Is the *applicant* at the time of this filing *succeeding* to the business of a currently registered SBS Entity?

Date of Succession MM DD YYYY / /	*Name of Predecessor*
SEC File, CRD, NFA, IARD, and/or CIK Number (if any)	IRS Employer Number (if any)

Briefly describe details of the succession including any assets or liabilities not assumed by the successor. Use reverse side of this sheet for additional comments if necessary.

Section IV *Principals Effecting or Involved in Effecting SBS Business*

Item 16: Does any principal not identified in Item 15 and Schedule A effect, or is any principal not identified in Item 15 and Schedule A involved in effecting security-based swaps on behalf of the applicant, or will such principals effect or be involved in effecting such business on the applicant's behalf?

For each Principal identified in Section IV, complete Schedule C of the Form SBSE-A and the relevant DRP pages.

1.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		

Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:

Schedule B of FORM SBSE-A Page 2	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	Official Use	Official Use Only

Section IV, Continued ***Principals Effecting or Involved in Effecting SBS Business***

For each Principal identified in Section IV, complete Schedule C of the Form SBSE-A and the relevant DRP pages.

2.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
3.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
4.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
5.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			
6.	Name of Principal	Type of Entity (Corp, Partnership, LLC, etc.)	SEC File No., CRD, NFA, IARD, CIK Number, and/or Tax Identification Number
	Business Address (*Street, City, State/Country, Zip + 4/Postal Code*)		
	This entity [ ] effects [ ] is involved in effecting security based swaps on behalf of the applicant. (*check only one*)		
Briefly describe the details of the principal's activities relating to its effecting or involvement in effecting security-based swap transactions on behalf of the applicant:			

Schedule C of FORM SBSE-A Page 1	*Applicant* Name: _____ *Principal* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**	Official Use Only

Use the appropriate DRP for providing details to "yes" answers to the questions in Schedule C. Refer to the Explanation of Terms section of Form SBSE-A Instructions for explanations of italicized terms.

		YES	NO
CRIMINAL DISCLOSURE	A. In the past ten years has the *principal*:		
	(1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*?	[ ]	[ ]
	(2) Been charged with a *felony*	[ ]	[ ]
	B. In the past ten years has the *principal*:		
	(1) Been convicted of or pled guilty or or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: *financial services industry-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	[ ]	[ ]
	(2) Been *charged* with a *misdemeanor* specified in B(1)?	[ ]	[ ]
REGULATORY ACTION DISCLOSURE	C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
	(1) *Found* the *principal* to have made a false statement or omission?	[ ]	[ ]
	(2) *Found* the *principal* to have been involved in a violation of its regulations or statutes?	[ ]	[ ]
	(3) *Found* the *principal* to have been a cause of a *financial services industry-related* business having its authorization to do business denied, revoked, or restricted?	[ ]	[ ]
	(4) Entered an *order* against the *principal* in connection with *financial services industry-related* activity?	[ ]	[ ]
	(5) Imposed a civil money penalty on the *principal*, or ordered the *principal* to cease and desist from any activity?	[ ]	[ ]
REGULATORY ACTION DISCLOSURE	D. Has any other federal regulatory agency, state regulatory agency, or *foreign financial regulatory authority*:		
	(1) Ever found the *principal* to have made a false statement or omission or been dishonest, unfair, or unethical?	[ ]	[ ]
	(2) Ever found the *principal* to have been involved in a violation of *financial services industry-related* regulations or statutes?	[ ]	[ ]
	(3) Ever found the *principal* to have been a cause of a *financial services industry-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ]	[ ]
	(4) In the past ten years, entered an order against the *principal* in connection with a *financial services industry-related* activity?	[ ]	[ ]
	(5) Ever denied, suspended, or revoked the *principal's* registration or license or otherwise, by order, prevented it from associating with a *financial services industry-related* business or restricted its activities?	[ ]	[ ]
	E. Has any *self-regulatory organization* or commodities exchange ever:		
	(1) *found* the *principal* to have made a false statement or omission?	[ ]	[ ]
	(2) *found* the *principal* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and exchange Commission)?	[ ]	[ ]
	(3) *found* the *principal* to have been the cause of a *financial services industry-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ]	[ ]
	(4) Disciplined the *principal* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	[ ]	[ ]
	F. Has the *principal's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	[ ]	[ ]
	G. Is the *principal* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of C, D, or E?	[ ]	[ ]

Schedule C of FORM SBSE-A Page 2	*Applicant* Name: _____ *Principal* Name: _____ Date:_____ *Applicant* NFA No.: _____	Official Use	Official Use Only

CIVIL JUDICIAL DISCLOSURE	H. (1) Has any domestic or foreign civil judicial court:	YES	NO
	(a) In the past ten years, enjoined the *principal* in connection with any *financial services industry-related* activity?	[ ]	[ ]
	(b) Ever *found* that the *principal* was involved in a violation of *financial services industry-related* statutes or regulations?	[ ]	[ ]
	(c) Ever dismissed, pursuant to a settlement agreement, a *financial services industry-related* civil judicial action brought against the *principal* by a state or f*oreign financial regulatory authority*?	[ ]	[ ]
	(2) Is the *principal* now the subject of any civil judicial *proceeding* that could result in a "yes" answer to any part of H(1)?	[ ]	[ ]
FINANCIAL DISCLOSURE	I. In the past ten years has the *principal* ever been a securities firm or a *principal* of a securities firm that:		
	(1) Has been the subject of a bankruptcy petition?	[ ]	[ ]
	(2) Has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	[ ]	[ ]

Schedule F of FORM SBSE-A **NONRESIDENT SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS**	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**

Each nonresident security-based swap dealer and non-resident security-based swap participant shall use Schedule F to identify its United States agent for service of process and the certify that it can

(3) provide the Commission with prompt access to its books and records, and

(4) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the *applicant* may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2. Certification regarding access to records:

Applicant can as a matter of law;

(3) provide the Commission with prompt access to its books and records, and

(4) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form SBSE a copy of the opinion of counsel it is required to obtain in accordance with paragraph (c)(2) or (c)(3) of Exchange Act Rule 15Fb2-4, as appropriate [paragraphs (c)(2) or (c)(3) of 17 CFR 240.15Fb2-4].

Signature:

Name and Title:

Date:

Schedule G of FORM SBSE-A **CERTIFICATION ON STATUTORY DISQUALIFICATION**	*Applicant* Name: _____ Date:_____ *Applicant* NFA No.: _____	**Official Use**

Use Schedule G to certify that none of the *applicant's* associated persons is subject to statutory disqualification (as that term is defined in Section 3(a)(39) of the Exchange Act [15 U.S.C. 78c(a)(39)].

Instructions: This certification must be signed by the *applicant's* Chief Compliance Officer designated pursuant to Exchange Act Section 15F(k) or by his or her designee.

For purposes of this Form, the term *associated person* shall have the meaning as specified in Section 3(a)(70) of the Exchange Act [15 U.S.C. 78c(a)(70)].

This is a: [ ] CERTIFICATION [ ] RE-CERTIFICATION

The *applicant* certifies that it has

(c) performed background checks on all of its *associated persons* who effect or are involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf, and

(d) determined that no *associated person* who effects or is involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(39)].

Applicant Name:	Date:
Signature of Chief Compliance Officer or Designee:	
Name of Chief Compliance Officer or Designee:	If Designee, Title of Designee:

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items A and B*** of Schedule C of Form SBSE-A;

Check **[√]** item(s) being responded to:

A. In the past ten years has the principal:

[ ] (1) Been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?

[ ] (2) Been charged with a felony?

B. In the past ten years has the principal:

[ ] (1) Been convicted of or pled guilty or or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

[ ] (2) Been charged with a misdemeanor specified in B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *principal* is an organization registered through the CRD, such *principal* need only complete Part I of the *applicant's* appropriate DRP (SBSE-A). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE-A). The completion of this DRP does not relieve the *principal* of its obligation to update its CRD records.

Applicants must attach a copy of each applicable court document (*i.e.*, criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) if not previously submitted through CRD (as they could be in the case of a *control affiliate* registered through CRD). Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*
CRD NUMBER

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity's record because the principal is no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

CRIMINAL DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the principal exercise(d) control: Enter organization name, whether or not the organization was an investment-related business and the principal's position, title or relationship.

_____

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case number).

_____

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

A. Date First Charged (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

_____

_____

_____

C. Current status of the Event? [ ] Pending [ ] On Appeal [ ] Final

D. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Disposition Disclosure Detail: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

_____

_____

_____

_____

_____

_____

5. Provide a brief summary of the circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the char(s) occurred. (The information must fit within the space provided.)

_____

_____

_____

_____

_____

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Items C, D, E, F, or G*** of Schedule C of Form SBSE-A;

Check **[√]** item(s) being responded to:

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

[ ] (1) Found the principal to have made a false statement or omission?

[ ] (2) Found the principal to have been involved in a violation of its regulations or statutes?

[ ] (3) the principal to have been a cause of an investment-related business having its authorization to do business denied, revoked, or restricted?

[ ] (4) Entered an order against the principal in connection with investment-related activity?

[ ] (5) Imposed a civil money penalty on the principal, or ordered the principal to cease and desist from any activity?

D. Has any other federal regulatory agency, state regulatory agency, or foreign financial regulatory authority:

[ ] (1) Ever found the principal to have made a false statement or omission or been dishonest, unfair, or unethical?

[ ] (2) Ever found the principal to have been involved in a violation of investment-related regulations or statutes?

[ ] (3) Ever found the principal to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) In the past ten years, entered an order against the principal in connection with an investment-related activity?

[ ] (5) Ever denied, suspended, or revoked the principal's registration or license or otherwise, by order, prevented it from associating with an investment-related business or restricted its activities?

E. Has any self-regulatory organization or commodities exchange ever:

[ ] (1) found the principal to have made a false statement or omission?

[ ] (2) found the principal to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and exchange Commission)?

[ ] (3) found the principal to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

[ ] (4) Disciplined the principal by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

F. [ ] Has the principal's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

G. [ ] Is the principal now the subject of any regulatory proceeding that could result in a "yes" answer to any part of C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items C, D, E, F or G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If the principal is an organization registered through the CRD, such principal need only complete Part I of the *applicant's* appropriate DRP (SBSE). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE). The completion of this DRP does not relieve the *prinicipal* of its obligation to update its CRD records.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*	*Principal's* CRD Number

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity record because the control affiliate(s) are no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

PART II

1. Regulatory Action initiated by:

[ ] SEC [ ] Other Federal [ ] State [ ] SRO [ ] Foreign

(Full name of regulator, foreign financial regulatory authority, federal, state or SRO)

2. Principal Sanction: (check appropriate item)

[ ] Civil and Administrative Penalty(ies)/Fine(s)
[ ] Bar
[ ] Cease and Desist
[ ] Censure
[ ] Denial
[ ] Disgorgement
[ ] Expulsion
[ ] Injunction
[ ] Prohibition
[ ] Reprimand
[ ] Restitution
[ ] Revocation
[ ] Suspension
[ ] Undertaking
[ ] Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. Principal Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) - Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

_____
_____
_____

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, regulatory action appealed to: (SEC, SRO, Federal or State Court) and Date Appeal Filed:

REGULATORY ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)

[ ] Acceptance, Waiver & Consent (AWC) [ ] Consent [ ] Settled
[ ] Decision & Order of Offer of Settlement [ ] Dismissed [ ] Stipulation and Consent
[ ] Decision [ ] Order [ ] Vacated

11. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

12. A. Were any of the following Sanctions Ordered? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions Ordered:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against principal, date paid and if any portion of penalty was waived.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (BD)] is an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Item H*** of Schedule C of Form BD;

Check **[√]** item(s) being responded to:

H(1) Has any domestic or foreign civil judicial court:

[ ] (a) in the past ten years, enjoined the principal in connection with any investment-related activity?

[ ] (b) ever found that the principal was involved in a violation of investment-related statutes or regulations?

[ ] (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil judicial action brought against the principal by a state or foreign financial regulatory authority?

H(2) [ ] Is the principal now the subject of any civil judicial proceeding that could result in a "yes" answer to any part of H?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *principal* is an individual or organization registered through the CRD, such *principal* need only complete Part I of the *applicant's* appropriate DRP (SBSE-A). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE-A). The completion of this DRP does not relieve the *principal* of its obligation to update its CRD records.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*
CRD NUMBER

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity's record because the principal is no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

PART II

1. Court Action initiated by: (Name of regulator, foreign financial regulatory authority, SRO, commodities exchange, agency, firm, private plaintiff, etc.)

2. Principal Relief Sought: (check appropriate item)

[ ] Cease and Desist
[ ] Civil Penalty(ies)/Fine(s)
[ ] Disgorgement
[ ] Injunction
[ ] Money Damages (Private/Civil Complaint)
[ ] Restitution
[ ] Restraining Order
[ ] Other _____

Other Relief Sought:

_____
_____
_____

3. Filing Date of Court Action (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

4. Principal Product Type: (check appropriate item)

[ ] Annuity(ies) - Fixed
[ ] Annuity(ies) - Variable
[ ] Banking Products (other than CD(s))
[ ] CD(s)
[ ] Commodity Option(s)
[ ] Debt – Asset Backed
[ ] Debt - Corporate
[ ] Debt - Government
[ ] Debt - Municipal
[ ] Derivative(s)
[ ] Direct Investment(s) – DPP & LP Interest(s)
[ ] Equity - OTC
[ ] Equity Listed (Common & Preferred Stock)
[ ] Futures - Commodity
[ ] Futures - Financial
[ ] Index Option(s)
[ ] Insurance
[ ] Investment Contract(s)
[ ] Money Market Fund(s)
[ ] Mutual Fund(s)
[ ] No Product
[ ] Options
[ ] Penny Stock(s)
[ ] Unit Investment Trust(s)
[ ] Other _____

Other Product Type:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court – City or County and State or Country, Docket/Case Number):

6. Control Affiliate Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil action. (The information must fit within the space provided.):

_____
_____
_____

8. Current Status? [ ] Pending [ ] On Appeal [ ] Final

9. If on appeal, action action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

_____

10. If pending, date notice/process was served (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

[ ] Consent [ ] Judgement Rendered [ ] Settled
[ ] Dismissed [ ] Opinion [ ] Withdrawn [ ] Other _____

12. Resolution Date (MM/DD/YYYY) [ ] Exact [ ] Explanation

If not exact, provide explanation:

13. Resolution Detail

A. Were any of the following Sanctions Ordered or Relief Granted? (Check all appropriate items):

[ ] Monetary/Fine [ ] Revocation/Expulsion/Denial [ ] Disgorgement/Restitution
Amount $_____ [ ] Censure [ ] Cease and Desist/Injunction [ ] Bar [ ] Suspension

B. Other Sanctions:

C. Sanction Detail: If suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification, by exam/retraining was a condition of the sanction, provide length of time given to re-qualify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against prinicpal, date paid and if any portion of penalty was waived.

14. Provide a brief summary of details related to action(s), allegation(s), disposition(s), and/or finding(s) disclosed above. (The information must fit within the space provided.)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (SBSE-A)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page [DRP (SBSE)] is an an [ ] INITIAL ***OR*** [ ] AMENDED response to report details for affirmative responses to ***Questions I*** on Schedule C of Form SBSE;

Check **[√]** item(s) being responded to:

I In the past ten years has the *principal* ever been a securities firm or a *control affiliate* of a securities firm that:

[ ] (1) has been the subject of a bankruptcy petition?

[ ] (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one person or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *principal* is an individual or organization registered through CRD, such *principal* need only complete Part I of the *applicant's* appropriate DRP (SBSE-A). Details of the event must be submitted on the *principal's* appropriate DRP (BD) or DRP (U-4). If a *principal* is an organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (SBSE-a). The completion of this DRP does not relieve the *prinicpal* of its obligation to update its CRD records.

PART I

A. If the *principal* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

Name of *Principal*
CRD NUMBER

Registered: [ ] Yes [ ] No

[ ] This DRP should be removed from the SBS Entity's record because the principal is no longer associated with the SBS Entity.

B. If the *principal* is registered through the CRD, has the *principal* submitted a DRP (with Form U-4) or DRP (BD) to the CRD System for the event?

If the answer is "Yes," no other information on this DRP must be provided: If "No," complete Part II.

[ ] Yes [ ] No

Note: The completion of this Form does not relieve the *principal* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

[ ] Bankruptcy [ ] Declaration [ ] Receivership

[ ] Compromise [ ] Liquidated [ ] Other _____

2. Action Date (MM/DD/YYYY) _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (SBSE-A)

(continuation)

3. If the financial action relates to an organization over which the *applicant* or the *control affiliate* exercise(d) *control*, enter organization name and the applicant's or control affiliate's position, title or relationship:

_____

Was the Organization investment-related? [ ] Yes [ ] No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

_____

5. Is action currently pending? [ ] Yes [ ] No

6. If not pending, provide Disposition Type: (check appropriate item)

[ ] Direct Payment Procedure [ ] Dismissed [ ] Satisfied/Released

[ ] Discharged [ ] Dissolved [ ] SIPA Trustee Appointed [ ] Other _____

7. Disposition Date (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

_____
_____
_____
_____
_____

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently open? [ ] Yes [ ] No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): _____ [ ] Exact [ ] Explanation

If not exact, provide explanation: _____

10. Provide details of any status/disposition. Include details of creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

_____
_____
_____
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_____

Form SBSE-BD

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered Broker-dealers

FORM SBSE-BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. **FORM** - Form SBSE-BD is the Application for Registration as either a Security-based Swap Dealer or Major Security-based Swap Participant (collectively, "SBS Entities") by an entity that is registered or registering with the Commission as a broker or dealer. These SBS Entities must file this form to register with the Securities and Exchange Commission. An applicant must also file Schedules F and G, as appropriate. There are no Schedules A, B, C, D, or E.
2. **DEFINITIONS** – Form SBSE-BD uses the same definitions as in Form BD.
3. **ELECTRONIC FILING** - This Form SBSE-BD must be filed electronically with the Commission through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE-BD electronically to assure the timely acceptance and processing of those filings.[188] Additional documents shall be attached to this electronic application.
4. **UPDATING** - By law, the *applicant* must promptly update Form SBSE-BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason [17 CFR 240.15Fb2-2]. In addition, the applicant must update any incomplete or inaccurate information contained on Form SBSE-BD prior to filing a notice of withdrawal from registration on Form SBSE-W [17 CFR 15Fb3-2(a)].
4. **FEDERAL INFORMATION LAW AND REQUIREMENTS -** An agency may not conduct or sponsor, and a *person* is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o-10, 78q and 78w. Filing of this form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirements to engage in the security-based swap business. The Commission maintain[s] a file of the information on this form and will make certain information collected via the form publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

D. FILING INSTRUCTIONS

1. FORMAT

a. Items 1-4 and the accompanying Schedules must be answered and all fields requiring a response must be completed before the filing will be accepted.

b. *Applicant* must complete the execution screen certifying that Form SBSE-BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.

c. To amend information, the *applicant* must update the appropriate Form SBSE-BD screens.

d. A paper copy, with original signatures, of the initial Form SBSE-BD filing and Schedules must be retained by the *applicant* and be made available for inspection upon a regulatory request.

The mailing address for questions and correspondence is:

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188 As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

FORM SBSE-BD	Application for Registration as a Security-based Swap Dealer and Major Security-based Swap Participant that is Registered as a Broker-Dealer	Official Use	Official Use Only

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as an SBS Entity, would violate the Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

[ ] APPLICATION [ ] AMENDMENT

1. Exact name and CRD number of the *applicant:*
   - A. Full name of the *applicant*:
   - B. CRDNo.:
   - C Website/URL:
   - D. Contact Employee:
     Name: Title:
     Telephone Number: Email Address:
   - E. Chief Compliance Officer designated by the *applicant* in accordance with Exchange Act Section 15F(k):
     Name: Title:
     Telephone Number: Email Address:

2. A. The *applicant* is registering as a security-based swap dealer: [ ] Yes [ ] No
   B. The *applicant* is registering as a major security-based swap participant: [ ] Yes [ ] No
   Because it: (check all that apply)
   [ ] maintains a substantial security-based swap position
   [ ] has substantial counterparty exposure [ ] is highly leveraged relative to its capital position

3. A. The *applicant* is presently registered with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant
   B. The *applicant* is registering with the Commodity Futures Trading Commission as a:
   [ ] Swap Dealer [ ] Major Swap Participant

4. Is the *applicant* subject to regulation by a prudential regulator, as defined in Sec. 1a(39) of the Commodity Exchange Act.
   [ ] Yes [ ] No If "*yes*," identify the prudential regulator: _____.

Briefly describe the *applicant's* business: _____

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's security-based swap activities, unless the applicant is a nonresident SBS Entity , may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. If the applicant is a nonresident SBS Entity, it must complete Schedule F to designate a U.S. agent for service of process.

The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including schedules attached hereto, and other information filed herewith are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date (MM/DD/YYYY) Name of Applicant

By: Signature Name and Title of Person Signing on *Applicant's* behalf

This page must always be completed in full.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

Schedule F of FORM SBSE **NONRESIDENT SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS**	*Applicant* Name: _____ Date:_____ Firm SEC No.: _____	**Official Use**

Each nonresident security-based swap dealer and non-resident security-based swap participant shall use Schedule F to identify its United States agent for service of process and the certify that it can

(5) provide the Commission with prompt access to its books and records, and

(6) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the *applicant* may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2. Certification regarding access to records:

Applicant can as a matter of law;

(5) provide the Commission with prompt access to its books and records, and

(6) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form SBSE a copy of the opinion of counsel it is required to obtain in accordance with paragraph (c)(2) or (c)(3) of Exchange Act Rule 15Fb2-4, as appropriate [paragraphs (c)(2) or (c)(3) of 17 CFR 240.15Fb2-4].

Signature:

Name and Title:

Date:

Schedule G of FORM SBSE-BD **CERTIFICATION ON STATUTORY DISQUALIFICATION**	*Applicant* Name: _____ Date:_____ Firm SEC No.: _____	**Official Use**

Use Schedule G to certify that none of the *applicant's* associated persons is subject to statutory disqualification (as that term is defined in Section 3(a)(39) of the Exchange Act [15 U.S.C. 78c(a)(39)].

Instructions: This certification must be signed by the *applicant's* Chief Compliance Officer designated pursuant to Exchange Act Section 15F(k) or by his or her designee.

For purposes of this Form, the term *associated person* shall have the meaning as specified in Section 3(a)(70) of the Exchange Act [15 U.S.C. 78c(a)(70)].

This is a: [ ] CERTIFICATION [ ] RE-CERTIFICATION

The *applicant* certifies that it has

(e) performed background checks on all of its *associated persons* who effect or are involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf, and

(f) determined that no *associated person* who effects or is involved in effecting, or who will effect or be involved in effecting, security-based swaps on its behalf is subject to statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(39)].

Applicant Name:	Date:
Signature of Chief Compliance Officer or Designee:	
Name of Chief Compliance Officer or Designee:	If Designee, Title of Designee:

Form SBSE-C

OMB Approval
OMB Number: .....3235-____ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Certification for Registration of Security-based Swap Dealers and Major Security-based Swap Participants

FORM SBSE-C INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Each security-based swap dealer and major security-based swap participant must file Form SBSE-C to apply for ongoing registration.
2. **ELECTRONIC FILING** – The applicant must file Form SBSE-C through the EDGAR system, and must utilize the EDGAR Filer Manual (as defined in 17 CFR 232. 11) to file and amend Form SBSE-C electronically to assure the timely acceptance and processing of those filings.[189]
3. All fields requiring a response must be complete before the filing is accepted.

The mailing address for questions and correspondence is:

FEDERAL INFORMATION LAW AND REQUIREMENTS – SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o, 78o-4, 78o-5, 78q and 78w. Filing of this Form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether it is in the public interest to approve or disapprove the application for ongoing registration by the security-based swap dealer or major security-based swap participant. The Commission maintains a file of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this Form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

[189] As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

FORM SBSE-C	*Applicant* Name: _____ Date:_____ SEC Filer No: _____	Official Use

Instructions: This certification must be signed by a knowledgeable senior officer of the *applicant*.

I certify that, after due inquiry, I have reasonably determined that the applicant -

(1) has the operational, financial, and compliance capabilities to act as a security-based swap dealer or major security-based swap participant, as applicable, and

(2) I have documented the process by which I reached such determination.

Applicant Name:	Date:
Signature of Knowledgeable Senior Officer:	Name of Knowledgeable Senior Officer:
	Title of Knowledgeable Senior Officer

Form SBSE-W

OMB Approval
OMB Number: .....3235-___ Expires:..... ..Month __, 2014 Estimated average burden hours per response: . . . . . _____. per amendment: . . . . . _____.

Request for Withdrawal from Registration as a Security-based Swap Dealer or Major Security-based Swap Participant

FORM SBSE-W INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Security-based swap dealers and major security-based swap participants (collectively "SBS Entities") must file Form SBSE-W to withdraw their registration from the Securities and Exchange Commission ("SEC").
2. All questions must be answered and all fields requiring a response must be complete before the filing is accepted.
3. File Form SBSE-W with the SEC electronically.[190] Prior to filing Form SBSE-W, amend Form SBSE, Form SBSE-A, or Form SBSE-BD, as applicable, to update any incomplete or inaccurate information.
4. A paper copy of this Form SBSE-W with the original manual signature(s) must be retained by the security-based swap dealer or major security-based swap participant filing the Form SBSE-W and be made available for inspection upon a regulatory request. A paper copy of the initial Form SBSE, Form SBSE-A, or Form SBSE-BD filing, as appropriate, and amendments to any Disclosure Reporting Pages (DRPs) also must be retained by the security-based swap dealer and major security-based swap participant filing the Form SBSE-W.

The mailing address for questions and correspondence is:

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

The term **INVESTIGATION** includes: (a) grand jury investigations, (b) U.S. Securities and Exchange Commission investigations after the "Wells" notice has been given, (c) formal investigations by a self-regulatory organization or, (d) actions or procedures designated as investigations by jurisdictions. The term investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

The term **INVESTMENT-RELATED** pertains to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, savings association, credit union, insurance company, or insurance agency).

FEDERAL INFORMATION LAW AND REQUIREMENTS – SEC's Colllection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15F, 17(a) and 23(a) of the Exchange Act authorize the SEC to collect the information on this form from registrants. See 15 U.S.C. §§78o, 78o-4, 78o-5, 78q and 78w. Filing of this Form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether whether it is in the public interest to permit the security-based swap dealer or major security-based swap participant to withdraw its registration. The Commission maintain a file of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

190 As discussed in the release proposing this Form, the Commission is currently developing a system to facilitate receipt of applications electronically. More specific instructions on how to file this Form may be included in the final version of the Form.

FORM SBSE-W	Request for Withdrawal from Registration as a Security-based Swap Dealer or Major Security-based Swap Participant	Official Use

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

NOTE: Prior to filing a notice of withdrawal from registration on Form SBSE-W, an entity must update any incomplete or inaccurate information contained on Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate [17 CFR 15Fb3-2(a)].

1. A. Full name of Security-based Swap Dealer or Major Security-based Swap Participant: B. IRS Emp. Ident. No.:
   C. Name under which business is conducted, if different: D. Firm SEC, NFA, and/or CRD No.:
   E. Firm main address: Number and Street City State/Country Zip+4/Postal Code
   F. Mailing address, if different: Number and Street City G. Area Code / Telephone No.:

2. Withdrawing from Registration as a: [ ] Security-based Swap Dealer [ ] Major Security-based Swap Participant

3. Date firm ceased business: MM / DD / YY

4. Reason security-based swap dealer or major security-based swap participant is seeking to withdraw from SEC registration:

[ ] Winding down all business
[ ] No longer doing security-based swap business in U.S.
[ ] Have effected less security-based swap business for previous four quarters and no longer fit definition of major security-based swap participant
[ ] Ceasing business as a security-based swap dealer
[ ] Ceasing business as a major security-based swap participant
[ ] Other (describe): _____

5. Does the security-based swap dealer or major security-based swap participant hold any segregated counterparty collateral? Yes [ ] No [ ]
   A. Number of counterparties whose collateral is held:
   B. Amount of money held as collateral: $
   C. Market value of securities held as collateral: $
   D. Describe arrangements made for return of collateral: _____

6. Is the security-based swap dealer or major security-based swap participant now the subject of or named in any investment-related:

	yes	no
- investigation	[ ]	[ ]
- customer-initiated complaint	[ ]	[ ]
- private civil litigation	[ ]	[ ]

7. Name and Address of the Person who will have Custody of Books and Records: Area Code / Telephone No.:
   Address where the Books and Records will be Located, if Different: Number and Street City State/Country ZIP + 4/Postal Code

EXECUTION: The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, the security-based swap dealer or security-based swap participant, and that all information herein, including any attachments hereto, is accurate, complete, and current. The undersigned and security-based swap dealer or major security-based swap participant further certify that all the information previously submitted on Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, is accurate and complete as of this date, and that the security-based swap dealer's or major security-based swap participant's books and records will be preserved and available for inspection as required by law.

Date (MM/DD/YYYY) Name

By: Signature Print Name and Title

[FR Doc. 2011–26889 Filed 10–21–11; 8:45 am]
BILLING CODE 8011–01–C

FEDERAL REGISTER

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Service

42 CFR Chapter IV

Medicare and Medicaid Programs; Changes to the Ambulatory Surgical Centers Patient Rights Conditions for Coverage; Reform of Hospital and Critical Access Hospital Conditions of Participation; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Final Rule and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Service

42 CFR Part 416

[CMS–3217–F]

RIN 0938–AP93

Medicare Program; Changes to the Ambulatory Surgical Centers Patient Rights Conditions for Coverage

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the ambulatory surgical centers (ASCs) conditions for coverage (CfC) to allow patient rights information to be provided to the patient, the patient's representative, or the patient's surrogate prior to the start of the surgical procedure. In addition, we made minor changes to the CfC for patient rights requirements, as specified in the proposed rule. This final rule reflects the Centers for Medicare and Medicaid Services' (CMS') commitment to the general principles of the President's Executive Order 13563 released January 18, 2011, entitled ''Improving Regulation and Regulatory Review.''

DATES: *Effective Date:* These regulations are effective December 23, 2011.

FOR FURTHER INFORMATION CONTACT:

Jacqueline Morgan, (410) 786–4282.
Maria Hammel, (410) 786–1775.
Jeannie Miller, (410) 786–3164.

I. Background

This final rule reflects the Centers for Medicare and Medicaid Services' (CMS') commitment to the general principles of the President's Executive Order 13563 released January 18, 2011, entitled ''Improving Regulation and Regulatory Review.'' As the single largest payer for health care services in the United States, CMS has a critical role in promoting high quality care for Medicare beneficiaries. CMS is responsible for ensuring that the conditions for coverage (CfCs) for Ambulatory Surgical Centers (ASCs) are adequate to protect and promote the health and safety of the individuals treated in ASCs. Any regulatory changes that we contemplate consider patient health and safety along with the administrative burden placed on Medicare-participating facilities.

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) specifies that an ASC must meet health, safety, and other standards specified by the Secretary of Health and Human Services (HHS) (the Secretary) in regulation if it has an agreement in effect with the Secretary to accept payment by Medicare as payment in full for Medicare-covered services.

Substantive requirements are set forth in 42 CFR part 416 subparts B and C of our regulations. The regulations at 42 CFR part 416 subpart B describe the general conditions and requirements for ASCs. The regulations at 42 CFR part 416 subpart C describe the specific CfCs for ASCs, which include the health and safety provisions.

II. Provisions of the Proposed Regulation

On April 23, 2010, we published a proposed rule (75 FR 21207) in the **Federal Register** entitled, ''Medicare Programs; Ambulatory Surgical Centers, Conditions for Coverage,'' (hereinafter referred to as ''ASC patient rights proposed rule'') in which we proposed to revise one of the existing CfCs that ASCs must meet in order to participate in the Medicare program. The ASC patient rights proposed rule was based on feedback received after the publication of the November 18, 2008 Hospital Outpatient PPS Update for CY 2009 final rule (73 FR 68502), which contained a CfC requiring an ASC to provide notice of patient rights in advance of the date of a procedure. We were subsequently informed that the CfC notice of patient rights requirement in the November 18, 2008 rule presented problems for ASCs that provided same-day procedures on an emergency basis. In order to address those problems, we proposed in the ASC patient rights proposed rule, to establish an exception to that CfC that would permit notice of patient rights to be provided on the date of the procedure, if an ASC provided services to a patient on the same day he or she received a physician referral for the ASC service(s), and if a delay in providing the service(s) would adversely affect the patient's health. Since publishing the ASC patient rights proposed rule on April 23, 2010, we have learned that a number of ASCs routinely perform surgeries on the same day they receive physician referrals from their patients. ASCs that routinely serve same-day patients would like to continue doing so, whether the service is being performed on an emergency or non-emergency basis. Because we believe scheduling decisions should be between the patient and the ASC, rather than dictated by CMS, we are finalizing a different policy than we proposed.

In our ASC patient rights proposed rule at § 416.50(h) ''Standard: Exception to the timing of the notice of patient rights,'' we proposed to include an exception that would allow an ASC, in the case of an emergency procedure, when it was not feasible to inform the patient or the patient's representative of the patient's rights in advance of the date of the procedure, to provide this information to the patient or the patient's representative on the day of treatment, immediately before the procedure, but only if (1) the signed physician referral was in writing, was dated the day the patient presents at the ASC, and was placed in the patient's medical record prior to the procedure; and (2) a physician in the ASC or the referring physician communicated in writing and the ASC documented in the medical record that the procedure had to be performed as soon as possible to safeguard the health of the patient.

In addition to proposing to add § 416.50(h) to provide for an exception for same day procedures, we proposed other minor revisions to § 416.50. Because both § 416.50(a)(1) and (a)(2) include the requirement that disclosure of information be made in advance of the date of the procedure, we proposed to eliminate this specific requirement from these sections and to include it instead in the stem statement, which would apply to all of the requirements in § 416.50.

Further, we proposed to reorganize § 416.50(a), (b), and (c) by creating separate standards for provisions that are currently required in these paragraphs. Specifically, we proposed to retitle and reorganize the requirement of § 416.50, ''Conditions for coverage—Patient rights.''

III. Analysis of and Responses to Public Comments

We received 10 comments on the ASC patient rights proposed rule that addressed various issues regarding patient rights in ASCs. Approximately 7 comments were from ASCs and 3 comments were received from groups representing ASCs. A summary of the major issues and our responses follow:

Comment: Several commenters applauded CMS' recognition of the need to address the importance of communicating patients' rights information when an ASC is providing services to a patient on the same day the patient is referred to the ASC.

Response: We appreciate the recognition of our intent to ensure that important quality of care issues are addressed in our regulations.

Comment: Several commenters stated the exception is too intrusive in requiring that surgeries performed on the same day as the physician's referral must be for emergency procedures only.

These commenters also stated that the restriction could create patient scheduling inconveniences and patient travel issues. They believe the CfC should be expanded so that urgent (nonemergency) procedures can be performed on the same day as the physician referral of the patient.

Response: We agree with these commenters. The restrictive patient rights exception could create patient scheduling inconveniences and patient travel issues. After considering the public comments and the potential negative impact of the proposed exception on ASC patients, their families and ASC operations, we have revised the patient rights CfC. In this final rule, we have eliminated proposed § 416.50(h) and, at 416.50(a), we have amended the patient rights CfC to specify that patient rights information can be provided to the patient prior to the start of the surgical procedure. With this new requirement, ASCs will have ample time to give the patient and/or the patient's representative patient rights information. This revision will provide the patient, the patient's provider of transportation, and the ASC with the flexibility of having the surgical procedure completed on the same day the notice of patient rights is provided, when appropriate. This policy promotes ASC health and safety standards by allowing the use of optimal scheduling practices that address the routine, urgent and emergent needs of ASCs and their patients without compromising patient safety.

Comment: Some commenters stated that there were several urgent procedures for which patients (many of whom may not have a primary-care physician) self-refer to ASCs. In such instances, under the proposed rule, these patients would be unable to have the procedure completed on the same day they present at the ASC.

Response: We agree with these commenters. There are times when patients visit ASCs for urgent matters even though these patients do not have primary care physicians to provide them with referrals. Patients such as these are seen in some ASCs across the country to obtain the necessary urgent care, sometimes on the same day they contact the ASC. We agree that the ASC patient rights proposed rule could negatively impact the patient's receipt of care in those situations. The revisions we have made in this final rule, reflected in § 416.50(a), will allow for the completion of such urgent procedures within the timeframes that best meet the schedules of the patient and the ASC.

Comment: Some commenters believe that implementing the proposed limited exception for same day surgeries will unreasonably disadvantage ASCs in the services they can provide to patients compared to the services that can be provided at hospital outpatient departments. The commenters also believe that these restrictions could have the consequence of increasing health care costs to the Medicare program and limiting the choices of those patients who prefer to receive care in the ASC.

Response: We agree that placing limitations on the types of surgeries an ASC can perform on the same day patients present at the ASC with physician referrals is unduly restrictive and that ASCs could be unreasonably disadvantaged compared to hospital outpatient departments. We agree with these commenters that these restrictions could limit patient access to non-emergent procedures at ASCs and limit patient choices, create patient scheduling inconveniences, and create patient travel issues. Therefore, in this final rule, we are revising the ASC patient rights proposed rule at § 416.50(a) to allow ASCs to continue providing services based on the criteria determined by applicable ASC patient scheduling standards and policies that were in effect prior to implementing the patient rights final rule published on November 18, 2008. We are confident that our latest revisions will ensure that ASCs are in a position to continue serving the needs and promoting the health and safety of their patients.

Comment: Several commenters stated that the requirement to have the patient obtain a written referral is an unrealistic expectation to meet when a patient is presenting to the ASC for an immediate procedure.

Response: We do not believe that the requirement of obtaining a referral would be a burden for most patients who generally seek an opinion and obtain a referral from their primary physician. However, we are eliminating the proposed requirement at § 416.50(h), which includes the provision that a patient must obtain a written referral. Instead, ASCs should continue to use their current referral policies for such procedures. We have taken this approach because we believe ASCs are in the best position to know whether it is appropriate to require patients to bring referrals for procedures performed on the same day the patient comes to the ASC for treatment.

Comment: One commenter stated that the guidelines for surveyors in the State Operations Manual have recognized the appropriateness of surgical procedures performed on the same day that a referral is made when medical necessity is documented.

Response: We regard the interpretive guidelines as a tool to assist ASCs in determining when ''same day'' surgeries are appropriate. The policy currently set out in our regulation is still binding until the effective date of this rule.

Comment: Several commenters stated that the ASC may be hesitant to document in the medical record that a procedure was an emergency which needed to be performed as soon as possible to safeguard the health of the patient, because a plaintiff's attorney could use the documentation in the medical record against the ASCs or physician in an attempt to demonstrate negligence.

Response: Standard medical practice requires the ASC surgeon to systematically document the patient's medical record with information concerning the illness, injury or condition that brought the patient to the ASC, as well as the care and services received by the patient while at the ASC. Since medical records are legal documents and are subject to State and Federal laws, the documentation thereof must be complete, comprehensive, and accurate to ensure adequate patient care. ASCs continue to be responsible for determining if a surgical procedure can be performed safely at the ASC. Additionally, we do not have any control over how a medical record may be used in a legal proceeding.

Comment: Several commenters stated that patient notice requirements should be applied equally in all provider settings.

Response: We agree with these commenters. We reviewed the conditions set out for other providers and suppliers when finalizing this rule. The patient rights requirement for ASCs is now comparable to other CMS providers and suppliers, as appropriate.

IV. Provisions of the Final Regulation

In this final rule, we are adopting the provisions as set forth in the April 23, 2010 proposed rule with the following revisions:

- We revised § 416.50(a)(1) to delete the reference to the timing of the notice of patient rights exception. We are making a conforming change to § 416.50(a)(2)(i) (redesignated as § 416.50(c)(1) in this final rule).
- We revised § 416.50(a)(1) to change the timing of the notice of patient rights from ''in advance of the date of the procedure'' to ''prior to the start of the surgical procedure.''
- We revised § 416.50(d)(6) to specify that the ASC must provide ''the patient, the patient's representative, or the

patient's surrogate'' with written notice of a grievance decision. The proposed rule only included the ''patient.'' Although this change was not proposed in the proposed rule, we are making it because it is a minor technical correction to bring this provision into accordance with the other notice provisions for ASCs as well as other providers.

- We revised § 416.50(e)(2) to delete the words ''health and safety'' because competency is not a ''health and safety'' law. This is a technical correction and makes no change in established policy.
- We removed the exceptional requirement at § 416.50(h) which allowed an ASC in the case of an emergency to provide patients rights information in advance of the date of the procedure.

V. Waiver of Notice Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In completing this final rule, we determined that there were two instances in the proposed rule which were incorrectly stated. These two statements have been corrected in this final rule, as follows:

In the proposed rule, at § 416.50(d)(6), we did not specify that the patient's representative (if applicable) should also be provided with written notice of its grievance decision. However, throughout the preamble portion of the rule, we indicated that the patient or the patient's representative should receive patient rights information. The omission from § 416.50(d)(6) was an oversight, which did not in any way reflect our intent to include the representative in all instances where patient rights information was provided. Additionally, in the proposed rule, at § 416.50(e)(2), we proposed that if a patient was adjudged incompetent under applicable State health and safety laws by a court of proper jurisdiction, the rights of the patient would be exercised by the person appointed under State law to act on the patient's behalf. However, State laws that address a patient's competency are not health and safety laws. Therefore, in this final rule, we have deleted the words ''health and safety''. The deletion of these words in no way impact the intent or the protection of patient's rights in the ASC. Because of the nontechnical nature of both of these corrections, and in accordance with the Administrative Procedure Act, we find it unnecessary to provide notice and comment to correct these omissions. Therefore, we are waiving notice of proposed rulemaking and an opportunity to comment on the nontechnical corrections in this rule.

VI. Collection of Information Requirements

The information collection and recordkeeping requirements for the ASC Patient Rights CfC were previously accounted for in the November 18, 2008 final rule entitled ''Changes to the Ambulatory Surgical Center Conditions for Coverage.'' This ASC Patient Rights final rule 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).

VII. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The rule does, however, create substantial savings for both patients and facilities. In 2009, there were approximately 7 million ASC admissions. Of this amount, we estimate that approximately one in five (which would ordinarily require two medical visits, one on each of two separate days) would be reduced to one visit by allowing ASCs to perform surgical procedures on the same day a patient is referred to the ASC. As a result, about 1,400,000 visits can be avoided. We estimate that the average visit to an ASC requires two and one half hours of patient time (30 minutes to get to the ASC, a 30 minute wait to be seen, 60 minutes for the visit, and 30 minutes to return home). We value patient time at $10 an hour. We therefore project a savings in patient time of about 35 million dollars a year from 1,400,000 trips avoided because of ASCs performing procedures on the same day patients are referred to the ASC. We also project that the average provider cost for the visit eliminated is about $20, which includes 15 minutes of doctor's time, 15 minutes of a nurse's time and 15 minutes of clerical processing time, to provide the patient with an assortment of forms and informational materials (including patient rights). Taking into account time spent on patients' rights at the remaining visit, we believe that the net time saving would be about $10. We project that this will result in 17.5 million dollars a year in provider cost savings. On average, a facility would realize savings of about $3,500, assuming that one-fifth of 1,400 visits were avoided. These savings would be slightly offset by additional time spent on mailing costs. We did not, however, calculate the cost for mailing out patient rights information because these documents would be included in the informational packets that ASCs typically mail to their patients.

The RFA requires agencies to analyze options for regulatory relief of small businesses in cases were rules would impose a ''significant economic impact on a substantial number of small entities.'' For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We estimate there are approximately 5,200 Medicare participating ASCs with average admissions of approximately 1,432 patients per ASC (based on the number of patients seen in ASCs in 2009). Many ASCs are considered to be small entities, by having annual revenues of less than $7 million. Based on our

estimate that on average facilities would save about $3,500, we do not believe that this would be an ''economically significant'' amount. Accordingly, we have determined that this rule does not require a regulatory flexibility analysis.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. However, this final rule only affects ambulatory surgical centers and not hospitals. As a result, we are not preparing an analysis for section 1102 (b) of the Act because we believe and the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year by State, local or tribal governments, in the aggregate, or by the private sector of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold level is approximately $136 million. This final rule will not reach this spending threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule has no Federalism implications and does not impose any costs on State or local governments. Therefore, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 416 as set forth below:

PART 416—AMBULATORY SURGICAL SERVICES

■ 1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

■ 2. Section 416.50 is revised as follows:
■ a. Redesignate paragraph (d) as paragraph (g).
■ b. Redesignate paragraph (c) as paragraph (f).
■ c. Redesignate paragraph (b) as paragraph (e).
■ d. Revise newly designated paragraph (e).
■ e. Redesignate paragraph (a)(3) as paragraph (d).
■ f. Revise newly designated paragraph (d).
■ g. Redesignate paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) as paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) respectively.
■ h. Amend newly redesignated paragraph (c)(1) by removing the words ''in advance of the date of the procedure, with information'' and replacing it with ''with written information''.
■ i. Redesignate paragraph (a)(1)(ii) as paragraph (b).
■ j. Revise the newly designated paragraph (b).
■ k. Revise paragraph (a).
■ m. Revise the introductory text.

The revisions read as follows:

§ 416.50 Condition for coverage—Patient Rights.

The ASC must inform the patient or the patient's representative or surrogate of the patient's rights and must protect and promote the exercise of these rights, as set forth in this section. The ASC must also post the written notice of patient rights in a place or places within the ASC likely to be noticed by patients waiting for treatment or by the patient's representative or surrogate, if applicable.

(a) *Standard: Notice of Rights.* An ASC must, prior to the start of the surgical procedure, provide the patient, the patient's representative, or the patient's surrogate with verbal and written notice of the patient's rights in a language and manner that ensures the patient, the representative, or the surrogate understand all of the patient's rights as set forth in this section. The ASC's notice of rights must include the address and telephone number of the State agency to which patients may report complaints, as well as the Web site for the Office of the Medicare Beneficiary Ombudsman.

(b) *Standard: Disclosure of physician financial interest or ownership.* The ASC must disclose, in accordance with Part 420 of this subchapter, and where applicable, provide a list of physicians who have financial interest or ownership in the ASC facility. Disclosure of information must be in writing.

* * * * *

(d) *Standard: Submission and investigation of grievances.* The ASC must establish a grievance procedure for documenting the existence, submission, investigation, and disposition of a patient's written or verbal grievance to the ASC. The following criteria must be met:

(1) All alleged violations/grievances relating, but not limited to, mistreatment, neglect, verbal, mental, sexual, or physical abuse, must be fully documented.

(2) All allegations must be immediately reported to a person in authority in the ASC.

(3) Only substantiated allegations must be reported to the State authority or the local authority, or both.

(4) The grievance process must specify timeframes for review of the grievance and the provisions of a response.

(5) The ASC, in responding to the grievance, must investigate all grievances made by a patient, the patient's representative, or the patient's surrogate regarding treatment or care that is (or fails to be) furnished.

(6) The ASC must document how the grievance was addressed, as well as provide the patient, the patient's representative, or the patient's surrogate with written notice of its decision. The decision must contain the name of an ASC contact person, the steps taken to investigate the grievance, the result of the grievance process and the date the grievance process was completed.

(e) *Standard: Exercise of rights and respect for property and person.* (1) The patient has the right to the following:

(i) Be free from any act of discrimination or reprisal.

(ii) Voice grievances regarding treatment or care that is (or fails to be) provided.

(iii) Be fully informed about a treatment or procedure and the expected outcome before it is performed.

(2) If a patient is adjudged incompetent under applicable State laws by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed under State law to act on the patient's behalf.

(3) If a State court has not adjudged a patient incompetent, any legal representative or surrogate designated by the patient in accordance with State

law may exercise the patient's rights to the extent allowed by State law.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 11, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 7, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–27171 Filed 10–18–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 482 and 485

[CMS–3244–P]

RIN 0938–AQ89

Medicare and Medicaid Programs; Reform of Hospital and Critical Access Hospital Conditions of Participation

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the requirements that hospitals and critical access hospitals (CAHs) must meet to participate in the Medicare and Medicaid programs. These proposed changes are an integral part of our efforts to reduce procedural burdens on providers. This proposed rule reflects the Centers for Medicare and Medicaid Services' (CMS') commitment to the general principles of the President's Executive Order 13563, released January 18, 2011, entitled ''Improving Regulation and Regulatory Review.''

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 23, 2011.

ADDRESSES: In commenting, please refer to file code CMS–3244–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3244–P, P.O. Box 8010, Baltimore, MD 21244–8010. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3244–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

CDR Scott Cooper, USPHS, (410) 786–9465.

Jeannie Miller, (410) 786–3164.

Lisa Parker, (410) 786–4665.

Mary Collins, (410) 786–3189.

Diane Corning, (410) 786–8486.

Sarah Fahrendorf, (410) 786–3112.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code (CMS–3244–P) and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

AHA American Hospital Association
AOA American Osteopathic Association
APRN Advanced Practice Registered Nurse
BBA Balanced Budget Act
CAH Critical Access Hospital
CCN CMS Certification Number
CDC Centers for Disease Control and Prevention
CfC Condition for Coverage
CoP Condition of Participation
CMS Centers for Medicare & Medicaid Services
DNV Det Norske Veritas
EACH Essential Access Community Hospital
H&P History and Physical Examination
HAI Healthcare-Associated Infection
HFAP Healthcare Facilities Accreditation Program
HHS U.S. Department of Health and Human Services
MRHFP Medicare Rural Hospital Flexibility Program
OBRA Omnibus Budget Reconciliation Act
OPO Organ Procurement Organization
PA Physician Assistant
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RPCH Rural Primary Care Hospital
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
UMRA Unfunded Mandates Reform Act

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I. Background

A. Introduction

This proposed rule reflects the Centers for Medicare and Medicaid Services' (CMS') commitment to the general principles of the President's Executive Order 13563, released January 18, 2011, entitled ''Improving Regulation and Regulatory Review.'' In this proposed rule we seek to reduce the regulatory burden placed on hospitals. We have identified a number of existing hospital CoPs that we believe could be reformed, simplified, or eliminated in order to reduce unnecessary burden and costs placed on hospitals and critical access hospitals (CAHs) under existing regulations. Earlier this year, the President reaffirmed his commitment to Executive Order 12866, which was issued in 1993 and has long governed the process of regulatory development and review. He also issued Executive Order 13563 directing agencies to select the least burdensome approaches, to minimize cumulative costs, to simplify and harmonize overlapping regulations, and to identify and consider flexible approaches that maintain freedom of choice for the American public. Executive Order 13563 also requires agencies to engage in a process of reviewing existing regulations to see if those rules make sense and continue to be justified. The reforms contemplated in this proposed rule are intended to meet the letter and spirit of the requirement in the President's Executive Order 13563, issued January 18, 2011, entitled ''Improving Regulation and Regulatory Review,'' for reviewing existing regulations to see if those rules make sense and continue to be justified. They also meet the objectives of section 610 of the Regulatory Flexibility Act (RFA), which also requires agencies to review the impact of existing rules on small businesses or other small entities for possible reforms to reduce burden and costs.

Under this initiative, we are conducting a retrospective review of the CoPs that we apply to hospitals, in order to remove or revise obsolete, unnecessary, or burdensome provisions. Most of the existing hospital requirements have developed over decades, reflecting new statutory requirements, changes in technology or medical practice, and the evolution of the health delivery system. The goal of this retrospective review is to reduce system costs by removing obsolete or burdensome requirements.

B. Legal Basis and Purpose of Hospital CoPs

Sections 1861(e)(1) through (8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital also must meet such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals furnished services in the institution. Under this authority, the Secretary has established regulatory requirements that a hospital must meet to participate in Medicare at 42 CFR part 482, CoPs for Hospitals. Section 1905(a) of the Act provides that Medicaid payments from States may be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii) and 42 CFR 440.20(a)(3)(ii), hospitals are required to meet the Medicare CoPs in order to participate in Medicaid.

On May 26, 1993, CMS published a final rule in the **Federal Register** entitled ''Medicare Program; Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs)'' (58 FR 30630) that implemented sections 6003(g) and 6116 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 and section 4008(d) of OBRA 1990. That rule established requirements for the EACH and RPCH providers that participated in the seven-state demonstration program that was designed to improve access to hospital and other health services for rural residents.

Sections 1820 and 1861(mm) of the Act, as amended by section 4201 of the Balanced Budget Act (BBA) of 1997, replaced the EACH/RPCH program with the Medicare Rural Hospital Flexibility Program (MRHFP), under which a qualifying facility can be designated as a CAH. CAHs participating in the MRHFP must meet the conditions for designation specified in the statute and, under section 1820(c)(2)(B)(i)(I) of the Act, must meet the CoPs located at 42 CFR part 485, subpart F. Among such requirements, a CAH must be located in a rural area (or an area treated as rural) and must be located more than a 35-mile (or in the case of mountainous terrain or in areas with only secondary roads available, more than a 15-mile drive) from a hospital or another CAH unless otherwise designated as a necessary provider prior to January 1, 2006.

The CoPs are organized according to the types of services a hospital may offer, and include specific, process oriented requirements for each hospital service or department. The purposes of these conditions are to protect patient health and safety and to ensure that quality care is furnished to all patients in Medicare-participating hospitals. In accordance with Section 1864 of the Act, State surveyors assess hospital compliance with the conditions as part of the process of determining whether a hospital qualifies for a provider agreement under Medicare. However, under section 1865 of the Act, hospitals can elect to be reviewed instead by private accreditation organizations approved by CMS as having standards and survey procedures that are at least equivalent to those used by CMS and State surveyors. CMS-approved hospital accreditation programs include those of The Joint Commission (TJC), the American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP), and Det Norske Veritas Healthcare (DNV) (See 42 CFR part 488, Survey and Certification Procedures.).

C. Relationship of This Rulemaking to Future Reforms

The reforms we propose in this rule are intended to reduce the cost and burden of existing CoPs. They are based in large part on ideas that have been provided to us by hospitals and organizations representing hospitals, by health care professionals, and by other stakeholders, as well as through recent research and our own evaluation of current practices. We are committed to working with, and welcome suggestions for future rulemaking from, affected parties to identify other reforms to the CoPs that would reduce unnecessary burden on hospitals, while allowing hospitals maximum flexibility in meeting the Federal requirements necessary to fulfill our quality of care responsibilities.

II. Provisions of the Proposed Regulations

In accordance with the President's Executive Order 13563, we are reviewing regulations in an effort to reduce burden, maximize patient safety, and reflect current industry standards. We have identified several priority areas in the CoPs for both hospitals (42 CFR part 482) and CAHs (42 CFR part 485) to update and revise. Our identification and prioritization of these areas was a result of outreach to hospital

stakeholders, such as the American Hospital Association (AHA) and TJC; and internal discussions among various components at CMS. We believe that these proposed revisions may eliminate or significantly reduce those instances where the CoPs are duplicative, unnecessary, and/or burdensome.

A. Revisions To Allow Flexibility and Eliminate Burdensome CoPs

1. Governing Body (§ 482.12)

We propose to revise the ''Governing body'' requirements as follows: The Governing body CoP (§ 482.12) states that the hospital must have an effective governing body that is legally responsible for the conduct of the hospital as an institution. We have interpreted the governing body CoP as requiring that each hospital facility have a separate governing body (*http://www.cms.gov/manuals/downloads/som107ap_a_hospitals.pdf*).

Based on our experience with hospitals and the input provided by stakeholders through anecdotal evidence, we believe that hospitals in a multi-hospital system (defined here as those having more than one CMS Certification Number (CCN)) can be effectively governed by a single governing body. Thus, we propose to revise and clarify the governing body requirement to reflect current hospital organizational structure whereby multi-hospital systems have integrated their governing body functions to oversee care in a more efficient and effective manner. Specifically, we propose to revise § 482.12 to state that ''There must be an effective governing body that is legally responsible for the conduct of the hospital.''

We would retain the current provision that requires the persons legally responsible for the conduct of the hospital to carry out the functions specified in Part 482 of our regulations that pertain to the governing body if the hospital does not have an organized governing body.

2. Patient's Rights (§ 482.13)

On December 8, 2006, we published a final rule in the **Federal Register** entitled ''Medicare and Medicaid Programs; Hospital Conditions of Participation: Patients' Rights'' (71 FR 71378). In that final rule we revised the hospital standards for the use of restraint and seclusion, and set forth new standards for staff training and death reporting. In particular, section 482.13(g) of the final rule requires hospitals to report no later than the close of business on the next business day following knowledge of the patient's death: (1) Each death that occurs while the patient is in restraint or seclusion; (2) each death that occurs within 24 hours after the patient has been removed from restraint or seclusion; and (3) each death known to the hospital that occurs within one week after restraint or seclusion where it is reasonable to assume that the restraint or seclusion contributed directly or indirectly to the patient's death.

Included under these broad reporting requirements are those deaths in which no seclusion is used, and the only restraints used are soft, two-point wrist restraints. The patients typically needing soft two-point wrist restraints are individuals in critical care settings, such as intensive care units, where such restraints are medically necessary. For example, soft two-point wrist restraints can be used to prevent patients from removing medically necessary devices and equipment such as central lines, endotracheal tubes, and nasogastric tubes. CMS is not aware of any research—or even any anecdotal information—suggesting a cause-and-effect relationship between the use of soft, two-point wrist restraints and patient deaths.

CMS is therefore proposing to modify the reporting requirements for hospitals when the circumstances of a patient's death involve only the use of soft two-point wrist restraints and no use of seclusion. At § 482.13(g)(4) we propose that hospitals would be required to notify CMS of the deaths described at § 482.13(g)(2) (soft two-point wrist restraints and no use of seclusion) within seven days after the date of death through a log or other system. We propose that the record would include, at a minimum, the patient's name, date of birth, date of death, attending physician, primary diagnosis(es), and medical record number. We propose that hospitals make the log or other system accessible to CMS upon request at all times. We are unable to eliminate the reporting requirement for these deaths due to statutory provisions in the Children's Health Act that require such deaths to be reported.

For deaths involving all other types of restraints and all forms of seclusion, we would retain the current, more extensive reporting requirements, including notice to CMS by telephone, no later than the close of business on the next business day following knowledge of the patient's death.

We are proposing to introduce a measure of flexibility to these requirements and redesignate them at § 482.13(g)(1), by providing additional reporting options, as determined by CMS, which would include the use of facsimile, as well as an option for electronic reporting. In the event that electronic reporting technology develops more rapidly than the requirements for this section, we have proposed the term ''electronically'' rather than ''email'' to build in a small measure of flexibility.

3. Medical Staff (§ 482.22)

The CMS condition of participation on ''Medical Staff,'' at § 482.22, concerns the organization and accountability of the hospital medical staff. CMS first adopted the term ''medical staff'' in 1986 when it began using the term at § 482.22 in place of ''physicians,'' to allow hospitals maximum flexibility in the granting of privileges and the organization of their professional staff (51 FR 22010). These changes were introduced to reflect the trend of extending patient care responsibilities to practitioners other than doctors of medicine or osteopathy. CMS has more recently modernized its approach to medical staff requirements with respect to telemedicine services through the rule ''Medicare and Medicaid Programs: Changes Affecting Hospital and Critical Access Hospital Conditions of Participation: Telemedicine Credentialing and Privileging,'' that became effective July 5, 2011 (76 FR 25563).

CMS is now proposing to further modernize hospitals' medical staffing policies. We believe these changes would provide hospitals the clarity and flexibility they need under federal law to maximize their staffing opportunities for all practitioners, and particularly for non-physician practitioners, under their individual States' laws.

First, we propose to redesignate § 482.22(a)(2) to § 482.22(a)(5) and revise it by adding language to clarify that a hospital may grant privileges to both physicians and non-physicians to practice within their State scope of practice, regardless of whether they are also appointed to the hospital's medical staff. That is, technical membership in a hospital's medical staff would not be a prerequisite for a hospital's governing body to grant practice privileges to practitioners.

Hospitals wishing to bring on additional practitioners without also making them members of the medical staff would follow the same requirements specified in current regulation. That is, the medical staff would examine the credentials of each candidate and make recommendations to the governing body. Medical staff conducting the evaluations would operate under their own hospitals'

policies and procedures. Moreover, the medical staff would continue to be limited by State law, and thus would not be permitted to grant a practitioner candidate any privileges beyond those allowed in the State where the hospital is located, where he or she would ultimately practice.

We believe this proposed language would provide hospitals with the clarity they need to explore new and expanded approaches to care giving. Hospitals would be able to increase the number of practitioners who could perform various functions and duties, up to the regulatory boundaries allowed under their State licensing and scope of practice laws.

These proposed revisions are in response to requests received from stakeholders prior to the beginning of this rulemaking process. Many of these stakeholders expressed the opinion that some CMS requirements, particularly those related to medical staff, may stand in direct conflict with functions permitted under State practice acts and laws. In such cases, our requirements would be unnecessarily restricting the scope of practice of certain categories of non-physician practitioners (for example, Advanced Practice Registered Nurses (APRNs), Physician Assistants (PAs), Physical Therapists (PTs), Speech-language Pathologists (SLPs), and Doctors of Pharmacy (PharmDs)). Thus, stakeholders maintain, current regulatory impediments may be unduly limiting access to care and/or delaying treatment for patients and causing undue burden to practitioners (for example, the need to seek out physicians to co-sign orders). Our proposed changes would remove these barriers and allow hospitals to move forward in new ways to improve patient care, subject to State law.

The second area we propose to address relates to the general management and oversight of practitioners. Prior to the beginning of this rulemaking process, we received questions from some hospitals about the appropriate credentialing and privileging process for APRNs. We believe the changes we are proposing at § 482.22(a)(5) would address them. For example, some hospitals have questioned whether APRNs should be managed by the human resources department, as most registered nurses are, or by the medical staff, as most PAs are. We believe that, to the extent allowed under their States' law, most hospitals already manage and oversee the services of APRNs through their medical staffs. In fact, technically, our current regulations already allow hospitals to appoint non-physician practitioners as members of their medical staffs, if the State law in which their hospital operates permits it. However, the numerous questions we have received in this area indicate that our current regulation is unclear. Therefore, we are proposing language to revise the section by clarifying that being a member of a hospital's medical staff is not a prerequisite to being granted privileges in the hospital, regardless of whether a practitioner is a physician or a non-physician.

One of our chief concerns, in the context of proposing this change, is to ensure that all practitioners working at a hospital would continue to follow the rules set forth for ''Medical Staff'' at § 482.22. Thus, we are proposing language within this provision that would require those physicians and non-physicians, who have been granted practice privileges within their scope of practice but without appointment to the medical staff, to be subject to the requirements contained within this section. That is, they would be subject to the same hospital requirements, medical staff bylaws, and medical staff oversight as outlined under this CoP and to which appointed medical staff members are also subject. Alternatively, a hospital could establish categories within its medical staff to create distinctions between practitioners who have full membership and a new category for those who could be classified as having an ''associate,'' ''special,'' or ''limited'' membership. Such a structure is neither required nor suggested; we are providing it here as an example of one possible way for a hospital to align all of its practitioners under the ''Medical Staff'' rules.

We believe these proposed changes would complement and build upon present state and federal reform initiatives, including those set forth in the Affordable Care Act (ACA), to address the healthcare workforce shortages. We especially believe these proposed changes would support efforts to provide better health care in medically underserved communities. These changes would provide more flexibility to small hospitals and to critical access hospitals (CAHs) in rural areas and regions with a limited supply of primary care and specialized providers. They would also provide needed flexibility to hospitals located in impoverished urban centers. These changes would also provide States with additional regulatory flexibility to support their efforts to address the shortage of primary care providers.

The third area in which we are proposing changes concerns the more direct responsibilities for the organization and accountability of the medical staff. These requirements are set forth at § 482.22(b)(3). Presently, the hospital may assign these management tasks to either an individual doctor of medicine or osteopathy or, when permitted by State law of the State in which the hospital is located, a doctor of dental surgery or dental medicine. CMS proposes to expand the list to include doctors of podiatric medicine (DPMs). We believe this change would permit a podiatric physician to serve as the president, or its equivalent, of a hospital's medical staff in a significant number of states. CMS is aware that in such states, the laws underscore the widely held conclusion that the education, training, and experience of podiatric physicians are similar to that of their allopathic and osteopathic colleagues with respect to serving in such a hospital leadership position. With this proposed change, CMS wishes to ensure its hospital leadership requirements are not in conflict with State laws that would otherwise allow podiatric physicians to serve in this capacity. Moreover, CMS recognizes that the act of being selected as the president of the medical staff reflects the high level of confidence in which a candidate is held by his or her peers.

4. Nursing Services (§ 482.23)

We propose to revise the hospital nursing service requirements at § 482.23 (b)(4), ''Nursing services,'' which currently requires a hospital to ensure that the nursing staff develop, and keep current, a nursing care plan for each patient. We propose that for those hospitals that use an interdisciplinary plan of care in providing patient care, the care plan for nursing services be developed and kept current as part of the hospital's overall interdisciplinary care plan.

An interdisciplinary care plan optimizes the involvement of the various healthcare disciplines (such as nursing, respiratory care, occupational therapy, and pharmacy) to identify and document patient treatment goals and objectives, interventions, and progress in meeting those goals and objectives. We propose to revise our requirements to be less burdensome and more in line with current practice by proposing that, for those hospitals that use an interdisciplinary care plan, the nursing services care plan could be integrated into the overall hospital interdisciplinary care plan. This would decrease the burden of the nursing staff having to develop two care plans, one to fulfill the nursing services requirement and the other to fulfill the particular hospital's requirement for an

interdisciplinary care plan, and would improve the quality of patient care by the effective and timely communication of information pertaining to the nursing care of the patient.

We propose to revise the current Nursing services CoP at § 482.23(c) by adding new provisions that would allow for drugs and biologicals to be prepared and administered on the orders of practitioners other than those specified under § 482.12(c). We are also proposing a further revision to § 482.23(c) that would add a new provision allowing orders for drugs and biologicals to be documented and signed by practitioners other than those specified under § 482.12(c). We would allow for these two revisions only if such practitioners are acting in accordance with State law, including scope of practice laws, and only if the hospital has granted them privileges to do so.

These proposed revisions are in response to requests that CMS received from stakeholders prior to our beginning the rulemaking process. Many of these stakeholders expressed the opinion that some of the CMS requirements impede the scope of practice of certain categories of practitioners (for example, APRNs, PAs, and Doctors of Pharmacy (PharmDs)). They maintain that such regulatory impediments may limit access to care or delay treatment for patients; may cause undue burden to practitioners (for example, the need to seek out physicians to co-sign orders); and may stand in direct conflict with functions allowed under State practice laws.

In proposing these changes, we are aware that some States may not allow specific practitioners to exercise such privileges. We are also aware that some States may limit the categories of practitioners from which a registered nurse (as part of his or her scope of practice) may receive and carry out orders. However, we believe that these proposed revisions would not only allow hospitals to more fully use these practitioners in the care of patients, but that changes to what we view as unnecessary regulatory prohibitions would serve to greatly reduce the regulatory burden for hospitals and allow for more efficient care practices.

Within this section of the Nursing services CoP, we are also proposing changes that would allow hospitals to use standing orders. At § 482.23(c)(1)(ii), we propose to allow for the preparation and administration of drugs and biologicals on the orders contained within pre-printed and electronic standing orders, order sets, and protocols for patient orders, but only if such orders meet the requirements of § 482.24(c)(3), as discussed below.

Much of the evidence on the effectiveness of hospital standing orders is in the context of their use by Rapid Response Teams (RRTs) and then only when applied in a very limited and focused manner. A search of the medical literature revealed that there may be additional areas where standing orders have some efficacy in the hospital setting. (*http://www.innovations.ahrq.gov/content.aspx?id=1750; http://www.cdc.gov/mmwr/PDF/rr/rr5416.pdf*).

These areas include:

- Emergency department (ED) admission/triage in particular for certain conditions such as acute asthma, acute myocardial infarction, and stroke (we would expect that standing orders would be authenticated by an ED physician or nonphysician practitioner when subsequent orders during the ED visit are authenticated for the patient);
- Improving immunization rates (beyond those for influenza and pneumococcal as currently allowed under the CoPs); and
- Postoperative recovery areas.

Although the current hospital CoPs already allow for nurse-initiated influenza and pneumococcal vaccinations (under medical staff-approved hospital policy), an expanded use of standing orders for other immunizations, which have clearly established and nationally recognized guidelines (for example, CDC guidelines for Hepatitis B vaccination of at-risk newborns), may be a mechanism, under the CoPs, for improved patient care.

We propose to eliminate the requirement, currently at § 482.23(c)(3), that non-physicians must have special training in administering blood transfusions and intravenous medications. We believe that this training is standard practice, and thus does not need to be prescribed in these regulations.

At § 482.23(c)(4) we propose that those who administer blood transfusions and intravenous medications do so in accordance with State law and approved medical staff policies and procedures. We propose to retain § 482.23(c)(4) and redesignate it at § 482.23(c)(5), without any content change.

We also propose additional revisions at proposed § 482.23(c)(6) that would allow hospitals the flexibility to develop and implement policies and procedures for a patient and his or her caregivers/support persons to administer specific medications (non-controlled drugs and biologicals).This proposal would be consistent with the current practice of giving patients access at the bedside to urgently needed medications, such as nitroglycerine tablets and inhalers, and selected non-prescription medications, such as lotions and rewetting eye drops. These proposed changes would apply to the self-administration of both hospital-issued medications and the patient's own medications brought into the hospital.

Hospitals that choose to develop and implement a program that allows for patients and caregivers/support persons to administer certain medications would be expected to address the program in their hospital policies and procedures. We would expect a collaborative effort by the hospital's medical staff, nursing department, and pharmacy department to develop these policies and procedures. A hospital would need to: assure that a practitioner had issued an order, consistent with hospital policy, permitting self-administration of medications; assess patient and caregiver/support person capacity to self-administer specific medications; provide patient and caregiver/support person instruction regarding the safe and accurate administration of the specified drugs and biologicals (for specific hospital-issued medications and, if determined to be needed, for a patient's own medications brought in from home); ensure the security of medications for each patient; identify a patient's own medications and visually evaluate those medications for integrity; and document the administration of each medication in the patient's medical record.

We believe that this provision, allowing for patient self-administration of medication, particularly those medications brought in from the patient's home, may provide hospitals with a means to make care more patient-centered and adaptable to patient and caregiver/support person needs.

Medical Record Services (§ 482.24)

On November 27, 2006, CMS published a final rule that made revisions to specific provisions of the hospital CoPs at 42 CFR part 482 (71 FR 68694). The current requirements, as finalized at § 482.24(c)(1)(i) in the 2006 rule, specify that all orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner. Also included in the rule was an exception to this requirement at § 482.24(c)(1)(ii), which allows, for the 5 year period following January 26, 2007, all orders, including verbal orders, to be dated, timed, and authenticated by the ordering practitioner or another practitioner who is responsible for the care of the patient as specified under

§ 482.12(c) and who is authorized to write orders by hospital policy in accordance with State law. When the rule was published in late 2006, the 5-year sunset provision was included with the thought that such an exception would not be needed five years hence since various technologies (for example, computerized physician order entry and authentication from a distance through a telecommunication medium) would have evolved and proliferated to the extent where in-person authentication by a practitioner would no longer be common or necessary. Though technologies have certainly advanced in the five years since publication of the rule, there is still not universal application and use of these advancements in hospitals or among practitioners.

Additionally, § 482.24(c)(1)(iii) establishes that all verbal orders must be authenticated based upon Federal and State law; in the absence of a State law designating a specific timeframe for the authentication of verbal orders, this provision then specifies that all verbal orders must be authenticated within 48 hours. Many stakeholders in the hospital community, including The Joint Commission and the American Hospital Association, have pointed out to us that this requirement is not only a particularly burdensome one for hospitals, but also one that does not have any appreciable benefit for patients with regard to safe care. We are proposing to consolidate three existing provisions into one new provision at § 482.24(c)(2). Specifically, we would remove existing paragraphs (c)(1)(i) through (c)(1)(iii) and add a new § 482.24(c)(2). Existing paragraph (c)(2) would be redesignated as (c)(3). This new provision would retain the requirement that all orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner, but would add the exception currently contained at § 482.24(c)(1)(ii) by allowing for authentication by either the ordering practitioner or ''another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.'' In this way we would remove the sunset provision and the 48-hour timeframe requirement for authentication of orders and instead defer to hospital policy and State law for establishment of any timeframe. If there was no State law establishing such a timeframe, then a hospital would be allowed to establish their own timeframe for authentication of orders, including verbal orders.

Due to the risk of error involved in the use of verbal orders, we encourage hospitals to keep the use of such orders to a minimum and to establish policies that discourage their use. When verbal orders must be used, hospitals should have their own policies in place (*e.g.,* ''read-back and verify'' requirements) to ensure accuracy in the transcribing of orders, particularly those involving medication dosages.

As discussed above in the Nursing services CoP section, we are proposing changes to that CoP as well as to the Medical records services CoP that would allow hospitals to use standing orders as long as certain provisions were met. In this rule, we propose new provisions to § 482.24(c)(3) that would allow a hospital to use pre-printed and electronic standing orders, order sets, and protocols for patient orders only if the hospital: (1) Establishes that such orders and protocols have been reviewed and approved by the medical staff in consultation with the hospital's nursing and pharmacy leadership; (2) demonstrates that such orders and protocols are consistent with nationally recognized and evidence-based guidelines; (3) ensures that the periodic and regular review of such orders and protocols is conducted by the medical staff, in consultation with the hospital's nursing and pharmacy leadership, to determine the continuing usefulness and safety of the orders and protocols; and (4) ensures that such orders and protocols are dated, timed, and authenticated promptly in the patient's medical record by the ordering practitioner or another practitioner responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

For additional guidance on the use of standing orders, stakeholders should review the CMS memorandum (CMS S&C–09–10) issued on October 24, 2008 (*http://www.cms.gov/Survey CertificationGenInfo/downloads/ SCLetter09-10.pdf*), where we pointed out our strong support of the use of evidence-based protocols, developed by the medical staff and based on recognized standards of practice, that advance the quality of care provided to patients. CMS, through the CoPs, requires hospitals and practitioners to take a thoughtful and responsible approach when using pre-printed and electronic standing orders, order sets, and protocols, particularly those orders that may be initiated as part of an emergency response or as part of an evidence-based treatment regimen where it is not practicable for a nurse to obtain the order and authentication from the physician or practitioner prior to the provision of care. In all cases protocols and standing orders must be medically necessary for the patients to whom they are applied, and the treating physician must be able to modify, cancel, void or decline to authenticate orders that were not medically necessary in a particular situation. Under no circumstances should a hospital use standing orders in a manner that requires any staff not authorized to write patient orders to make clinical decisions outside of their scope of practice in order to initiate such orders. Hospital policies and procedures that discuss the use of standing orders should address well-defined clinical scenarios as a standard of practice for the use of such orders. We would expect the policies and procedures to also address the process by which a standing order is developed; approved; monitored; initiated by authorized staff; and subsequently authenticated by physicians or practitioners responsible for the care of the patient. Under the CoPs, all orders, whether written or verbal, must be authenticated and documented in the patient's medical record by a practitioner responsible for the care of the patient.

We would also expect to see specific criteria for a nurse or other authorized personnel to initiate the execution of a particular standing order clearly identified in the protocol for the order, for example, the specific clinical situations, patient conditions, or diagnoses by which initiation of the order would be justified. Policies and procedures should also address the instructions that the medical, nursing, and other applicable professional staff receive on the conditions and criteria for using standing orders as well as any individual staff responsibilities associated with the initiation and execution of standing orders. An order that has been initiated for a specific patient must be added to the patient's medical record at the time of initiation, or as soon as possible thereafter. Likewise, standing order policies and procedures must specify the process whereby the physician or other practitioner responsible for the care of the patient acknowledges and authenticates the initiation of all standing orders after the fact, with the exception of influenza and pneumococcal polysaccharide vaccines, which do not require such authentication in accordance with § 482.23(c)(2).

The policies and procedures must also establish a process for monitoring and evaluating the use of standing orders, including proper adherence to the order's protocol. There must also be a process for the identification and timely completion of any requisite updates, corrections, modifications, or revisions to pre-printed and electronic standing orders, order sets, and protocols.

We believe that these proposed changes would do much to advance the practice of evidence-based medicine and would ensure more consistent care for all patients.

6. Infection Control (§ 482.42)

CMS introduced Infection Control as a CoP in 1986 amidst growing recognition that infections and communicable diseases were potentially exposing hospital patients to significant pain and risk, and driving up direct hospital charges (51 FR 22010, 22027). The regulation increased hospital accountability and sought to identify, prevent, control, investigate, and report infections and communicable diseases of patients and hospital personnel. The regulation also established a requirement for hospitals to keep a log to identify problems and for improvement to be made when problems were identified.

Since this requirement was published, advances in infection control surveillance systems have made the need for a separate infection log obsolete. We have also received complaints from stakeholders that the log requirement is too prescriptive and burdensome. We therefore propose to eliminate the current requirement at § 482.42(a)(2), proposing instead to allow hospitals flexibility in their approach to the tracking and surveillance of infections. The modern surveillance systems already in use include infection detection, data collection and analysis, monitoring, and evaluation of preventive interventions. These activities are already required at § 482.42(a)(1), which we propose to retain under § 482.42(a). Specifically, the infection control officer or officers are required to develop a system for identifying, reporting, investigating, and controlling infections and communicable diseases of patients and personnel. The requirements at § 482.42(a), together with modern surveillance practices, have made the requirement for a separate infection control log unnecessarily redundant and burdensome.

7. Outpatient Services (§ 482.54)

Under the CoPs, the provision of outpatient services is an optional hospital service. However, if a hospital provides outpatient services, the services must meet the needs of patients according to acceptable standards of practice as required at § 482.54. The current provision at § 482.54(b)(1) also requires the hospital to assign an individual to be responsible for outpatient services.

We are aware that increasingly more hospital services are offered as outpatient services today than when this particular CoP was first developed. As hospitals have expanded the outpatient services offered to patients, many hospitals have determined that it is in the best interests of patient safety and management practices to appoint more than one individual to oversee the various services offered and also to fully integrate their outpatient services with inpatient services. Additionally, these hospitals have realized that as they have expanded the variety of outpatient services offered, a single outpatient services leader may not possess the training and expertise to oversee the myriad services that the hospital is capable of providing in the outpatient setting. For example, a hospital that offers pediatric, gynecological, and orthopedic outpatient services may find it advantageous and more efficient to have each of these outpatient departments managed by a professional with a background and expertise in the relevant specialty and who is also responsible for these hospital departments in the inpatient setting. Rather than have just one individual, who may only have qualifications and experience in one of these areas, as the person responsible for only the outpatient services of all three specialties, hospitals would be able to make more efficient use of department directors who would oversee both inpatient and outpatient services for a particular specialty. In fact, the current regulations at § 482.54(a) require outpatient services to be, ''integrated with inpatient services.''

Under the current requirement at § 482.54(b)(1), hospitals that are using multiple leaders must hire another director to oversee these highly qualified and expert directors who are already exercising responsibility for their respective areas, often for both inpatient and outpatient services. We have reason to believe, and feedback from stakeholders has confirmed that this situation may be causing unnecessary staff costs, increased administrative burden, and confused chains of command within a hospital regarding its management of patient services.

Therefore, in this proposed rule, we are proposing revisions to this CoP that would allow hospitals greater flexibility in determining the management structure of outpatient services that would be tailored to the scope and complexity of the services offered by an individual hospital. We propose to change the existing provision at § 482.54(b) by revising the provision at § 482.54(b)(1) to allow hospitals to assign one or more individuals to be responsible for outpatient services. We also propose to revise the current provision at § 482.54(b)(2), which currently requires a hospital to have appropriate professional and nonprofessional personnel available at each location where outpatient services are offered, by proposing to add a measure of flexibility such that hospitals would make their personnel decisions based on the scope and complexity of outpatient services offered.

8. Transplant Center Process Requirements—Organ Recovery and Receipt (§ 482.92)

On March 30, 2007, CMS published a final rule entitled ''Medicare Program: Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants'' (72 FR 15198). This final rule set forth hospital CoPs for the approval and re-approval of transplant centers at 42 CFR part 482, subpart E, including § 482.92, the section involving blood type and other vital data verification. Likewise, CMS addressed the regulatory requirements for organ procurement organizations in the 2006 final rule entitled ''Medicare and Medicaid Programs; Conditions for Coverage for Organ Procurement Organizations (OPOs),'' which published in the May 31, 2006 **Federal Register** (71 FR 30982). This rule set forth the Conditions for Coverage (CfCs) for OPOs, and it, too, included requirements for blood type verification. The transplant center and OPO rules were designed to work in tandem to achieve CMS' goals of safe, effective, and efficient care for all patients. However, since the time of publication, CMS has become aware of the potential for duplicative, overlapping efforts related to blood type verification. This proposed rule would address this unnecessary duplication by removing certain blood type verification requirements for transplant centers set forth at § 482.92(a).

As further described below, the requirements set forth in the transplant center rule at § 482.92(a) and in the OPO rule at § 486.344(d)(2)(ii) and § 486.344(e) are redundant and burdensome for providers as presently structured. Each blood type and other data verification requires documentation which must be physically signed and retained. For cases where the recovery is conducted by a surgeon on call for the OPO recovering for his/her own program, both the OPO and transplant center rules apply. As a practical matter, this has meant one set of paperwork for each entity, and, in some cases, a third set of paperwork maintained with the surgeon's records. The transplant hospital must maintain a copy of its signed verification and make it available for the onsite surveyors of its organ transplant program. OPOs maintain blood matching documentation for their onsite surveyors as well. In practice, for such cases, this means organ recovery teams must produce and protect two sets of paperwork alongside the recovered organs.

In addition, because the ultimate recipient is not always known at the time of organ recovery, as there may be several potential matches pending the final receipt of lab work confirming the compatibility of various blood antigens, the management of paperwork verifying the blood types for each intended organ recipient becomes even more burdensome.

In order to reduce the amount of verification paperwork, CMS proposes to amend the existing regulations governing transplant centers by removing the provision at § 482.92(a) which requires the transplant team to verify blood type before organ recovery. We would redesignate current paragraph (b) and (c) as (a) and (b), respectively.

CMS is proposing this change in an effort to reduce administrative burden for transplant centers and the surgeons recovering for these centers. We believe this change will also remove any legal ambiguities which may arise on behalf of ''on-call'' organ recovery surgeons and team members who fall under both the rules of the OPOs they are removing the organs for and the rules of the transplant hospitals where they are privileged. The change also would produce cost savings because the ''extra'' verifications will no longer be conducted.

Because the blood type verification is conducted at numerous points in time and by multiple physicians and clinicians, CMS does not expect that this proposed change would impact transplant recipients in an adverse manner. In fact, we believe the changes are wholly in keeping with our overarching aims to (1) ensure timely care for patients who are waiting for organs for transplantation; and (2) establish sufficient quality and procedural standards to ensure that transplants are performed in a safe and efficient manner. CMS believes the overall impact of this change would be to free up time and resources for transplant recovery teams and centers. This change is thus expected to benefit all parties involved in the practice of organ transplantation.

Definitions (§ 485.602) and Provision of Services (§ 485.635)

The current CoP at § 485.602 and § 485.635(b) require CAHs to furnish certain types of services directly rather than through contracts or under arrangements. Specifically, the CoP at § 485.635(b) requires CAH staff to provide, as direct services, (1) diagnostic and therapeutic services that are commonly furnished in a physician's office or at another entry point into the health care system; (2) laboratory services; (3) radiology services; and (4) emergency procedures.

In our view, the current regulation does not provide sufficient flexibility for the CAH to address efficiencies and alleviate work force shortages by affiliating with other providers and entities, as well as by utilizing temporary agencies. Healthcare facilities in rural settings often face challenges due to limited resources, small size, and location with regard to recruiting and retaining appropriately qualified health care professionals as employees. Their inability to use contracted services in some situations in lieu of hiring employees to provide certain services, places an increased burden on CAHs. In particular, it may be more efficient for a CAH to contract with a provider in the quantity that the CAH requires, to effectively address the needs of its patients. Under the current CoP, however, the CAH cannot pursue this option for the required services in these specialty areas.

We believe that what is most important in terms of quality and safety of care is that these required services are made available by the CAH, not that the qualified professionals providing those services be employees of the CAH. The proposed revisions to § 485.635(b) would eliminate the requirement that CAH staff must provide certain services directly and changes the heading of the standard, ''Direct services,'' to ''Patient services.'' We also propose to revise the language in paragraphs § 485.635(b)(1) through (b)(4), ''that the CAH staff furnishes as direct services.'' We believe the proposed revisions will provide CAHs with additional flexibility, increase the ability of CAHs to provide services that are required to ensure access to care, decrease burden on CAHs, and positively impact the costs of health care delivery. We also propose to eliminate the definition of ''Direct Services'' at § 485.602 since it will no longer be applicable.

The governing body, or the person principally responsible for the operation of the CAH under § 485.627(b)(2), would continue to be responsible for all services furnished by the CAH whether or not they are furnished directly, under arrangements, or under agreements. The governing body or responsible person must ensure that all furnished services enable the CAH to comply with all applicable conditions of participation and standards for the contracted services.

We believe that changing this requirement will alleviate an unnecessary burden on CAHs and provide greater access to quality health care.

B. Clarifying Changes

10. Pharmaceutical Services (§ 482.25) and Infection Control (§ 482.42)

We propose to make a minor technical change to the requirement at § 482.25(b)(6). The current requirement states that drug administration errors, adverse drug reactions, and incompatibilities must be reported to the hospital's quality assurance program, if appropriate. Additionally, we propose to make a minor technical change to the requirement at § 482.42(b)(1). The current requirement states that the chief executive officer, the medical staff, and the director of nursing services must ensure that the hospital-wide quality assurance program and training programs address problems identified by the infection control officer or officers. Therefore, in both § 482.25(b)(6) and § 482.42(b)(1) we propose to replace the term ''quality assurance program'' with the more current term ''quality assessment and performance improvement program.'' This change would clarify that we expect drug errors, adverse reactions, and incompatibilities to be addressed in a hospital's QAPI program, as required at § 482.21.

11. Personnel Qualifications (§ 485.604)

Many of the former EACH/RPCH CoPs were adopted for the new CAH program (see 62 FR 46008, August 29, 1997), including the definition for clinical

nurse specialist. In this NPRM we are proposing to revise the definition of a *clinical nurse specialist* at § 485.604(a) to reflect the definition in the statute at § 1861(aa)(5)(B). Specifically, we propose to change the definition at § 485.604(a) to state that a clinical nurse specialist is a registered nurse licensed to practice nursing in the State in which the clinical nurse specialist services are performed, that holds an advanced degree in a defined clinical area of nursing from an accredited educational institution.

12. Surgical Services (§ 485.639)

The current surgical services CoP was promulgated in 1995 (60 FR 45814, September, 1, 1995) to ensure adequate health and safety protection for patients. However, the provision of surgical services is not a required CAH service under the Act at section 1820(c); therefore, we are proposing to make changes to this CoP to clarify that it is an optional service for CAHs. The proposed technical change to the CoP introductory text is as follows:

''If a CAH provides surgical services, surgical procedures must be performed in a safe manner by qualified practitioners who have been granted clinical privileges by the governing body of the CAH or responsible individual in accordance with the designation requirements under paragraph (a) of this section.''

C. Other Options Considered

In addition to the proposals discussed above, we considered the alternative options, described below, for revising the CoPs.

Medical Staff (§ 482.22)

Similar to the changes proposed in this rule that would allow a multi-hospital system the option of having a single governing body legally responsible for the conduct of the hospital (§ 482.12), we considered changes to the Medical staff CoP at § 482.22 that would allow a multi-hospital system the option of having a single organized medical staff responsible for the quality of medical care provided to patients by all of the hospitals in the system. Stakeholders have reported that multi-hospital systems have both integrated their governing body functions and their medical staff functions to oversee patient care in a more efficient manner.

The current language of § 482.22 states that the hospital ''must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital.'' We do not believe that the current Medical staff CoP language implies that we require a single and separate medical staff for each hospital within a multi-hospital system. Therefore, we have retained the current requirement without revision. However, based on the anecdotal evidence and input provided by stakeholders on this issue, we request comment on whether we need to propose any clarifying language.

Based on stakeholder feedback, we considered revising the overall organizational structure of the CoPs to condense current requirements for departmental leadership responsibilities into a single, non-specific CoP that would allow hospitals to appoint hospital leaders based on hospital-established qualifications and needs specific to each hospital. However, we believe that the department-specific organization of the current CoPs, and the current specialty-department-specific leadership requirements, are appropriate, and can be compatible with the leadership standards of our stakeholders. We are specifically seeking comment on this issue.

Medical Record Services (§ 482.24)

We considered modifying the regulatory requirement at current § 482.24(c)(2) to clarify the intent of the rule in situations where a patient has received a medical history and physical examination (H&P) by either a non-hospital practitioner or a practitioner with hospital privileges prior to the patient's hospital visit. When an H&P has been completed for a patient within the most recent 30-day period prior to the patient's admission or registration, the current regulation requires a hospital to ensure documentation of, ''[a]n updated examination of the patient, including any changes in the patient's condition. * * *''

We believe that some stakeholders may be interpreting our current requirements in a way that would require a hospital to conduct a full update to an H&P that was conducted within 30 days prior to the patient's admission or registration. As put forth in our November 27, 2006 final rule related to this issue (''Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations,'' 71 FR 68673, 68675) and as stated in our current Interpretive Guidelines (CMS. ''State Operations Manual.'' Pub 100–07, Appendix A, *http://cms.gov/manuals/Downloads/som107ap_a_hospitals.pdf*), a hospital may adopt a policy allowing submission of an H&P prior to the patient's hospital admission or registration by a practitioner who may not be a member of the hospital's medical staff or who does not have admitting privileges by that hospital, or by a qualified licensed individual who does not practice at that hospital but is acting within his/her scope of practice under State law or regulation. When an H&P is completed within the 30 days before admission or registration, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is placed in the patient's medical record. This examination must be conducted by a practitioner who is credentialed and privileged by the hospital's medical staff to perform an H&P.

The update note to the H&P must document an examination for any changes in the patient's condition since the time that the patient's H&P was performed that might be significant for the planned course of treatment. If, upon examination, the licensed practitioner finds no change in the patient's condition since the H&P was completed, he/she may indicate in the patient's medical record that the H&P was reviewed, the patient was examined, and that ''no change'' has occurred in the patient's condition since the H&P was completed. We note that we do not specify the extent of the examination that must be conducted; rather, we defer to the clinical judgment of hospital staff to determine the extent of the necessary H&P update. We believe that our interpretation of the H&P update requirement assures that all patients undergoing surgery or anesthesia are properly evaluated for all contraindications in accordance with the clinical judgment of hospital staff without an undue duplication of services and documentation. Therefore, we do not believe that the regulation should be amended. We are specifically seeking comment on this issue.

Physical Environment (§ 482.41)

Currently, hospitals are required to meet the standards of the 2000 edition of the Life Safety Code (LSC), which is not the most recent edition. Many accrediting bodies, as well as state and local jurisdictions, require hospitals to comply with more recent versions, such as the 2003, 2006, or 2009 edition of the LSC. Complying with both the 2000 edition of the LSC, for Federal purposes, and a more recent edition, for accreditation or other purposes, can be challenging for hospitals when there are

inconsistencies between the two versions.

We expect the 2012 edition of the LSC to be released in Fall 2011. Based on the content of the 2012 edition, we will decide whether it or another more recent edition, is appropriate for incorporation into the regulations for hospitals and other affected providers and suppliers. Any regulatory changes would be addressed through separate notice-and-comment rulemaking. We are specifically seeking comment on this issue.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

According to CMS, there are about 4,900 hospitals (not including CAHs) that are certified by Medicare and/or Medicaid. We will use those figures to determine the burden for this rule. In addition, throughout this section, we estimate costs based on average hourly wages for different healthcare providers and attorneys. Unless indicated otherwise, we obtained these average hourly wages from the United States Bureau of Labor Statistics' ''May 2010 National Occupational Employment and Wage Estimates United States'' (*http://www.bls.gov/oes/current/oes_nat.htm* accessed on September 28, 2011). We also added 30 percent to the indicated average hourly wage to allow for overhead and fringe benefits.

A. ICRs Regarding Condition of Participation: Patient's Rights (§ 482.13)

Proposed § 482.13(g) would remove the current requirement for hospitals to notify CMS by telephone no later than the close of business the next business day following knowledge of a patient's death for patients who die when no seclusion has been used and the only restraints used on the patient were soft, non-rigid, cloth-like materials, which were applied exclusively to the patient's wrist(s). This requirement would include patients who died within 24 hours of having been removed from these types of restraints. In those cases, the hospital must report to CMS by recording in a log or other system the information required at proposed § 482.13(g)(2)(i) and (ii). We are proposing this change only for deaths where the patient died while either in soft two-point wrist(s) restraints or within 24 hours of having been removed from soft two-point wrist(s) restraints provided that: (a) There is no reason to believe the death was caused by those restraints, (b) that those were the only restraints used, and (c) that no seclusion was used.

We believe that we previously underestimated the burden and costs associated with the current reporting requirement. After discussions with other CMS staff, we now believe that this reporting would be done by a nurse rather than a clerical person and that there are substantially more deaths that occurred to patients while they were in soft, non-rigid, cloth-like material, which were applied exclusively to a patient's wrist(s), or within 24 hours of being removed from this type of restraints.

We will be revising the current burden estimates for OMB control number 0938–0328 to reflect the burden estimated to be associated with the current regulations and would adjust for any burden reductions resulting from this provision once the current proposal is finalized. For a more detailed discussion of estimated burden and cost savings, please see the Regulatory Impact Analysis section of this rule.

B. ICRs Regarding Condition of Participation: Nursing Services (§ 482.23)

The current hospital CoPs require that hospitals ensure that the nursing staff develops, and keeps current, a nursing care plan for each patient (42 CFR 482.23(b)(4)). Proposed 482.23(b)(4) would allow those hospitals that have interdisciplinary care plans (ICPs) to have their nursing care plans developed and kept current as part of the hospital's ICPs. Based on our experience with hospitals, a nurse would develop and maintain the nursing care plan for each patient. The nurse would also be responsible for identifying the sections of each nursing care plan that needed to be integrated into the hospital's ICP and transferring that information into the ICP. Thus, allowing hospitals to include the nursing care plan in the ICP for each patient would save the nurse the time she or he is currently spending identifying and transferring information from the separate nursing care plan into the ICP and maintaining the separate nursing care plan.

In the currently approved OMB control number 0938–0328, we indicated that the creation and maintenance of a nursing care plan constituted a usual and customary business practice and did not assign a burden for this requirement in accordance with 5 CFR 1320.3(b)(2). Since completing that package, we have reconsidered our estimate of that analysis. While we continue to believe that creating and maintaining a health care plan for each patient is a usual and customary practice for hospitals, we do not believe that is usual and customary for hospitals to develop and maintain a separate nursing care plan when they also develop and maintain an ICP.

We will be revising the current burden estimates for OMB control number 0938–0328 to reflect the burden estimated to be associated with the current regulations and would adjust for any burden reductions resulting from this provision once the current proposal is finalized. For a more detailed discussion of estimated burden and cost savings, please see the Regulatory Impact Analysis section of this rule.

C. ICRs Regarding Condition of Participation: Medical Record Services (§ 482.24)

In the currently approved OMB control number 0938–0328, we indicated that most of the patient-related activities, such as authentication of verbal orders and using standing orders, constituted a usual and customary business practice and did not assign a burden for this requirement in accordance with 5 CFR 1320.3(b)(2). However, we have reconsidered our analysis. We believe that the authentication of verbal orders should be governed by state law and not mandated by the Federal government. In addition, while writing orders is generally a usual and customary business practice in hospitals, hospitals can also choose how those orders will be conveyed. We believe that some hospitals are not currently using

standing orders as often as they would choose to due to our CoPs. Therefore, by allowing authentication of verbal orders to be governed by state law and expanding the use of standing orders, we believe that these provisions would result in a burden reduction.

We will be revising the current burden estimates for OMB control number 0938–0328 to reflect the burden estimated to be associated with the current regulations and would adjust for any burden reductions resulting from this provision once the current proposal is finalized. For a more detailed discussion of estimated burden and cost savings, please see the Regulatory Impact Analysis section of this rule.

D. ICRs Regarding Condition of Participation: Infection Control (§ 482.42)

The current hospital CoPs require that ''the infection control officer or officers must maintain a log of incidents related to infections and communicable disease'' (42 CFR 482.42(a)(2)). We are proposing to eliminate this requirement for keeping a dedicated log of incidents related to infections and communicable diseases, proposing instead to allow hospitals flexibility in their approach to the tracking and surveillance of infections.

In the currently approved OMB control number 0938–0328, we did not assign a burden for creating and maintaining this log. However, we have reconsidered our analysis. We believe there are many alternatives available that present an even greater opportunity to monitor and analyze infection control activities than keeping a log as currently required by the CoPs. In addition, we believe that the log is a format that hospitals are using only because of the CMS requirement and that they are producing data in this fashion in addition to the format they are using for their own purposes. Thus, while identifying and monitoring infections that patient have during hospitalization would be usual and customary for hospitals, we believe that requiring hospitals to keep a log rather than decide how they could best keep track of this information is burdensome for hospitals.

We will be revising the current burden estimates for OMB control number 0938–0328 to reflect the burden estimated to be associated with the current regulations and will adjust for any burden reductions resulting from this provision once the current proposal is finalized. For a more detailed discussion of estimated burden and cost savings, please see the Regulatory Impact Analysis section of this rule.

E. ICRs Regarding Condition of Participation: Transplant Center Process Requirements—Organ Recovery and Receipt (§ 482.92)

We propose removing 482.92(a) entirely. The elimination of this section would remove the burden on the part of transplant centers by eliminating a requirement to review and compare blood type and other vital data before organ recovery takes place.

In the currently approved OMB control number 0938–1069, we indicated that the verification by the transplant hospital recovery physician when the recipient was known constituted a usual and customary business practice and did not assign a burden for this requirement in accordance with 5 CFR 1320.3(b)(2). However, since that PRA package was approved by OMB, several members of the transplant community have repeatedly told CMS that this verification was unnecessary and burdensome because OPOs already perform this type of verification prior to organ recovery in accordance with 486.344(d)(2)(ii). Therefore, we have reconsidered our estimate of the burden for this requirement.

We will be revising the current burden estimates for OMB control number 0938–0328 to reflect the burden estimated to be associated with the current regulations and would adjust for any burden reductions resulting from this provision once the current proposal is finalized. For a more detailed discussion of estimated burden and cost savings, please see the Regulatory Impact Analysis section of this rule.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impacts

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this rulemaking as required by Executive Orders 12866 (September 1993) and 13563 (January 2011). 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, reducing costs, harmonizing rules, and promoting flexibility. A Regulatory Impact Analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any one year). This proposed rule is an ''economically'' significant regulatory action under section 3(f)(1) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this proposed rule.

2. Statement of Need

In Executive Order 13563, the President recognized the importance of a streamlined, effective, efficient regulatory framework designed to promote economic growth, innovation, job-creation, and competitiveness. To achieve a more robust and effective regulatory framework, the President has directed each executive agency to establish a plan for ongoing retrospective review of existing significant regulations to identify those rules that can be eliminated as obsolete, unnecessary, burdensome, or counterproductive or that can be modified to be more effective, efficient, flexible, and streamlined. Consistent with this directive, CMS has conducted a retrospective review of the conditions of participation it imposes on hospitals to remove or revise obsolete, unnecessary, or burdensome provisions. The goal of the retrospective review is to identify opportunities reduce system costs by removing obsolete or burdensome requirements while maintaining patient care and outcomes.

CMS had not reviewed the entire set of Conditions of Participation for Hospitals in many years. These requirements had grown over time and, while often revised, had not been subject to a complete review. CMS staff as well as CMS stakeholders, including TJC, the American Medical Association, the AHA, and many others, had identified problematic requirements over the years. Accordingly, we decided to conduct a retrospective review of the conditions of participation imposed on hospitals and to remove or revise obsolete, unnecessary, or burdensome provisions, and to increase regulatory flexibility while identifying and adding opportunities to improve patient care and outcomes. We analyzed all potential reforms and revisions of the CoPs for both the costs and the benefits that they would bring to hospitals and CAHs,

Based on our analysis, we decided to pursue those regulatory revisions that would reflect the substantial advances that have been made in healthcare delivery and that would benefit hospitals and CAHs through cost savings.

3. Summary of Impacts

These proposed reductions in process and procedure requirements will facilitate redirection of staff resources to higher priorities with greater benefit both to patients directly and through the increased flexibility that institutions will have to reengineer internal processes. We present a summary of these cost reducing changes in Table 2.

TABLE 1—SECTION-BY-SECTION SUMMARY OF COST SAVINGS TO HOSPITALS AND CAHS

[Entries rounded to nearest $100K if under $50M and to nearest $10M if higher]

Regulatory area	Section	Annual savings ($K)
Patient's Rights—Death Notice Soft Restraints	482.13	9,900
Medical Staff	482.22	330,000
Nursing Services—Care Plan	482.23	110,000
Medical Record Services—Authentication	482.24	80,000
Medical Record Services—Standing Orders	482.24	90,000
Infection Control—Eliminate Log	482.42	6,600
Outpatient Services	482.54	300,000
Transplant Organ recovery	482.92	200
CAH Direct Services	485.635	15,800
Total		942,500

Some of these savings come simply from reductions in process requirements and reporting. The changes in the area of Medical staffing and several other areas would allow hospitals more flexibility in hiring and staffing decisions, including use of part-time and contract staff, to provide patient services efficiently and effectively. Total national hospital spending is about nine hundred billion dollars a year and about half of this is spent on staff compensation (source: AHA Hospital Statistics). Thus, the potential magnitude of the efficiencies that could be achieved is very large.

Clearly, the amount of savings actually realized through these reforms will depend on the individual decisions of about 6,100 hospitals (including CAHs), over time. We cannot predict the extent or speed of these elective changes. Other factors, such as impending physician shortages and the growing use of other practitioners to perform many physician functions will play a role as will State decisions on laws delineating scope of practice.

Furthermore, for the requirements that we propose to modify or delete, we are not aware of any information suggesting that the change we propose would create consequential risks for patients. In other words, we do not believe that any requirement we propose to eliminate has saved lives in recent decades.

We welcome comments on ways to better estimate the likely effects of these reforms within the broader array of influences on delivery of care.

4. Anticipated Impacts

There are about 4,900 hospitals and 1,200 CAHs that are certified by Medicare and/or Medicaid. We use these figures to estimate the potential impacts of this proposed rule. According to CMS' Center for Medicaid, Children's Health Insurance Program (CHIP), and Survey and Certification (CMCS), for fiscal year (FY) 2010, TJC accredited 3,839 hospitals and 365 CAHs. For TJC-accredited hospitals and CAHs we will use the figures of 3,800 and 400, respectively. For non TJC-accredited hospitals and CAHs, we will use the figures of 1,100 and 800, respectively. In addition, we use the following average hourly wages for nurses and physicians respectively: $45 and $124 (BLS Wage Data by Area and Occupation, including both hourly wages and fringe benefits, at *http://www.bls.gov/bls/blswage.htm* and *http://www.bls.gov/ncs/ect/*). The analysis below overlaps with the Collection of Information Requirements section for many individual items. That section contains more technical and legal detail as appropriate under the Paperwork Reduction Act, but that is not necessary or appropriate in a Regulatory Impact Analysis. Readers may wish to consult both sections on some topics.

Death Notices for Soft Restraints (Patient's Rights § 482.13)

We propose to remove the current requirement for hospitals to notify CMS by telephone no later than the close of business the next business day following knowledge of a patient's death for patients who die when no seclusion has been used and the only restraints used on the patient were soft, non-rigid, cloth-like materials, which were applied exclusively to the patient's wrists. Reporting would also be removed for patients who died within 24 hours of having been removed from these types of restraints.

We estimate that full reporting of all such instances would result in 882,000 occurrences. This is much greater than the assumption that originally established this reporting requirement in the final rule (71 FR 71425). However, since the requirements have come into effect, we believe our initial estimate was low. Also, the assumption in the 2006 final rule was that these functions would be carried out by a clerical person. Based on our experience with hospitals, this assumption is incorrect. A registered nurse would be the more appropriate staff member to make the call and to enter the information into a patient's medical record. The difference between the average hourly wage for a clerical person and a registered nurse ($18.88 per hour versus $45 per hour) would account for a significant discrepancy in estimated burden between the 2006 final rule and this proposed rule. Similar to the 2006 rule, we still estimate that it would take about fifteen minutes (or .25 hours) to comply with this requirement for each occurrence. The estimate of the time is also based on our experiences with hospitals as well as feedback from stakeholders that indicates that this estimate is reasonable. Therefore, we estimate that this reduction in burden would reduce

a hospital's burden hours by 45 hours each year valued at $45 per hour for an annual savings of $2,025. Thus, we estimate that for all 4,900 hospitals this would result in a savings of about $9,922,500.

Medical Staff (§ 482.22)

Our changes and clarifications regarding medical staff and privileging would allow hospitals to substitute and rearrange actual delivery of care. In particular, use of Advanced Practice Nurse Practitioners (APRNs) and Physician Assistants (PAs) in lieu of higher-paid physicians could provide immediate savings to hospitals. We have no precise basis for calculating potential savings, which in any event depend on future staffing and management decisions, but they are very substantial. For purposes of this analysis we have reached an estimate of $330 million using the following assumptions:

- All hospitals are able, under State scope of practice laws (that is, 4,900 hospitals), and one third of these are willing (that is, 1,617), to make such medical staff substitutions;
- There are on average 7,000 inpatient hospital stays per hospital per year (from AHA Hospital Statistics);
- The average hospital stay is about 5 days (per AHA statistics);
- On average, each patient receives approximately 75 minutes (1.25 hours) of a physician's time (for example, in-person visits/assessments, including patient and family education; review of patient lab and other diagnostic test results; documentation of orders, progress notes, and other entries in the medical record; performance of minor procedures; and discussion of the patient's condition with other staff) during an average 5-day stay;
- At a minimum, 33 percent of this physician per patient time would now be covered by nonphysician practitioners (for example, APRNs and PAs); and
- There is an average salary difference of $71 an hour between physicians and these practitioners.

The resulting savings estimate of about $330 million annually (1,617 hospitals × 7,000 inpatient hospital stays × 1.25 hours of physician/nonphysician practitioner time × $71 per hourly wage difference × 33 percent of physician time with patients covered by nonphysician practitioners) could obviously be much higher or lower if any of the parameters above changed. Additionally, we have restricted our estimates to inpatient hospital stays and we did not include a discussion of the approximately 620,000,000 annual hospital outpatient visits (AHA Hospital Statistics) and the impact that the proposed changes could have on staffing costs for hospitals in light of this number. Thus, many reasonable variations of our assumptions would lead to a similar magnitude of savings. We welcome comments on these estimates and on ways to improve them.

Nursing Services Care Plan (§ 482.23)

The current hospital CoPs require that hospitals ensure that the nursing staff develops, and keeps current, a nursing care plan for each patient. Our proposal would allow those hospitals that have interdisciplinary care plans (ICPs) to have their nursing care plans developed and kept current as part of the hospital's ICPs.

Based on our experience with hospitals, a nurse would develop and maintain the nursing care plan for each patient. The nurse would also be responsible for identifying the sections of each nursing care plan that needed to be integrated into the hospital's ICP and transferring that information into the ICP. Thus, allowing hospitals to include the nursing care plan in the ICP for each patient would save the nurse the time he or she is currently spending identifying and transferring information from the separate nursing care plan into the ICP and maintaining the separate nursing care plan. We believe that many hospitals have already developed methods for eliminating this time-wasting step, particularly those hospitals that have largely implemented an electronic health records system. Assuming that about 60 percent have done so, this reform would only affect roughly 16 million patients (40 percent of 40 million admissions).

We estimate that allowing a hospital to use only the ICP would save the nurse an average of nine minutes or 0.15 hours and would affect 16,000,000 patients. Thus, the proposed provision would result in a reduction of 2,400,000 burden hours valued at $45 per hour for a savings of $108,000,000.

Medical Record Services—Authentication and Standing Orders (§ 482.24)

We are proposing to revise the Medical Records CoP to eliminate the requirement for authentication of verbal orders within 48 hours if no State law specifying a timeframe exists. Since we believe that very few States have authentication timeframe requirements, we do not believe that the few States that may have such requirements would impact the potential savings we are estimating here. We are also proposing to make permanent the temporary provision (5-year Sunset provision due to expire early 2012) that allows for orders to be authenticated by another practitioner who is responsible for the care of the patient and who, in accordance with hospital policy State law, is authorized to write orders.

We believe that this provision would result in a burden reduction. We would expect a registered nurse or compliance officer to be responsible for checking medical records and flagging orders needing authentication, particularly those verbal orders nearing the current 48-hr timeframe. Based on our experience with hospitals and feedback from stakeholders on this issue, we believe that hospitals will save one hour of a nurse's time every day for 365 burden hours for each hospital annually. For all 4,900 hospitals, this would result in a reduction of 1,788,500 burden hours, valued at $45 per hour for a savings of $80,482,500.

We are also proposing to add new provisions to allow hospitals to use pre-printed and electronic standing orders, order sets, and protocols for patient orders if the hospital ensures that these orders: have been reviewed and approved by the medical staff and nursing and pharmacy leadership; are consistent with nationally recognized guidelines; are reviewed periodically and regularly by medical staff and nursing and pharmacy leadership; and are dated, timed, and authenticated by a practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with State law. In addition, we proposed to allow for drugs and biologicals to be prepared and administered on the orders of other practitioners if they are acting in accordance with State law and scope of practice and the hospital has granted them the privileges to do so.

The use of standing orders, order sets, and protocols reduces a hospital's burden in several ways. Initially, it saves the physician or other practitioner the time it takes to write out the orders. It also saves the physician the time it would take to go back to the chart or call a nurse with a verbal order if the physician forgets a particular order. The nurses also save time when standing orders are used. The orders are more legible so there is less time interpreting and calling physicians for verification. Nurses also need to call physicians less frequently when there is a change in the patient's condition or they feel there needs to be a change in the care the patient is receiving. Patients also benefit from standing orders because there would be less delay in the delivery of needed care to a patient. Thus, we believe that expanding the use of

standing orders would significantly reduce the hospital's burden.

Based on our experience with hospitals and on stakeholder feedback regarding the issue of standing orders, we estimate that these provisions would affect 13 million patients or roughly one-third of hospital admissions. We also estimate that using standing orders would result in a burden reduction of an average of 4 minutes or 0.07 hours for each of these patients. Thus, expanding the use of standing orders would result in a reduction of 700,000 burden hours valued at $124 per hour for a savings of $86,800,000.

Outpatient Services (§ 482.54)

Our proposed liberalization of outpatient services supervision will permit large savings. Under the existing Condition of Participation, only one person may direct outpatient services. Similar to our estimates for medical staff savings, what savings hospitals may realize would depend largely on their future decisions, and cannot be predicted with any precision. For purposes of estimation, we have developed an estimate that illustrates the potential. Under this estimate, we assume that two-thirds of the hours eliminated would represent net savings, since existing directors obviously perform significant coordination functions that would have to be performed however the work is organized. To be more specific, potential savings are based on the following:

- Two-thirds of hospitals elected to redirect these overall director functions (3,267 hospitals);
- On average, each position represents 2,000 hours per year;
- Only two-thirds of the hours eliminated represented net savings; and
- Compensation averages about $70 an hour.

Based on these assumptions, this reform would produce $305 million annually in staff savings (3,267 hospitals × 2,000 hours × ⅔ × $70 per hour). A similar result would be obtained if four-fifths of hospitals redirected these functions, but the net hours saved were only a little more than half of the current hours.

Transplant Organ Recovery (§ 482.92)

We propose removing the current blood typing requirement entirely. The elimination of this section would remove transplant center burden by eliminating a requirement to review and compare blood type and other vital data before organ recovery takes place. The OPOs already perform this type of verification prior to organ recovery. In addition, since publication of the existing rule, the transplant community has repeatedly told CMS that the verification that we propose to delete is burdensome and unnecessary.

Under the current requirements for this situation, the OPO performs a verification before organ recovery, the surgeon working for the transplant center performs a verification before organ recovery, and the transplant center surgeon performs another verification before the organ is transplanted. Under the proposed requirement, the OPO performs a verification before organ recovery and the transplant center surgeon performs a verification before the organ is transplanted. We would eliminate the verification that is conducted by the staff working on behalf of the transplant center that must occur prior to organ recovery. In addition, the responsibility for maintaining these records is very unclear, and has caused conflict between surgeons, transplant centers, and the hospitals where the organ recoveries are performed. Elimination of the extra verification step removes this source of conflict and confusion.

Between July 1, 2009 and June 30, 2010, the United States saw 2,293 heart and 1,699 lung transplants. During the same time frame, there were also 16,679 transplants for kidneys, 6,301 for livers, and 371 for pancreases. (Scientific Registry of Transplant Recipients (SRTR) *http://srtr.org/csr/current/nats.aspx,* date last accessed 6/9/10). Most organ recoveries for heart and lung transplants are conducted by surgeons working for their own transplant centers. By contrast, in the case of kidneys, livers, and pancreases, these organs are typically recovered by surgeons who are on-call for an OPO and who are not also working for, or privileged at, the same transplant center where the organ is delivered. For purposes of this analysis, we assume that 25 percent of kidney, liver and pancreas organ recoveries are conducted by surgeons who are working for the transplant centers. It is in this small percentage of transplant cases, roughly 5,800, together with the total number of heart and lung transplants, where the requirement for an additional verification has resulted in overlapping and burdensome requirements. For the purpose of analysis, we have assumed that conducting the verification and filing the corresponding paperwork would take 8 minutes and that there are 9,972 transplant cases. We therefore conclude that removing the duplicative verification requirement will result in an annual savings of 1,305 burden hours valued at $124 per hour for a monetary savings of $161,820.

Infection Control Log (§ 484.42)

We are proposing to eliminate a requirement for keeping a dedicated log of incidents related to infections and communicable diseases, proposing instead to allow hospitals flexibility in their approach to the tracking and surveillance of infections. We believe the changes we are proposing overall would result in the more efficient use of time.

We believe that the current log requirement requires roughly 30 hours annually of a nurse's time per hospital (*i.e.,* an average of 600 to 900 log entries per year and 2–3 minutes per entry). Thus, for all 4,900 hospitals this change would result in a savings of 147,000 burden hours valued at $45 per hour for a savings of $6,615,000.

CAH Provision of Services (§ 485.635)

Our proposed removal of the ''direct services'' requirement imposed on CAHs would eliminate the requirement that certain services be provided only by employees and not through contractual arrangements with entities such as community physicians, laboratories, or radiology services. Opportunities may be limited because CAHS are both small and overwhelmingly located in rural areas where there may not be realistic alternatives to direct hiring. We estimate that this could produce savings of approximately one tenth of one full-time equivalent staff person in payroll savings on average, at an average compensation cost of $66, for a total of about $16 million saved annually across all 1,200 CAHs. Savings might be considerably larger, and we welcome information and data on this question.

5. Alternatives Considered

From within the entire body of conditions of participation, the most serious candidates for reform were those identified by stakeholders, by recent research, or by experts as unusually burdensome if not unchanged. This subset of the universe of standards is the focus of this proposed rule. We welcome comments on whether we properly selected the best candidates for change, and will consider suggestions for additional reform candidates from the entire body of conditions of participation for hospitals and CAHs.

A second set of alternatives arises because there are obviously various ways to draft each requirement. For each requirement that we have proposed for deletion or modification there are a number of possible options, including making no change, making the change

we propose, and in some but not all cases making some in-between change. Most standards have an ''either-or'' nature, but we welcome comments on possible variations. There is a final set of alternatives revolving around entirely different methods of achieving potential benefits, such as incentive payments through Medicare or other health plans to high-performing institutions, or publishing quality scores to make hospital strengths and weaknesses transparent to both the public at large and to practitioners. A number of such reforms are underway. Likewise, there are alternatives such as technical assistance through Quality Improvement Organizations (QIOs) funded by CMS, also underway under the latest QIO contracts. We welcome comments on such alternatives.

6. Uncertainty

Our estimates of the effects of this regulation are subject to significant uncertainty. While CMS is confident that these reforms would provide flexibilities to hospitals that would yield cost savings, we are uncertain about the magnitude of these effects. In addition, as we previously explained, we do not believe that any requirement we propose to eliminate achieved any consequential improvements in patient safety. Thus, we are confident that the rule would yield net benefits. In this analysis we provided some illustrative estimates to suggest the potential savings these reforms could achieve under certain assumptions. We welcome comments on ways to better estimate the likely effects of these reforms.

7. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), we have prepared an accounting statement. As previously explained, achieving the full scope of potential savings will depend on future decisions by hospitals, by State regulators, and others. Many other factors will influence long-term results. We believe, however, that likely savings and benefits will reach many billions of dollars. Our primary estimate of the net savings to hospitals from reductions in regulatory requirements that we can quantify at this time, offset by increases in other regulatory costs, are approximately $940 million a year. We welcome comments on both the overall estimate and its components.

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS

[$ in millions]

Category	Primary estimate	Units		
		Year dollars	Discount rate	Period covered
Benefits	None			
Costs				
	−$940	2012	7%	2012–16
Annualized Monetized reductions in Costs	$940	2012	3%	2012–16
Transfers	None			

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to determine whether proposed or final rules would have a ''significant economic impact on a substantial number of small entities'' and, if so, to prepare a Regulatory Flexibility Analysis and to identify in the notice of proposed rulemaking or final rulemaking any regulatory options that could mitigate the impact of the proposed regulation on small businesses. For purposes of the RFA, small entities include businesses that are small as determined by size standards issued by the Small Business Administration (SBA), nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The SBA size threshold for ''small entity'' hospitals is $34.5 million or less in annual revenues. Also, all non-profit hospitals are small entities under the RFA. About three-fifths of all hospitals (including CAHs) are non-profit and about one-third (many overlapping) have annual revenues below the SBA size threshold. Because the great majority qualifies as ''small entities,'' HHS policy for many years has been to treat all hospitals as small entities deserving protection under the RFA. Although the overall magnitude of the paperwork, staffing, and related cost reductions to hospitals and CAHs proposed under this rule is economically significant, these savings are likely to be only about one percent of total hospital costs. Total national inpatient hospital spending is approximately nine hundred billion dollars a year, or an average of about $150 million per hospital, and our primary estimate of the net effect of these proposals on reducing hospital costs is only about $940 million annually (although potentially far higher). This is an average of slightly over $150,000 in savings on average for the 6,100 hospitals (including CAHs) that are regulated through the Conditions of Participation. Under HHS guidelines for Regulatory Flexibility Analysis, actions that do not negatively affect costs or revenues by about 3 to 5 percent a year are not economically significant. We believe that no hospitals of any size will be negatively affected. Accordingly, we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, and that an Initial Regulatory Flexibility Analysis is not required. Notwithstanding this conclusion, we believe that this RIA and the preamble as a whole meet the requirements of the RFA for such an analysis.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not believe a regulatory impact analysis is required here for the same reasons previously

described and because, in addition, our proposals are particularly cost-reducing for the smallest hospitals, including especially CAHs (which in most cases have no more than 25 beds).

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates on State, local, or Tribal governments in the aggregate, or on the private sector, require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently about $136 million. This proposed rule would eliminate or reform existing requirements and would allow hospitals and CAHs to achieve substantial savings through staffing reforms. Accordingly, no analysis under UMRA is required.

D. Federalism

Executive Order 13132 on Federalism establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule would not significantly affect the rights, roles, or responsibilities of the States. This proposed rule would not impose substantial direct requirement costs on State or local governments, preempt State law, or otherwise implicate federalism. It does, however, facilitate the ability of States to reform their scope of practice laws without Federal requirements reducing the effectiveness of such reforms. We understand that about half of the States are considering such reforms, and we support such efforts.

VI. Regulations Text

List of Subjects

42 CFR Part 482

Grant programs—Health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—Health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

Subpart B—Administration

2. Section 482.12 is amended by revising the introductory text to read as follows:

§ 482.12 Condition of participation: Governing body.

There must be an effective governing body that is legally responsible for the conduct of the hospital. If a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this part that pertain to the governing body.

* * * * *

§ 482.13 Condition of participation: Patient's rights.

3. Section 482.13 is amended by—

a. Revising paragraphs (g)(1), (g)(2), and (g)(3).

b. Adding a new paragraph (g)(4).

The revisions and additions read as follows:

§ 482.13 Condition of participation: Patient's rights.

* * * * *

(g) * * *

(1) With the exception of deaths described under paragraph (g)(2) of this section, the hospital must report the following information to CMS by telephone, facsimile, or electronically, as determined by CMS, no later than the close of business on the next business day following knowledge of the patient's death:

(i) Each death that occurs while a patient is in restraint or seclusion.

(ii) Each death that occurs within 24 hours after the patient has been removed from restraint or seclusion.

(iii) Each death known to the hospital that occurs within 1 week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to a patient's death, regardless of the type(s) of restraint used on the patient during this time. ''Reasonable to assume'' in this context includes, but is not limited to, deaths related to restrictions of movement for prolonged periods of time, or death related to chest compression, restriction of breathing, or asphyxiation.

(2) When no seclusion has been used and when the only restraints used on the patient are those applied exclusively to the patient's wrist(s), and which are composed solely of soft, non-rigid, cloth-like materials, the hospital staff must report to CMS by recording in a log or other system, the following information:

(i) Any death that occurs while a patient is in such restraints; and

(ii) Any death that occurs within 24 hours after a patient has been removed from such restraints.

(3) For deaths described in paragraphs (g)(1) and (g)(2) of this section, staff must document in the patient's medical record the date and time the death was reported to CMS.

(4) For deaths described in paragraph (g)(2) of this section, entries into the log or other system must be documented as follows:

(i) Each entry must be made not later than seven days after the date of death of the patient;

(ii) Each entry must document the patient's name, date of birth, date of death, attending physician's name, medical record number, and primary diagnosis(es); and

(iii) The information must be made available in either written or electronic form to CMS immediately upon request.

Subpart C—Basic Hospital Functions

4. Section 482.22 is amended by—

a. Revising the introductory paragraph.

b. Revising paragraph (a) introductory text.

a. Adding a new paragraph (a)(5).

b. Revising (b)(3).

The revisions and additions read as follows:

§ 482.22 Condition of participation: Medical staff.

The hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital.

(a) *Standard: Composition of the medical staff.* The medical staff must be composed of doctors of medicine or osteopathy and, in accordance with State law, may also be composed of other practitioners appointed by the governing body.

* * * * *

(5) The medical staff must examine the credentials of candidates applying for practice privileges and medical staff membership within the hospital, as well as the credentials of practitioners applying only for hospital practice privileges, and make recommendations to the governing body for the

appointment of these candidates and the approval of these privileges in accordance with State law and hospital policies and procedures. A physician or nonphysician practitioner who has been granted practice privileges by the governing body for practice activities authorized within his or her State scope of practice is subject to all medical staff requirements contained in this section.

(b) * * *

(3) The responsibility for organization and conduct of the medical staff must be assigned only to:

(i) An individual doctor of medicine or osteopathy,

(ii) A doctor of dental surgery or dental medicine, when permitted by State law of the State in which the hospital is located; or

(iii) A doctor of podiatric medicine, when permitted by State law of the State in which the hospital is located.

* * * * *

5. Section 482.23 is amended by—

a. Revising paragraph (b)(4).

b. Revising paragraph (c).

The revisions and additions read as follows:

§ 482.23 Condition of participation: Nursing services.

* * * * *

(b) * * *

(4) The hospital must ensure that the nursing staff develops, and keeps current, a nursing care plan for each patient. The nursing care plan may be part of an interdisciplinary care plan.

* * * * *

(c) *Standard: Preparation and administration of drugs.* (1) Drugs and biologicals must be prepared and administered in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care as specified under § 482.12(c), and accepted standards of practice.

(i) Drugs and biologicals may be prepared and administered on the orders of other practitioners not specified under § 482.12(c) only if such practitioners are acting in accordance with State law, including scope of practice laws, and only if the hospital has granted them privileges to do so.

(ii) Drugs and biologicals may be prepared and administered on the orders contained within pre-printed and electronic standing orders, order sets, and protocols for patient orders only if such orders meet the requirements of § 482.24(c)(3).

(2) All drugs and biologicals must be administered by, or under supervision of, nursing or other personnel in accordance with Federal and State laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(3) With the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is authorized to write orders in accordance with State law and hospital policy, and who is responsible for the care of the patient as specified under § 482.12(c).

(i) If verbal orders are used, they are to be used infrequently.

(ii) When verbal orders are used, they must only be accepted by persons who are authorized to do so by hospital policy and procedures consistent with Federal and State law.

(iii) Orders for drugs and biologicals may be documented and signed by other practitioners not specified under § 482.12(c) only if such practitioners are acting in accordance with State law and scope of practice and only if the hospital has granted them privileges to do so.

(4) Blood transfusions and intravenous medications must be administered in accordance with State law and approved medical staff policies and procedures.

(5) There must be a hospital procedure for reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs.

(6) The hospital may allow a patient (or his or her caregiver/support person where appropriate) to self-administer both hospital-issued medications and the patient's own medications brought into the hospital, as defined and specified in the hospital's policies and procedures.

(i) If the hospital allows a patient to self-administer specific hospital-issued medications, then the hospital must have policies and procedures in place to:

(A) Assure that a practitioner responsible for the care of the patient has issued an order, consistent with hospital policy, permitting self-administration;

(B) Assess the capacity of the patient (or the patient's caregiver/support person where appropriate) to self-administer the specified medication(s);

(C) Instruct the patient (or the patient's caregiver/support person where appropriate) in the safe and accurate administration of the specified medication(s);

(D) Ensure the security of the medication(s) for each patient; and

(E) Document the administration of each medication in the patient's medical record.

(ii) If the hospital allows a patient to self-administer his or her own specific medications brought into the hospital, then the hospital must have policies and procedures in place to:

(A) Assure that a practitioner responsible for the care of the patient has issued an order, consistent with hospital policy, permitting self-administration of medications the patient brought into the hospital;

(B) Assess the capacity of the patient (or the patient's caregiver/support person where appropriate) to self-administer the specified medication(s), and also determine if the patient (or the patient's caregiver/support person where appropriate) needs instruction in the safe and accurate administration of the specified medication(s);

(C) Identify the specified medication(s) and visually evaluate the medication(s)for integrity;

(D) Ensure the security of the medication(s) for each patient; and

(E) Document the administration of each medication in the patient's medical record.

6. Section 482.24 is amended by—

a. Removing paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii).

b. Redesignating (c)(2) as (c)(4).

c. Adding a new paragraph (c)(2).

d. Adding a new paragraph (c)(3).

The revisions and additions read as follows:

§ 482.24 Condition of participation: Medical record services.

* * * * *

(c) * * *

(2) All orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

(3) Hospitals may use pre-printed and electronic standing orders, order sets, and protocols for patient orders only if the hospital:

(i) Establishes that such orders and protocols have been reviewed and approved by the medical staff in consultation with the hospital's nursing and pharmacy leadership;

(ii) Demonstrates that such orders and protocols are consistent with nationally recognized and evidence-based guidelines;

(iii) Ensures that the periodic and regular review of such orders and protocols is conducted by the medical staff, in consultation with the hospital's

nursing and pharmacy leadership, to determine the continuing usefulness and safety of the orders and protocols; and

(iv) Ensures that such orders and protocols are dated, timed, and authenticated promptly in the patient's medical record by the ordering practitioner or another practitioner responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

* * * * *

7. In § 482.25 paragraph (b)(6) is revised to read as follows:

§ 482.25 Condition of participation: Pharmaceutical services.

* * * * *

(b) * * *

(6) Drug administration errors, adverse drug reactions, and incompatibilities must be immediately reported to the attending physician and, if appropriate, to the hospital's quality assessment and performance improvement program.

* * * * *

8. Section 482.42 is amended by revising paragraph (a) and (b)(1) to read as follows:

§ 482.42 Condition of participation: Infection control.

* * * * *

(a) *Standard: Organization and policies.* A person or persons must be designated as infection control officer or officers to develop and implement policies governing control of infections and communicable diseases. The infection control officer or officers must develop a system for identifying, reporting, investigating, and controlling infections and communicable diseases of patients and personnel.

* * * * *

(b) * * *

(1) Ensure that the hospital-wide quality assessment and performance improvement (QAPI) program and training programs address problems identified by the infection control officer or officers; and

* * * * *

Subpart D—Optional Hospital Services

9. Section 482.54 is amended by revising paragraph (b) to read as follows:

§ 482.54 Condition of participation: Outpatient services.

* * * * *

(b) *Standard: Personnel.* The hospital must—

(1) Assign one or more individuals to be responsible for outpatient services.

(2) Have appropriate professional and nonprofessional personnel available at each location where outpatient services are offered, based on the scope and complexity of outpatient services.

Subpart E—Requirements for Specialty Hospitals

§ 482.92 [Amended]

10. Section 482.92 is amended by—

a. Removing paragraph (a).

b. Redesignating paragraphs (b) and (c) as (a) and (b) respectively.

PART 485—CONDITIONS OF PARTICIPATION SPECIALIZED PROVIDERS

11. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

§ 485.602 [Removed]

12. Section 485.602 is removed.

13. Section 485.604(a) is revised to read as follows:

§ 485.604 Personnel qualifications.

* * * * *

(a) *Clinical nurse specialist.* A clinical nurse specialist must be a person who—

(1) Is a registered nurse and is licensed to practice nursing in the State in which the clinical nurse specialist services are performed; and

(2) Holds an advanced degree in a defined clinical area of nursing from an accredited educational institution.

* * * * *

14. Section 485.635(b) is revised to read as follows:

§ 485.635 Condition of participation: Provision of services.

* * * * *

(b) *Standard: Patient services. (1) General:* The CAH provides those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at another entry point into the health care delivery system, such as a low intensity hospital outpatient department or emergency department. These CAH services include medical history, physical examination, specimen collection, assessment of health status, and treatment for a variety of medical conditions.

(2) *Laboratory services.* The CAH provides basic laboratory services essential to the immediate diagnosis and treatment of the patient that meet the standards imposed under section 353 of the Public Health Service Act (42 U.S.C. 236a). (See the laboratory requirements specified in part 493 of this chapter.) The services provided include:

(i) Chemical examination of urine by stick or tablet method or both (including urine ketones);

(ii) Hemoglobin or hematocrit;

(iii) Blood glucose;

(iv) Examination of stool specimens for occult blood;

(v) Pregnancy tests; and

(vi) Primary culturing for transmittal to a certified laboratory.

(3) *Radiology services.* Radiology services furnished by the CAH are provided by personnel qualified under State law, and do not expose CAH patients or personnel to radiation hazards.

(4) *Emergency procedures.* In accordance with requirements of § 485.618, the CAH provides medical services as a first response to common life-threatening injuries and acute illness.

15. Section 485.639 is amended by revising the introductory text to read as follows:

§ 485.639 Condition of participation: Surgical services.

If a CAH provides surgical services, surgical procedures must be performed in a safe manner by qualified practitioners who have been granted clinical privileges by the governing body, or responsible individual, of the CAH in accordance with the designation requirements under paragraph (a) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program) (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 30, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 6, 2011.

Kathleen Sebelius,

Secretary. Department of Health and Human Services.

[FR Doc. 2011–27175 Filed 10–18–11; 11:15 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–9070–P]

RIN 0938–AQ96

Medicare and Medicaid Program; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule identifies and proposes reforms in Medicare and Medicaid regulations that CMS has identified as unnecessary, obsolete, or excessively burdensome on health care providers and beneficiaries. This proposed rule would increase the ability of health care professionals to devote resources to improving patient care, by eliminating or reducing requirements that impede quality patient care or that divert providing high quality patient care. This is one of several rules that we are proposing to achieve regulatory reforms under Executive Order 13563 on Improving Regulation and Regulatory Review and the Department's Plan for Retrospective Review of Existing Rules.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 23, 2011.

ADDRESSES: In commenting, please refer to file code CMS–9070–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*9070*–P, P.O. Box 8012, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9070–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ronisha Davis, (410) 786–6882.

We have also included a subject matter expert and contact information under the ''Provisions of the Proposed Regulations'' section for each provision set out in this proposed rule.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

In January 2011, the President issued Executive Order 13563, ''Improving Regulations and Regulatory Review.'' Section 6 of that order requires agencies to identify rules that may be ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' In accordance with the Executive Order, the Secretary of the Department of Health & Human Services (HHS) published on May 18, 2011, a Preliminary Plan for Retrospective Review of Existing Rules (*http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system*). As shown in the plan, the Centers for Medicare & Medicaid Services (CMS) has identified many obsolete and burdensome rules that could be eliminated or reformed to improve effectiveness or reduce unnecessary red tape and other costs, with a particular focus on freeing up resources that health care providers, health plans, and States could use to improve or enhance patient health and safety. CMS has also examined policies and practices not codified in rules that could be changed or streamlined to achieve better outcomes for patients while reducing burden on providers of care. CMS has also identified non-regulatory changes to increase transparency and to become a better business partner.

As explained in the plan, HHS is committed to the President's vision of creating an environment where agencies incorporate and integrate the ongoing retrospective review of regulations into Department operations to achieve a more streamlined and effective regulatory framework. The objective is to improve the quality of existing regulations consistent with statutory requirements; streamline procedural solutions for businesses to enter and operate in the marketplace; maximize net benefits (including benefits that are difficult to quantify); and reduce costs and other burdens on businesses to comply with regulations. Consistent with the commitment to periodic review and to public participation, HHS will continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563.

HHS welcomes public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, HHS will give those suggestions careful consideration. Therefore, along with this proposed rule, we seek ideas from the public to help identify areas for possible reform.

II. Provisions of the Proposed Regulations

The following is a description of each of the proposals set forth in this proposed rule. We have grouped the proposals into three categories—(1) Removes unnecessarily burdensome requirements; (2) removes obsolete regulations; and (3) responds to stakeholder concerns. There are 14 specific reforms included in this proposed rule. As noted above, we seek comments on additional areas for future reforms in these three areas or others.

A. Removes Unnecessarily Burdensome Requirements

The following proposals seek to provide some form of burden relief to providers and suppliers by modifying, removing, or streamlining current regulations that we have identified as excessively burdensome.

1. End-Stage Renal Disease (ESRD) Facilities (§ 494.60)

Current regulations at 42 CFR part 494 provide Conditions for Coverage (CfCs) for Medicare-participating end-stage renal disease (ESRD) facilities. Effective February 9, 2009, these regulations were updated to include Federal Life Safety Code (LSC) provisions that we applied to ESRD facilities to standardize CMS regulations across provider types. When the new regulation was first promulgated, we believed that standardized application of the LSC was desirable and that the costs for ESRD facilities would not be excessive. However, we have since determined that standardization may not be appropriate given the non-residential and unique characteristics of ESRD facilities and the increased burden created by these requirements without the commensurate benefit. Chapters 20 and 21 of the National Fire Protection Agency's (NFPA) 101 LSC, 2000 Edition, were incorporated by reference in the ESRD regulations at § 494.60(e).

When implemented, these Federal LSC regulations were found to duplicate many provisions of already existing State and local fire safety codes covering ESRD facilities. Although the State and local codes protected patients from fire hazards, the NFPA 101 LSC retroactively imposed some additional structural requirements. We believe that some of these additional requirements, such as smoke compartments (per section 20.3.7/21.3.7 of NFPA 101) are unnecessary for most ESRD facilities. Smoke compartments, for example, are required in hospital and ambulatory surgical centers where patients are anesthetized, unconscious, or sleeping overnight. Smoke compartments are unnecessary in ESRD facilities as these compartments support a ''defend in place'' fire strategy which assumes the occupants of a location cannot immediately evacuate in case of fire. However, in dialysis facilities, the evacuation process from fire is rapid disconnection from the dialysis machine and a quick exit.

In retrospect, the additional structural requirements of NFPA 101 potentially could improve patient safety from fire in specific dialysis facilities that pose a higher risk for life safety from fire by their proximity to a potential fire source or their barriers to prompt evacuation from fire. These higher risk locations are those dialysis facilities that are adjacent to occupancies that contain ''industrial high hazard contents'' and those facilities that do not have a readily available exit to the outside for swift, unencumbered evacuation.

Data demonstrate that there is an extremely low risk of fire in outpatient dialysis facilities, and there are no recorded patient injuries or death due to fire in the 40 years of the Medicare ESRD program. The Federal Emergency Management Agency's (FEMA) Topical Fire Report Series (TFRS) documented the low fire risk of ESRD facilities, which ranked lowest (0.1 percent) in fire incidence among all health care facilities. (Medical Facility Fires, TFRS Volume 9, Issue 4). The reason that the fire risk is so low in dialysis facilities is due to the following combination of factors:

- ESRD facilities do not have fire ignition sources commonly found in other medical facilities, for example, cooking, anesthesia, paint shops, or piped-in gases, and are generally configured with open patient treatment areas providing exits directly to the outside;
- Dialysis patients are not anesthetized and are required at § 494.60(d)(2) of the ESRD regulation to be trained in emergency disconnect from their dialysis treatment and evacuation from the building;
- Section 494.60(d)(4) of the ESRD regulation requires that staff be present in the patient treatment area at all times during treatment and therefore immediately available to assist in emergency evacuation.

While the risks of fire are very low in a dialysis facility, the costs of complying with the Federal LSC requirements in dialysis facilities are high. Through research discussed in the following paragraph, CMS has learned that the actual costs for renovation and construction necessary for compliance with the additional requirements of NFPA 101 for dialysis facilities are considerable and profoundly exceed the original government estimate of $1,960 as published in the preamble to the new 2008 ESRD/LSC regulations.

To estimate the true costs for renovation and construction necessary to comply with the requirements for NFPA 101, in June 2011, CMS asked ESRD providers to provide estimates of the financial impact of implementing four potentially-costly additional requirements of NFPA 101. They included smoke compartment barriers, occupancy separations, hazardous area separations, and upgraded fire alarms. Owners of 3,756 of 5,600 existing certified dialysis facilities responded to the CMS request for cost projections. The responders represented approximately 70 percent of existing dialysis facilities, including hospital-owned facilities and those owned by small, medium, and large dialysis organizations.

The data collected showed that approximately 50 percent (an estimated 2,800) of the existing ESRD facilities would require renovations or upgrading of at least one of the four elements to comply with the requirements of NFPA 101. There are several reasons why, in June 2011, approximately 50 percent of existing dialysis facilities had not been renovated to comply with the February 2009 implementation date. The primary reason is the pervasive inconsistency in knowledge, interpretation, and application of NFPA 101 to ESRD facilities that we have become aware of since the 2009 implementation date. There was a high variability in the cost estimates submitted, ranging from a low of $23,500 to a high of $222,000 for an existing facility which needed to renovate, construct and upgrade all four components. The average per facility cost estimates submitted for the additional structural requirements of NFPA 101 are as follows:

- Smoke compartments—$32,544.
- Occupancy separation—$28,139.
- Hazardous areas separation—$16,976.

The total average cost for a facility to meet all three would be $77,659. We suspect that the variability of the estimates may be due to different State

and local requirements already in existence, differences in contractor costs, varying building characteristics (for example, age, size, construction type), and the inconsistent interpretations and applications of NFPA 101 that are prevalent across the nation. The wide range of estimates makes it difficult to determine an average cost related to implementation of NFPA 101. However, using the average costs for the individual structural requirements listed above, if 50 percent or 2,800 facilities required only renovation for hazardous area separation, the savings would be $47.5 million. If 2,800 facilities required renovation for all three structural requirements, the total savings from the burden reduction at the average estimate for all three would be $217 million.

These amounts represent a significant financial burden on facilities, with little or no improvement in patient safety from fire for a majority of them. Expenditures of this magnitude would likely divert resources away from areas which do affect dialysis patient safety, such as infection control and prevention.

The cost estimates do not account for the added burden that renovation to comply with NFPA 101 would impose on dialysis patients who must be relocated to other ESRD facilities for their treatments during construction. Significant additional costs would also be incurred by Federal government agencies and State Survey Agencies for oversight activities of LSC surveys which often duplicate State LSC surveys.

Based on information gained since publication of the updated ESRD CfC, we have concluded that the enforcement of the Federal LSC requirements of NFPA 101 add costs out of proportion to any added protection that they may afford in dialysis facilities which are not at higher risk of fire penetration from adjacent industrial ''high hazard'' occupancies and where swift, unencumbered evacuation to the outside is available. Therefore, we propose revising § 494.60(e)(1) to restrict mandatory compliance with the NFPA 101 LSC to those ESRD facilities located adjacent to ''high hazardous'' occupancies and those facilities whose patient treatment areas are not located at grade level with direct access to the outside. This revision would retain the NFPA 101 LSC protections for those facilities in higher-risk locations while relieving burden on those for whom the subdivision of building space and other additional LSC requirements of NFPA 101 are unnecessary.

We intend to use the NFPA definition of ''high hazard occupancy'' found at A.3.3.134.8.2, Annex A, NFPA 101, Life Safety Code 2000, which applies to ''occupancies where gasoline and other flammable liquids are handled, used or stored under such conditions that involve possible release of flammable vapors; where grain dust, wood flour or plastic dusts, aluminum or magnesium dust, or other explosive dusts are produced; where hazardous chemicals or explosives are manufactured, stored, or handled; where cotton or other combustible fibers are processed or handled under conditions that might produce flammable flyings; and where other situations of similar hazard exist.''

We note that all ESRD facilities would still be required to comply with State and local fire codes and safety standards under § 494.20. We also propose revising § 494.60(e)(2) to clarify which ESRD facilities must use sprinkler-equipped buildings: those housed in multi-story buildings of lesser fire protected construction types (Types II(000), III(200), or V(000), as defined in NFPA 101), which were constructed after January 1, 2008; and those housed in high rise buildings over 75 feet in height. We note that this revision would not change the meaning or intent of § 494.60(e)(2), but instead would clarify it. That provision states that dialysis facilities participating in Medicare as of October 14, 2008, may continue to use non-sprinklered buildings if such buildings were constructed before January 1, 2008, and State law so permits.

The ESRD CfCs also address other topics related to fire and building safety that will remain in place under our proposed revision. These existing CfC requirements include specific rules on how to handle chemicals related to the dialysis process, as well as general requirements for appropriate training in emergency preparedness for the staff and patients, including provisions for instructions on disconnecting from the dialysis machine during an emergency and instructions on emergency evacuation. We welcome comments from the public on whether the other ESRD CfCs can be improved in a way that minimizes provider burden while protecting patient safety or, alternately, the extent to which remaining requirements are necessary and appropriate for the care and safety of dialysis patients. Similarly, we note that other CMS regulations include CfCs, and we seek comments on whether we should revisit these or other regulatory provisions or whether existing requirements are necessary and appropriate.

Contact: Thomas Hamilton, 410–786–9493.

2. ASC Emergency Equipment

Section 1832(a)(2)(F)(i) of the Act specifies that Ambulatory Surgical Centers (ASCs) must meet health, safety, and other requirements specified by the Secretary in regulation in order to participate in Medicare. The Secretary is responsible for ensuring that the Conditions for Coverage (CfCs) and their enforcement are adequate to protect the health and safety of all individuals treated by ASCs, whether they are Medicare beneficiaries or other patients.

To implement the CfCs, we determine compliance through State survey agencies that conduct onsite inspections using these requirements. ASCs also may be deemed to meet Medicare standards if they are certified by one of the national accrediting organizations whose standards meet or exceed the CfCs. The ASC regulations were first published on August 5, 1982 (47 FR 34082). Most of the revisions since then have been payment related with the exception of a final rule published on November 18, 2008 (73 FR 68502) that revised four existing health and safety CfCs and created three new health and safety CfCs (42 CFR 416.41 through 416.43 and 416.49 through 416.52).

Sections 416.44(c)(1) through (c)(9) provide a detailed list of specific emergency equipment that must be available to the ASC's operating room, for example, emergency call system; oxygen; mechanical ventilator assistance equipment including airways, manual breathing bag, and ventilator; cardiac defibrillator; cardiac monitoring equipment; tracheotomy set; laryngoscopes and endotracheal tubes; suction equipment; and emergency medical equipment and supplies specified by the medical staff. In recent years, we have learned from the ASC community that some of this equipment is outdated, while other equipment is not applicable to the emergency needs of all ASCs. The emergency equipment CfC has not been revised since its inception in 1982. To ensure that no ASC is burdened with maintaining unnecessary equipment, we are proposing to revise the requirements for this CfC.

We propose to remove the list of emergency equipment at § 416.44(c)(1) through (c)(9) and propose at § 416.44(c) to require that ASCs, in conjunction with their governing body and the medical staff, develop policies and procedures which specify the types of emergency equipment that would be appropriate for the facility's patient population, and make the items

immediately available at the ASC to handle inter- or post-operative emergencies. We are also proposing that the emergency equipment identified by the ASC meet the current acceptable standards of practice in the ASC industry. We believe that these proposed changes would enable ASCs to better meet current demands, while also ensuring ASCs have the flexibility necessary to respond to emergency needs and incorporate the use of modern equipment most suitable for the procedures performed in the facility.

We note that a potential disadvantage of the approach we propose is that, by allowing ASCs to identify the emergency equipment most appropriate for each individual facility, there could be increased variation in emergency preparedness between different ASCs, even among ASCs that provide very similar services. We therefore invite comment on our proposed approach and on any alternatives to our approach. An example of such an alternative might be for us to categorize ASCs according to the major services they provide (such as ASCs that typically use general anesthesia), and then specify a minimum array of equipment tailored to the various categories of risk.

Contact: Jacqueline Morgan, 410–786–4282.

3. Revocation of Enrollment and Billing Privileges in the Medicare Program (§ 424.535)

On June 27, 2008, we published a final rule in the **Federal Register** (73 FR 36448) entitled ''Medicare Program; Appeals of CMS or CMS Contractor Determinations When a Provider or Supplier Fails to Meet the Requirements for Medicare Billing Privileges.'' In that rule, we added a new provision at § 424.535(c) to provide that: ''After a provider, supplier, delegated official, or authorizing official has had their billing privileges revoked, they are barred from participating in the Medicare program from the effective date of the revocation until the end of the re-enrollment bar. The re-enrollment bar is a minimum of 1 year, but not greater than 3 years, depending on the severity of the basis for revocation.'' The purpose of this provision was to prevent providers and suppliers from being able to immediately re-enroll in Medicare after their billing privileges were revoked.

Section 424.535(a)(1) and § 424.535(c), respectively, provide that—(1) Medicare billing privileges may be revoked when a provider or supplier is determined not to be in compliance with our enrollment requirements; and (2) a post-revocation re-enrollment bar of a minimum of 1 year shall be imposed.

We believe that the re-enrollment bar is unnecessary in certain situations. Accordingly, we propose to eliminate the re-enrollment bar in instances when providers and suppliers have not responded timely to requests for revalidation of enrollment or other requests for information initiated by CMS. Specifically, we propose revising § 424.535(c) to expressly provide that the re-enrollment bar would not apply if the revocation is based solely upon the failure of a provider or supplier to respond timely to a revalidation request or other request for information. We believe that this change is appropriate because the re-enrollment bar in such circumstances often results in unnecessarily harsh consequences for the provider or supplier and causes beneficiary access issues in some cases. We have learned of numerous instances when the provider's failure to respond to a revalidation request was unintentional; that is, the provider was not aware of the request due to, for instance, misrouted mail or a clerical mistake. This is different from other revocation reasons, which may be more serious; for example, we revoke providers that have been excluded from Medicare, Medicaid, or other Federal health care programs or that have been convicted of a felony under § 424.535(a)(2) and (a)(3), respectively. Finally, there is another, less restrictive regulatory remedy available for addressing a failure to respond timely to a revalidation request. This remedy is discussed below in section II.A.4.c.

Contact: Morgan Burns, 202–690–5145.

4. Deactivation of Medicare Billing Privileges (§ 424.540)

On April 21, 2006, we published a final rule in the **Federal Register** (71 FR 20753) entitled ''Medicare Program; Requirements for Providers and Suppliers to Establish and Maintain Medicare Enrollment.'' As part of that rule, we established provisions for the deactivation of Medicare billing privileges at § 424.540.

a. Section 424.540(a)(1)

Section 424.540(a)(1) specifies that Medicare billing privileges may be deactivated if Medicare claims are not submitted for 12 consecutive months. The purpose of this provision was to prevent situations in which unused, idle Medicare billing numbers could be accessed by individuals and entities to submit false claims. Currently, Medicare provider or supplier enrollment billing privileges are deactivated (made ineligible for Medicare billing purposes) for providers or suppliers that have not submitted a Medicare claim for 12 consecutive months. If the deactivated provider does furnish services and attempts to submit a claim after the date of deactivation, the claim would be denied. Therefore, once deactivated, a new provider or supplier enrollment application must be submitted and processed by the Medicare contractor before the billing privileges can be reactivated.

We propose to revise § 424.540(a) to apply only to those providers and suppliers who do not submit a Form CMS–855I (the enrollment form for individual physicians and non-physician practitioners) to enroll in the Medicare program. Physicians and non-physician practitioners are deactivated most often due to billing inactivity. To reactivate their Medicare billing privileges, they must resubmit an enrollment application.

We are most concerned with organizations that fail to submit a claim within a 12-month period, since business organizations would generally submit a claim on a more frequent basis. Conversely, we believe that there are instances in which individual practitioners may have a valid reason for not filing claims within a 12-month period. For instance, the practitioner—(1) May be enrolled in Medicare, but generally only treats non-Medicare patients; or (2) may have two separately-enumerated practice locations listed on its Form CMS–855I, yet typically only performs services at one of them.

Further, the 12-month deactivation and reactivation processes also increase the workload and administrative costs of Medicare contractors. Accordingly, our proposal to revise § 424.540(a) would remove this unnecessary burden without jeopardizing our ability to detect and prevent fraud and abuse. We have issued guidance that requires our contractors to conduct certain verification activities to guard against physician and non-physician practitioner identity theft. We believe that this would lessen the danger that the unused billing numbers of these individuals would be accessed by others to submit false claims.

b. Section 424.540(a)(2)

Section 424.540(a)(2) specifies that a provider or supplier's Medicare billing privileges may be deactivated if it fails to report a change to its enrollment information within 90 calendar days or, for changes in ownership or control, within 30 calendar days. We are not proposing to alter this provision. We believe it is necessary for providers and

suppliers to understand the importance of furnishing updated enrollment information to the Medicare program, for incorrect or aged data can lead to improper payments.

c. Section 424.540(a)(3)

We propose to add a new § 424.540(a)(3) that would allow us to deactivate, rather than revoke, the Medicare billing privileges of a provider or supplier that fails to furnish complete and accurate information and all supporting documentation within 90 calendar days of receiving notification to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information. Although the deactivated provider or supplier would still have to submit a complete enrollment application to reactivate its billing privileges, it would remain enrolled in Medicare and would not be subject to other, ancillary consequences that a revocation entails: for instance, a prior revocation must be reported in section 3 of the Form CMS–855I application, whereas a prior deactivation need not. In fact, it is for this reason that we believe our proposal would reduce the burden on the provider and supplier communities.

Contact: Morgan Burns, 202–690–5145.

5. Duration of Agreement for Intermediate Care Facilities for the Intellectually Disabled (Referred to in Current Regulations as Intermediate Care Facilities for the Mentally Retarded) (§ 442.15 Through § 442.109)

As described elsewhere in this preamble, we are replacing the use of the term ''mentally retarded'' with the term ''intellectually disabled'' as described in this program, so we have used the new term in these proposed provisions.

Section 1910 of the Act provides for the certification and approval of Intermediate Care Facilities for the Intellectually Disabled (ICFs/ID). Current regulations at § 442.109 and § 442.110 address ICFs/ID provider agreements and limit the ICFs/ID provider agreements under Medicaid to annual time limits. We propose to remove the time limited agreements for ICFs/ID at § 442.16. We also are proposing to eliminate this requirement at § 442.15, § 442.109, and § 442.110. We propose to replace the requirement with an open ended agreement which, consistent with nursing facilities (NFs), would remain in effect until the Secretary or a State determines that the ICF/ID no longer meets the conditions of participation for ICFs/ID at subpart I part 483.

Also, we are proposing to add a requirement that a certified ICF/ID must be surveyed on average every 12 months with a maximum 15-month survey interval. Current regulations at 42 CFR part 442 require that ICFs/ID be surveyed for compliance with conditions of participation at least every 12 months on a relatively fixed schedule. By contrast, nursing homes must be surveyed for compliance with certification standards at intervals of between 12 and 15 months. We anticipate the proposed change in the certification period would have positive impacts on the care provided in these facilities as well as the efficient and effective operation of State survey agencies responsible for regulating ICFs/ID. We also anticipate that the adoption of flexible survey scheduling would encourage more consistent staffing at levels that support certification standards.

In addition, State survey agency resources are strained by the rigid timelines imposed in the current regulation. For example, if a complaint results in an abbreviated survey 10 or 11 months into the facility's certification period, the current regulation does not allow the State agency to expand the complaint survey for the purpose of completing the requirements of annual certification at the same time. Instead, the State is required to conduct another full survey at 12 months, which is duplicative. More flexibility would allow States to use their survey staff in a targeted fashion, allocating resources where needed to assure resident safety and quality of care, rather than being forced to meet rigid regulatory timelines that do not bear a relationship to the needs of residents.

Contact: Thomas Hamilton, 410–786–9493.

B. Removes Obsolete or Duplicative Regulations or Provides Clarifying Information

The following proposals seek to remove requirements in the Code of Federal Regulations (CFR) that are no longer needed or enforced. We have identified regulations that have become obsolete and need to be updated.

1. OMB Control Numbers for Approved Collections of Information (§ 400.300 and § 400.310)

Part 400 subpart C requires the collection and display of control numbers assigned by the Office of Management and Budget (OMB) to collections of information contained in CMS regulations. The chart at § 400.310 that displays the OMB control numbers has not been updated since December 8, 1995. We believe that, it is no longer necessary to maintain the chart, because an inventory of currently approved CMS information collections, including OMB control numbers, is displayed on a public Web site at *http://www.reginfo.gov/public/do/PRAMain*. The Web site provides more timely access to the OMB control numbers for CMS information collection requests than the process of publishing updates in the CFR. Also, as part of our quarterly notice of CMS issuances, which is published each quarter in the **Federal Register**, we will remind reviewers where they can find the most current list of information collections and OMB control numbers. For these reasons, we are proposing to remove and reserve subpart C since the content of the information contained in this subpart is obsolete and more readily available on the public Web site.

Contact: Ronisha Davis, 410–786–6882.

2. Removal of Obsolete Provisions Related to Initial Determinations, Appeals, and Reopenings of Part A and Part B Claims and Entitlement Determinations (§ 405.701 Through § 405.877)

In this rule, we propose to remove the obsolete provisions contained in 42 CFR part 405 subparts G and H governing initial determinations, appeals, and reopenings of Part A and Part B claims, and determinations and appeals regarding an individual's entitlement to benefits under Part A and Part B of Medicare. Section 1869 of the Act and 42 CFR part 405 subpart I set forth the current policies for such determinations, appeals, and reopenings.

On November 15, 2002, we published a comprehensive proposed rule in the **Federal Register** (67 FR 69312), entitled ''Changes to the Medicare Claims Appeal Procedures,'' to implement the relevant claims and appeals provisions contained in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). In this proposed rule, we established, in one location (part 405 subpart I), provisions governing all aspects of Part A and Part B claims appeals. In 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) made further changes to the Medicare claims appeals process. On March 8, 2005, we published an interim final rule with comment period in the **Federal Register** (70 FR 11420) to implement provisions of the proposed

rule, and to explain how the recently enacted MMA provisions would be implemented. On December 9, 2009, we published a final rule in the **Federal Register** (74 FR 65296) entitled, ''Changes to the Medicare Claims Appeal Procedures,'' responding to comments received on the interim final rule implementing part 405 subpart I.

Part 405 subparts G and H contain the policies for initial determinations, appeals, and reopenings of Medicare Part A and Part B claims, before the effective date of BIPA (referred to as ''pre-BIPA appeals''). In addition, part 405 subparts G and H contain provisions regarding initial determinations and appeals with respect to an individual's entitlement to Medicare Parts A and B. Under subparts G and H, initial determinations and appeals with respect to an individual's entitlement to Medicare Parts A and B were conducted by the Social Security Administration (SSA) and governed by the provisions set forth in 20 CFR part 404 subpart J. Under part 405 subpart I, we explain that the SSA makes initial determinations regarding an individual's entitlement to Medicare Parts A and B, and conducts reconsiderations of those initial determinations, in accordance with 20 CFR part 404, subpart J (see 42 CFR 405.904). However, entitlement appeals beyond the reconsideration level (that is, to an Administrative Law Judge, the Medicare Appeals Council, or Federal District Court) are governed by the appeals procedures set forth in part 405 subpart I.

The provisions in part 405 subpart I were intended to replace the provisions in part 405 subparts G and H once all pre-BIPA appeals were completed. However, we determined it was necessary to establish a phased-in implementation approach for part 405 subpart I appeals, and to maintain the existing provisions in subparts G and H until the completion of all pre-BIPA appeals (see, 74 FR 11424). With the publication of the December 9, 2009 final rule, some pre-BIPA appeals had not been completed. Thus, we were unable to remove the appeals provisions in subparts G and H at that time.

In this rule, we propose to remove the obsolete provisions since it is our expectation that in the 6 years since publication of the March 8, 2005 interim final rule, any party with a pending pre-BIPA appeal would have received an appeal decision or would have brought the pending matter to our attention. We believe that removing these regulations would eliminate any possible confusion among Medicare beneficiaries, providers, suppliers, and their representatives with respect to the applicable appeal rights and procedures. However, while we believe that all pre-BIPA appeals have been processed, we cannot be completely certain that no pending pre-BIPA appeals currently exist. In order to ensure that parties receive due process for their claim disputes, we propose that any newly identified pre-BIPA appeals be handled under the current appeals provisions set forth in part 405 subpart I. (We note that all reopening actions, regardless of whether the determination or decision was made under the pre-BIPA process, initial determinations on claims, and, as explained above, initial determinations and appeals with respect to Medicare entitlement, are currently processed under the applicable procedures in part 405 subpart I.) We believe that maintaining a separate pre-BIPA claim appeals process in the unlikely event such an appeal is discovered is inefficient and impracticable. Using the current appeals process under subpart I, for all appeal requests filed on or after the effective date of this rule, as finalized, would reduce potential confusion about applicable appeal procedures, and would enable parties to take advantage of the reduced decision-making timeframes and other process improvements offered throughout part 405 subpart I (for example, panel reviews during the Qualified Independent Contractor (QIC) reconsideration process for claims denied as not medically reasonable and necessary (see § 405.968(c)), and the right to escalate cases to the next level of appeal when the QIC, Administrative Law Judge (ALJ) or Medicare Appeals Council does not issue a decision within the applicable adjudication timeframe (see § 405.970, § 405.1104, and § 405.1132).

Table 1 below illustrates how we propose to process any pre-BIPA Part A appeals identified after the effective date of this rule, as finalized, under our current regulations at part 405 subpart I. If a party demonstrates that they had requested reconsideration under part 405 subpart G, but did not receive a decision or dismissal, the party would be entitled to request a redetermination, followed by a QIC reconsideration, ALJ hearing, Medicare Appeals Council review, and judicial review in accordance with the provisions in part 405 subpart I. If a party demonstrates that they received a reconsideration decision and requested an ALJ hearing under part 405 subpart G but did not receive an ALJ hearing decision or dismissal, the party would be entitled to request a QIC reconsideration, followed by an ALJ hearing, Medicare Appeals Council review, and judicial review in accordance with the provisions in part 405 subpart I. If a party demonstrates that they received an ALJ hearing decision under subpart G, and requested but did not receive a decision, dismissal or denial of review notice from the Departmental Appeals Board, the party would be entitled to request Medicare Appeals Council review under part 405 subpart I.

TABLE 1—PRE-BIPA PART A APPEALS

Pending Pre-BIPA level of appeal in part 405 subpart G	Appeal resumes at the following level in part 405 subpart I
Reconsideration (§ 405.710).	Redetermination (§ 405.940).
ALJ Hearing (§ 405.720).	QIC Reconsideration (§ 405.960).
Departmental Appeals Board Review (§ 405.724).	Medicare Appeals Council Review (§ 405.1100).

Table 2 below illustrates how we propose to process any pre-BIPA Part B appeals identified after the effective date of this rule, as finalized, under our current regulations at part 405 subpart I. If a party demonstrates that they requested a carrier review of an initial determination under subpart H, but did not receive a carrier review determination or dismissal, the party would be entitled to request a redetermination, followed by QIC reconsideration, ALJ hearing, Medicare Appeals Council review and judicial review in accordance with the provisions in part 405 subpart I. If a party demonstrates that they received a carrier review determination and requested a carrier hearing but did not receive a carrier hearing officer decision or dismissal under subpart H, the party would be entitled to request a QIC reconsideration followed by an ALJ hearing, Medicare Appeals Council review and judicial review in accordance with the provisions in part 405 subpart I. If a party demonstrates that they received a carrier hearing officer decision, and requested but did not receive an ALJ hearing decision or dismissal under subpart H, the party would be directed to request a QIC reconsideration, followed by an ALJ hearing, Medicare Appeals Council review and judicial review in accordance with the provisions in part 405 subpart I. Finally, if a party demonstrates that they received an ALJ hearing decision under subpart H, and requested but did not receive a decision, dismissal or denial of review notice from the Departmental Appeals Board under subpart H, the party would be

entitled to request Medicare Appeals Council review under part 405 subpart I.

We are proposing that parties seek a QIC reconsideration before requesting and receiving a hearing before an ALJ under subpart I for several reasons. First, we note that several subpart I procedural requirements at the ALJ level of appeal are predicated on a QIC conducting a reconsideration. For example, the right to request an ALJ hearing under § 405.1000 and § 405.1002 is premised on a party being dissatisfied with a QIC reconsideration decision. In addition, under § 405.966(a)(2) and § 405.1028, absent a showing of good cause, evidence not submitted before the issuance of the QIC reconsideration by a provider, supplier, or beneficiary represented by a provider or supplier would be excluded from consideration by the ALJ. Thus, channeling appeals through the QIC reconsideration level would ensure that parties are afforded an opportunity to submit relevant evidence without having to demonstrate good cause for not submitting it during the pre-BIPA process. Second, we believe channeling pre-BIPA appeals through the QIC reconsideration process would benefit parties. For example, we believe parties would benefit from the panel review by physicians and other appropriate health care professionals at the QIC level when claims are denied as not medically reasonable and necessary under section 1862(a)(1)(A) of the Act. We also believe the administrative record would be more fully developed with respect to the medical and scientific evidence considered by such panels. Third, in order for a party to seek expedited access to judicial review under § 405.990, the party must first have received a QIC reconsideration, or the appeal must have been escalated from the QIC to the ALJ level (see, § 405.990(b)). To ensure a party may seek expedited access to judicial review, if such review is appropriate, we are proposing to channel pre-BIPA appeals through the QIC reconsideration process when the party has not received an ALJ decision. Finally, as noted above, we believe that having one set of rules apply to all appeals would eliminate the confusion and uncertainty regarding the appropriate procedures to follow should there be any existing pre-BIPA appeals.

TABLE 2—PRE-BIPA PART B APPEALS

Pending pre-BIPA level of appeal in part 405 subpart H	Appeal resumes at the following level in part 405 subpart I
Review of Initial Determination (§ 405.807).	Redetermination (§ 405.940).
Carrier Hearing (§ 405.821).	QIC Reconsideration (§ 405.960).
ALJ Hearing (§ 405.855).	QIC Reconsideration (§ 405.960).
Departmental Appeals Board Review (§ 405.856).	Medicare Appeals Council Review (§ 405.1100).

With very limited exceptions as noted below, the provisions in subparts G and H related to the processing of initial determinations, reopenings, and appeals of claims under Part A and Part B of Medicare, and determinations and appeals regarding an individual's entitlement to benefits under Part A and Part B of Medicare are obsolete because of the new procedures set forth in subpart I. We propose to remove all such obsolete provisions. The provisions in subparts G and H identified below are either unrelated to claims or entitlement appeals and are still in effect, or were inadvertently not included in subpart I, and accordingly, would be retained and redesignated to subpart I.

We propose to retain § 405.706, ''Decisions of utilization review committees,'' and redesignate the section as § 405.925 in subpart I. This regulatory provision explains that—(1) The decisions made by the utilization review committees are not initial determinations made by the Secretary within the meaning of section 1869 of the Act; (2) are not subject to the appeal; and (3) further explains how utilization review committee decisions may be used in payment and coverage decisions. In drafting the regulations under part 405 subpart I, we inadvertently omitted this section. For clarity, and to ensure that beneficiaries and providers understand that utilization review committee decisions are not appealable, and in furtherance of our goal to include all relevant claims appeals procedures in one place, we are proposing to retain § 405.706, and redesignate it as § 405.925.

In addition, we propose to retain § 405.874, ''Appeals of CMS or a CMS contractor,'' and redesignate the provisions as § 405.800, § 405.803, § 405.806, § 405.809, § 405.812, § 405.815, and § 405.818. These provisions set forth, among other things, the procedures related to denials of provider or supplier enrollment applications, revocations of Medicare provider or supplier billing privileges, and the appeal rights afforded to the parties to those determinations. As these procedures do not relate directly to initial determinations and appeals of Medicare claims, they were not included in part 405 subpart I. However, these provisions are not obsolete and are still applicable to provider and supplier enrollment actions. We also note that we are making minor technical edits to the current text to refine the section.

Finally, we also propose to remove § 405.753 and § 405.877 (''Appeal of a categorization of a device.''). These regulations are obsolete because they no longer comport with the definition of ''national coverage determination'' in section 1869(f) of the Act, as amended by section 522 of BIPA. The Food and Drug Administration's (FDA) categorization of a product as a category A device is not a determination of whether or not the item is covered under title XVIII of the Act. Under § 405.203(c), we use the FDA categorization in making a coverage decision. Thus, our decision (acting on the FDA's categorization) to deny a claim for a category A device is an initial determination that is subject to review through the claims appeals process.

Contact: Flosetta Rowry, 410–786–8492.

3. ASC Infection Control Program (§ 416.44)

In existing regulations at 42 CFR 416.51, we require all ASCs to adhere to regulations regarding Infection Control, which include the requirement that all ASCs develop an infection control program. The regulations also describe how ASCs must set up their infection control program, such as the requirement that the ASC designate a qualified professional who has training in infection control and the ASC's obligation to establish a plan of action regarding preventing, identifying, and managing infections and communicable diseases.

Current regulations also contain a provision for infection control that is located within the physical environment standard in 42 CFR 416.44(a)(3). The requirement states that an ASC must establish a program for identifying and preventing infections, maintaining a sanitary environment, and reporting the results to the appropriate authorities. This regulatory requirement was part of the original CfCs first published for ASCs in 1982. Publication of the November, 2008 ASC final rule elevated the infection control requirements from a standard level under the Environment condition to a

separate condition level requirement, thus making the regulatory requirement in the Environment CfC duplicative. The Infection Control CfC located at § 416.51 expands and broadens the infection control requirements that were part of the original ASC requirements in the Environment CfC. Therefore, we propose to remove the requirement at § 416.44(a)(3), located in the Environment CfC, as it is unnecessary and obsolete. We believe this change would alleviate any duplicative efforts and confusion regarding the infection control requirements.

Contact: Jacqueline Morgan, 410–786–4282.

4. E-Prescribing (§ 423.160)

The MMA amended title XVIII of the Act to establish a voluntary prescription drug benefit program. Under those provisions, prescription Drug Plan (PDP) sponsors and Medicare Advantage (MA) organizations offering Medicare Advantage-Prescription Drug Plans (MA–PD) are required to establish electronic prescription drug programs to provide for electronic transmittal of certain information to the prescribing provider and dispensing pharmacy and pharmacist. This includes information about eligibility, benefits (including drugs included in the applicable formulary, any tiered formulary structure and any requirements for prior authorization), the drug being prescribed or dispensed and other drugs listed in the medication history, as well as the availability of lower cost, therapeutically appropriate alternatives (if any) for the drug prescribed. The MMA directed the Secretary to promulgate uniform standards for the electronic transmission of this data.

In the November 7, 2005, final rule (70 FR 67568), entitled ''Medicare Program; E–Prescribing and the Prescription Drug Program,'' CMS adopted three e-prescribing foundation standards to be used for e-prescribing for the Medicare Part D program. The three foundation standards are—(1) The National Council for Prescription Drug Programs (NCPDP) SCRIPT version 5.0., which provides for communications between the prescriber and dispenser; (2) the NCPDP Telecommunication Standard Version 5 release 1 (NCPDP Telecom 5.1) and equivalent NCPDP Batch Standard Batch Implementation Guide version 1.1 which is the transaction between the dispenser and the Plan, and the ASC X12N 270/271 Health Care Eligibility Benefit Inquiry and Response, Version 4010; and (3) the Addenda to Health Care Eligibility Inquiry and Response, Version 4010A1 (4010/4010A) for conducting eligibility and benefit inquiries between the prescriber and Plan Sponsor. The latter two transactions, NCPDP Telecom 5.1 and the 4010/4010A are also adopted as HIPAA transaction standards.

In the November 7, 2005 final rule, we discussed the means for updating the Part D e-prescribing standards. In instances in which an e-prescribing standard has also been adopted as a HIPAA transaction standard in 45 CFR part 162, the process for updating the e-prescribing standard would have to be coordinated with the maintenance and modification of the applicable HIPAA transaction standard. In the January 16, 2009 final rule, entitled ''Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards'' (74 FR 3296), we revised § 162.1102, § 162.1202, § 162.1302, § 162.1402, § 162.1502, § 162.1602, § 162.1702, and § 162.1802 to adopt the ASC X12 Technical Reports Type 3, Version 005010 (Version 5010), as a replacement of the current X12 Version 4010 and 4010A1 standards (Version 4010/4010A). Covered entities conducting HIPAA standards are required to use Version 5010 by January 1, 2012. The complete discussion of these standards may be found in the January 16, 2009 final rule (74 FR 3296).

In the same final rule, effective January 1, 2012, we revised § 162.1102, § 162.1202, § 162.1302, and § 162.1802 by adding a new paragraph (c) to each of these sections to adopt the NCPDP Telecommunication Standard Implementation Guide, Version D, Release 0 and equivalent NCPDP Batch Standard Implementation Guide, Version 1, Release 2 (collectively, Version D.0) in place of the NCPDP Telecommunication Standard Implementation Guide, Version 5, Release 1 and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (collectively, Version 5.1), for the following retail pharmacy drug transactions: health care claims or equivalent encounter information; eligibility for a health plan; referral certification and authorization; and coordination of benefits.

Therefore, for consistency with the current HIPAA transaction standards, and the need for covered entities (prescribers and dispensers) to comply with HIPPA, we propose to revise § 423.160(b)(3), to—(1) Update Version 4010/4010A with Version 5010; (2) adopt the NCPDP Telecommunication Standard Implementation Guide, Version D, Release 0 (Version D.0) and equivalent NCPDP Batch Standard Implementation Guide, Version 1, Release 2 (Version 1.2); and (3) retire NCPDP Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1) and equivalent NCPDP Batch Standard Implementation Guide, Version 1, Release 1 (Version 1.1), for transmitting eligibility inquiries and responses between dispensers and Part D sponsors with an effective date of January 1, 2012.

Contact: Andrew Morgan, 410–786–2543.

5. Physical and Occupational Therapist Qualifications (§ 440.110)

Current regulations detail provider qualifications for a 'qualified physical therapist' under Medicaid at 42 CFR 440.110(a)(2). Section 440.110(b)(2) details the provider qualifications for a 'qualified occupational therapist' under Medicaid. These current regulations contain outdated terminology referencing several professional organizations. Also some of the current qualification requirements do not address individuals who have been trained outside of the United States, or refer to outdated requirements, which could unintentionally exclude otherwise qualified therapists resulting in diminished access to care for Medicaid beneficiaries.

Medicare regulations at § 484.4 were updated through a November 27, 2007 final rule (72 FR 66406), effective January 1, 2008. While these personnel qualifications are detailed under home health services, we indicated in the preamble to the November 27, 2007 final rule, that therapy services must be provided according to the same standards and policies in all settings, to the extent possible and consistent with statute, and revised multiple regulations to cross-reference the personnel qualifications for therapists in § 484.4 to the personnel requirements in many other sections.

We are proposing at § 440.110 to remove the outdated personnel qualifications language in the current Medicaid regulations and instead cross reference the updated Medicare personnel qualifications for physical therapists and occupational therapists under § 484.4. This proposal has the potential to broaden the scope of providers that may be able to provide PT and OT services, by streamlining the qualifications so that certain providers are not excluded from providing services under Medicaid. In addition, it strengthens the consistency of standards across Medicare and Medicaid.

Contact: Adrienne Delozier, 410–786–0278.

6. Definition of Donor Document (§ 486.302)

Section 486.302 includes the following definition: ''Donor document is any documented indication of an individual's choice in regard to donation that meets the requirements of the governing State law.'' In recent years, the concept of the donor document and the opportunities for individuals to express their wishes concerning organ and/or tissue donation have changed. An individual can indicate his or her wishes not only on a driver's license through a State's Department of Motor Vehicles, but also on various registries or even in separate documents. Therefore, we believe that our definition in § 486.302 should be updated. Moreover, the focus on patient rights has increased over the last several years. For example, we published a final rule on November 19, 2010 entitled, ''Changes to the Hospital and Critical Access Hospital Conditions of Participation to Ensure Visitation Rights for All Patients'' (CMS–3228–F). In light of this increased focus, we believe that the current definition, does not fully allow for the various ways individuals can express their choices in the donor process. In addition, we believe it is important to emphasize that the decision to donate organs and/or tissue before death is the decision of the individual.

We propose replacing the current definition of ''donor document'' in § 486.302 with the following definition, ''[D]onor document means any documented indication of an individual's choice that was executed by the patient, in accordance with any applicable State law, before his or her death, and that states his or her wishes regarding organ and/or tissue donation.'' This new definition modifies the current definition in two ways. First, while the current definition refers to ''an individual's choice'' it does not recognize the right of the individual to identify their wishes more specifically. Donor documents may simply allow for the choice of whether or not to be an organ and/or tissue donor, however, some individuals may choose to use documents that allow them to express their wishes in more detail. For example, some people may choose to be an organ donor, but not a tissue donor. Others may not want to consent to the donation of specific organs. Therefore, we believe our proposed definition should cover documents or other ways for individuals to express their wishes more specifically, and we have modified the definition accordingly.

Second, we also believe that it is important to include the requirement that the donor document be ''executed by the patient.'' While this may appear self-evident, we want to emphasize that the decision by a living person to donate organs and/or tissue after his or her death is always a voluntary decision. Therefore, we have modified the definition to account for this.

These changes to the definition of the donor document only affect the documentation of an individual's wishes concerning organ and/or tissue donation while they are alive and can legally make those decisions. In the absence of a valid donor document, the donation decisions would rest with the individual who is legally responsible for making these decisions, usually the person's next of kin.

Contact: Jacqueline Morgan, 410–786–4282.

7. Administration and Governing Body (§ 486.324)

On May 31, 2006, we published a final rule in the **Federal Register** (71 FR 30982) entitled, ''Conditions for Coverage for Organ Procurement Organizations (OPOs).'' The final rule established several requirements, for OPOs at § 486.324, including a number of requirements related to the administration and governing body of an OPO. Due to an error in publishing the final rule, paragraph (e) was inadvertently inserted twice (71 FR 31052).

We are proposing to remove the duplicate paragraph (e), which appears immediately after § 486.324(d). It does not alter or change the legal requirement, nor does it create a change in information collection requirements or other regulatory burden.

Contact: Jacqueline Morgan, 410–786–4282.

8. Requirement for Enrolling in the Medicare Program (§ 424.510)

We have identified an incorrect reference in § 424.510(a), due to a typographic error. We are proposing to replace the incorrect reference to paragraph (c) (the effective date for reimbursement for providers and suppliers seeking accreditation from a CMS-approved accreditation organization) with a reference to paragraph (d) (the enrollment requirements).

Contact: Morgan Burns, 202–690–5145

C. Responds to Stakeholder Concerns

The following proposals seek to respond to some of the concerns and feedback that we have received from the public. In the comment period associated with this proposed rule, we welcome additional suggestions from stakeholders. We have identified nomenclature and definition changes that would hopefully increase transparency and enhance our relationship with the public.

Nomenclature Changes

1. Redefining the Term ''Beneficiary'' (§ 400.200 Through § 400.203)

In response to comments from the public to discontinue our use of the term ''recipient'' under Medicaid, we have been using the term ''beneficiary'' to mean all individuals who are entitled to, or eligible for, Medicare or Medicaid services. We are proposing to add a definition of ''beneficiary'' in § 400.200 that applies to patients under the Medicare and Medicaid programs. We would remove the terms ''beneficiary'' and ''recipient'' from § 400.202 and § 400.203, respectively, and we would make a nomenclature change to replace ''recipient'' with ''beneficiary'' throughout 42 CFR chapter IV. The action to refer to beneficiaries instead of recipients has already been implemented. We are simply conforming our regulations to our current use of the term ''beneficiary.'' In creating this definition it is not our intent to exclude or include anyone who would or would not have previously been understood to be a beneficiary. We welcome comments on whether this definition could be improved to attain that objective.

Contact: Ronisha Davis, 410–786–6882.

2. Replace the Terms ''Mental Retardation'' and ''Mentally Retarded'' With ''Intellectual Disability'' and ''Intellectually Disabled'' Throughout 42 CFR title IV

We are proposing to change the terminology we use in the program currently called Intermediate Care Facilities for the Mentally Retarded. Section 1905(d) of the Act states that, ''The term ''intermediate care facility for the mentally retarded'' means an institution (or distinct part thereof) for the mentally retarded or persons with related conditions * * *.'' In 2010, Rosa's Law (Pub. L. 111–256) amended statutory language in several health and education statues, directing that ''in amending the regulations to carry out this Act, a Federal agency shall ensure that the regulations clearly state—(A) That an intellectual disability was formerly termed ''mental retardation''; and (B) that individuals with intellectual disabilities were formerly

termed ''individuals who are mentally retarded.''

CMS regulations at 42 CFR chapter IV include numerous references to ''mental retardation.'' These regulatory provisions reflect the statutory benefit category at section 1905(d) of the Act, which uses the term ''mental retardation'' in the facility type designation, ''Intermediate Care Facility for the Mentally Retarded.'' Rosa's Law did not specifically list the Act within its scope, and therefore did not require any change to existing CMS regulations. However, consistent with Rosa's Law and in response to numerous inquiries from provider and advocate organizations as to when CMS will comply with the spirit of Rosa's Law, we propose to adopt the term ''intellectual disability'' (as used under Rosa's Law) in our regulations at § 400.203. We would define the term ''intellectually disabled'' to mean the condition that was previously referred to as ''mentally retarded'' in section 1919(e)(7)(G)(ii) of the Act. This nomenclature change does not represent any change in information collection requirements or other burden for the provider community or the State survey agencies. Current forms may be used by the State survey agencies until current supplies are exhausted. The change would require revision of forms CMS–3070G and CMS–3070H, as discussed below.

Contact: Peggye Wilkerson, 410–786–4857.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. Removes Unnecessarily Burdensome Requirements

1. ICRs Regarding End-Stage Renal Disease Facilities Condition for Coverage: Physical Environment (§ 494.60)

In this rule, we are proposing to limit the number of ESRD facilities that must meet the LSC requirements found in chapters 20 and 21 of NFPA 101. This proposal would reduce burden on ESRD facilities in terms of costly structural modifications. However, this proposed change does not impact any information collections under the Paperwork Reduction Act.

2. ICRs Regarding Condition for Coverage: Emergency Equipment—Ambulatory Surgical Centers (ASCs) (§ 416.44)

Proposed § 416.44(c) would require ASCs to coordinate, develop, and revise ASC policies and procedures that would specify the types of emergency equipment required for use in the ASC's operating room. The equipment must be immediately available for use during emergency situations, be appropriate for the facility's patient population and be maintained by appropriate personnel. The burden associated with these requirements is the time and effort required by an ASC to develop revised policies and procedures governing the identification and maintenance of emergency equipment that would typically be required to address the intra- or post-operative emergency complications specific to the types of procedures performed in the ASC and the needs of their specific patient population.

We believe that approximately 5,200 ASCs would have to comply with these requirements. We estimate that proposed § 416.44(c) would impose a one-time burden of two hours associated with revising the policies and procedures pertaining to the list of the emergency equipment and supplies maintained and commonly used by the ASC during emergency responses to their specific patient population. The total burden associated with this task would be approximately 5,200 hours. The total cost associated with this requirement would be $468,000 (5,200 × $90—based on an hourly nurse's salary ($45.00 × 2 hours), including fringe benefits, as specified by the Bureau of Labor Statistics for 2009).

Consistent with this proposed change, we will submit a revision to control number 0938–1071 (expiration date October 31, 2012) to the Office of Management and Budget for review.

3. ICRs Regarding Revocation of Enrollment and Billing Privileges in the Medicare Program (§ 424.535)

In this rule, we are proposing to eliminate the re-enrollment bar in instances when Medicare providers and suppliers have not responded timely to requests for revalidation of enrollment or other requests for information. This would allow providers and suppliers to attempt to re-enroll in Medicare sooner than would be the case if the re-enrollment bar applied. However, the overall information collection burden involved—specifically, the need to submit a Form CMS–855 initial enrollment application—would not change. Our proposed revision would therefore neither increase nor decrease the existing information collection burden related to this requirement.

4. ICRs Regarding Deactivation of Medicare Billing Privileges (§ 424.540)

In this rule, we are proposing to restrict the deactivation provisions in § 424.540(a)(1) to providers and suppliers that do not complete the Form CMS–855I application. Physicians and non-physician practitioners would therefore not have their Medicare billing privileges deactivated if they did not bill Medicare for 12 consecutive months.

We estimate that an average of approximately 12,000 physicians and non-physician practitioners have been deactivated each year pursuant to § 424.540(a)(1). These individuals have been required to submit a complete Form CMS–855I application to their Medicare contractor in order to reactivate their Medicare billing privileges. With our proposed change, however, this step would no longer be necessary because the deactivation would not have occurred.

For purposes of this ICR, we estimate that 10,800 physicians and non-physician practitioners (or 90 percent of the aforementioned 12,000 total) would continue to submit Form CMS–855I (OMB No. 0938–0685) reactivation applications absent our proposed change. The estimated ''per application'' burden of completing the application is 5 hours, at a per hour cost of $50. This results in a total savings in collection of information costs for Medicare-enrolled physicians and non-physician practitioners of approximately $2.7 million per year (10,800 × 5 × $50). Consistent with this proposed change, we will submit a revision to control number 0938–0685 to the Office of Management and Budget for review.

5. ICRs Regarding Duration of Agreement for ICFs/ID (§ 442.15)

In this rule, we are proposing to remove the time limited agreements for intermediate care facilities. There is no reduction in burden or cost for the intermediate care facility providers but the regulation change would help to reduce the paperwork and staff time required by State agencies in processing temporary extensions of the provider agreements that are required until the onsite survey occurs. In addition, providers and State agencies would no longer face the uncertainty created by the issuance of the multiple temporary extensions due to the provider agreements. Consistent with this proposed change, we will submit a revision to control number 0938–0062.

B. Removes Obsolete or Duplicative Regulations or Provides Clarifying Information

1. ICRs Regarding Display of Currently Valid OMB Control Numbers (§ 400.310)

In this rule, we are proposing to remove the chart at § 400.310 that display OMB control numbers because the information has become obsolete. This proposal would not produce any reduction or increase in burden, but would ensure that the public is viewing the most current information regarding OMB control numbers.

2. ICRs Regarding Initial Determinations, Reconsiderations, Appeals, and Reopenings Under Medicare Part A and B (§ 405.701 through § 405.877)

The provisions in part 405 subparts G and H that we are proposing to remove primarily are obsolete and no longer in use. We do not expect an increase or reduction in burden, but believe that it would be beneficial to ensure that providers or suppliers affected are using the post BIPA appeals process.

3. ICRs Regarding Condition for Coverage: Infection Control—Ambulatory Surgical Centers (ASCs) (§ 416.44)

In this rule, we are proposing to remove the requirement at § 416.44(a)(3) regarding infection control that is duplicative of § 416.51. The removal of this requirement would not result in any reduced or additional burden on ASCs, but would alleviate any duplicative efforts and confusion regarding the infection control requirements.

4. ICRs Regarding Standards for Electronic Prescribing (§ 423.160)

In this rule, we are proposing to update the current e-prescribing standards to mirror the HIPAA standards that will be in effect as of January 1, 2012. There is no burden (addition or reduction) associated with this proposal.

5. ICRs Regarding Physical Therapy, Occupational Therapy, and Services for Individuals With Speech, Hearing, and Language Disorders (§ 440.110)

In this rule, we are proposing to update and align provider qualifications for PT and OT professionals. This proposal has the potential to broaden the scope of providers that may be able to provide PT and OT services, by streamlining the qualifications so that certain providers are not excluded from providing services under Medicaid. However, this proposed change does not impact any information collections under the paperwork reduction Act.

6. ICRs Regarding Definitions (§ 486.302)

In this rule, we are proposing to modify the definition of ''donor document'' to improve the ability of patients to indicate their wishes regarding the donation of organs and tissue, while also emphasizing that the patient's decision is voluntary. We do not expect that there would be any changes in the collection of information requirements for OPOs. We anticipate that the enhanced ability individuals initially would have to more specifically identify their wishes would reduce burden associated with vague and unclear designations.

7. ICRs Regarding Condition: Administration and Governing Body (§ 486.324)

In this rule, we are proposing the removal of the duplicate paragraph (e) of § 486.324. This proposal would not result in any change in information collection or other regulatory burden.

8. ICRs Regarding Requirement for Enrolling in the Medicare Program (§ 424.510)

In this rule, we are proposing to correct a typographical error found in § 424.510(a). This proposal would create no change in information collection or other regulatory burden.

C. Responds to Stakeholder Concerns

Nomenclature Changes

1. ICRs Regarding General Definitions (§ 400.200)

In this rule, we are proposing to add a definition of ''beneficiary'' in § 400.200 that applies to patients under the Medicare and Medicaid programs. This proposal would create no change in information collection or other regulatory burden.

2. ICRs Regarding Definitions Specific to Medicaid (§ 400.203)

In this rule, we are proposing to add to the regulations a definition of ''intellectual disability'' for purposes of the Medicaid program that would define it, consistent with Rosa's law (Pub. L. 111–256), as the condition formerly referred to as ''mental retardation'' and we would replace all references in CMS regulations to ''mental retardation'' with ''intellectual disability.'' Furthermore, we propose to replace the term ''mentally retarded,'' as defined in section 1919(e)(7)(G)(ii) of the Act, with ''intellectually disabled.'' This proposal would create no change in information collection or other regulatory burden. The change would require revision of forms CMS–3070G and CMS–3070H, which are approved under OMB control number 0938–0062 (expiration date April 30, 2013). CMS will submit this collection to OMB for review.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [CMS–9070–P];

Fax: (202) 395–5806; or

E-mail: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the

Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

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, reducing costs, harmonizing rules, and promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this proposed rule would reduce costs to regulated entities and to patients by more than $100 million, perhaps as much as $200 million in the first year. It would also create significant life savings benefits. It is therefore an economically significant rule under section 3(f)(1) of Executive Order 12866. Accordingly, this proposed rule was reviewed by the Office of Management and Budget.

A. Statement of Need

In Executive Order 13563, the President recognized the importance of a streamlined, effective, efficient regulatory framework designed to promote economic growth, innovation, job creation, and competitiveness. To achieve a more robust and effective regulatory framework, the President has directed each executive agency to establish a plan for ongoing retrospective review of existing significant regulations to identify those rules that can be eliminated as obsolete, unnecessary, burdensome, or counterproductive or that can be modified to be more effective, efficient, flexible, and streamlined. This proposal responds directly to the President's instructions in Executive Order 13563 by reducing outmoded or unnecessarily burdensome rules, and thereby increasing the ability of health care entities to devote resources to providing high quality patient care.

B. Overall Impact

There are cost savings in many areas. Two areas of one-time savings are particularly substantial. First, as indicated earlier in the preamble, we estimate that one-time savings to ESRD facilities are likely to range from about $47.5 to $217 million. Second, we also estimate a one-time savings of $18.5 million to ASCs through reduced emergency equipment requirements. Both of these estimates are uncertain and total savings could be significantly higher. Among the many types of recurring savings that these proposals would create, physicians and other providers would avoid business and payment losses that are difficult to estimate but likely to be in the tens of millions of dollars annually through the reforms we propose for reenrollment and billing processes. We have identified other kinds of savings that providers and patients will realize throughout this preamble. All of these are summarized in the table that follows.

TABLE 3—SECTION-BY-SECTION ECONOMIC IMPACT ESTIMATES

Section	Frequency	Likely savings or benefits ($ millions)
A. Removes Unnecessarily Burdensome Requirements:		
1. End-Stage Renal Disease (ESRD) Facilities (§ 494.60)	One-Time	108.7
2. ASC Emergency Equipment (§ 416.44)	One-Time	18.5
3. Revocation of Enrollment/Billing Privileges (§ 424.535)	Recurring	10.0
4. Deactivation of Medicare Billing Privileges (§ 424.540)	Recurring	26.7
5. Duration of Agreement for ICFs/ID (§ 442.15–§ 442.109)	Recurring	<1
B. Removes Obsolete or Duplicative Regulations:		
1. OMB Control Numbers for Information Collection (§ 400.300 and § 400.310)	Recurring	<1
2. Removal of Obsolete Provisions Related to Processing Part A and Part B Claims and Entitlement Determinations (§ 405.701 through § 405.877).	Recurring	<1
3. ASC Infection Control Program (§ 416.44)	Recurring	<1
4. E-prescribing (§ 423.160)	Recurring	<1
5. Physical and Occupational Therapist Qualifications (§ 440.110)	Recurring	<1
6. Definition of Donor Document (§ 486.302)	Recurring	([1])
7. Administration and Governing Body (§ 486.324)	Recurring	<1
8. Requirement for Enrolling in the Medicare Program (§ 424.510)	Recurring	<1
C. Responds to Stakeholder Concerns:		
Nomenclature Changes		
1. Redefining the Term "Beneficiary" (§ 400.200 through § 400.203)	Recurring	<1
2. Replace "Mental Retardation" terminology with "Intellectual Disability" (throughout 42 CFR title IV).	Recurring	([1])

[1] See Text.

There are two areas of potentially significant benefits, above and beyond cost savings to providers. First, improved organ donation consent language that would enable prospective donors to specify their intentions more clearly would have a positive effect on organ donation. There are approximately 8,000 cadaveric organ donors annually in the United States. These donors provide a total of about 21,000 transplanted organs (see the OPTN/SRTR Annual Report at *http://optn.transplant.hrsa.gov/ar2009/*). The decision to make a firm, written decision on whether or not to be a potential donor, and on the willingness of families to honor that decision, can turn on very small issues of personal preference. We believe that the change we propose could and likely would tip that decision in some cases. However, we do not have a basis for quantifying this potential increase in donations. We welcome comment on the extent to which this policy change may increase organ donation and any information that would assist in quantifying these impacts.

In addition, while Rosa's Law began the elimination of official Federal government use of the pejorative term ''mental retardation,'' our proposal would complete this step for CMS regulations. The reform undoubtedly has substantial value to millions of Americans, not only to the intellectually disabled but also to their families and friends, and also to the many millions who simply object to such labeling. However, we have no data that would enable a precise calculation of this value.

Taking all of the proposed reforms together, we estimate that the overall cost savings that this rule would create may approach $200 million in the first year. This includes the one-time savings related to ESRD reforms, as well as the savings to providers in lost billings, paperwork costs, confusion, and other burden reductions discussed throughout this preamble.

C. Anticipated Impacts

The potential cost savings from reduced ESRD requirements are discussed extensively in that preamble section on those reforms. Assuming that the average cost for a facility to meet three structural standards would have been $77,659, and that one half of all facilities would have needed to make one half of these investments, total savings would be $108.7 million (2,800 × ($77,659/2)).

The only other large one-time savings estimates are those resulting from reforms of Ambulatory Surgical Center Emergency equipment requirements, and reforms in the revocations or deactivation of billing privileges. As to ASC, we estimate that the three most costly types of equipment are as follows: Tracheostomy kit $100.00, cricothyrotomy kit $200.00 and mechanical ventilator $12,000. We utilized fiscal year 2010 surveyor worksheets completed by the States when conducting ASC surveys to project the distribution of the types of ASC services nationally. We estimate that about two-thirds of the approximately Medicare 5,200 certified ASCs are functioning as multipurpose facilities. Those that are not multipurpose facilities would not have to spend $12,300 in total for costly equipment that would not be utilized. We have estimated the savings by breaking down each specialty type of ASC that would not be considered a multipurpose facility and that may not eliminate all three pieces of equipment or choose just one or two depending on the needs of the facility (1,500 ASCs × $12,300 = total savings of about $18.5 million).

With respect to the revocation reform, the number of affected providers is certainly very small as a proportion of the total universe of over one million Medicare providers, of whom over 900,000 are physicians and other practitioners. Based on administrative data, we estimate that the number of affected physicians and other practitioners that would be affected by this reform is between 1,000 and 2,000, a fraction of one percent of these. We have no statistical data on the resultant economic effects; but if the average provider loses as little as $10,000 in billable Medicare patient care services as a result of deactivation, total lost business for 1,000 providers could be $10 million annually. In this regard, gross annual physician practice revenue in America approaches $1 million a year (see, for example, the practice expense data in *http://www.modernmedicine.com/modernmedicine/article/articleDetail.jsp?id=143141*). Since Medicare pays about one third of revenue received for professional services such as physician care, the loss we estimate is one or two weeks of Medicare billing, on average. We welcome additional information on the likely magnitude and frequency of such losses.

With respect to deactivation of Medicare billing privileges, based on existing enrollment data we believe that about 12,000 physicians and non-physician practitioners may be affected annually. While the information collection consequences are relatively small (see the Information Collection section of this preamble), the problems this creates for both providers and patients are more substantial, including confusion about which bills are paid, chains of correspondence between the provider, the patient, and the Medicare contractor, and even in many cases an inability of providers to obtain reimbursement for services provided. Furthermore, although the direct paperwork costs are small, the amount of time and effort involved may deter some of these providers from even attempting to reactivate their billing privileges. Nonetheless, even if the average lost billing amounts (over and above amounts previously calculated for deactivations) are only on average $2,000, total annual costs in patient services that were unbilled or simply not provided would be $24 million (12,000 providers × $2,000), in addition to the $2.7 million we estimate in reduced information collection costs. In this regard, we point out that $2,000 represents only a fraction of one percent of average annual physician billing to Medicare, or less than one week of billing lost. We believe that losses are likely to be this low because this problem is most likely to occur with providers whose practices include relatively few Medicare patients, or who otherwise do not depend heavily on Medicare reimbursements (for example, part-time practices and those nearing retirement). We welcome additional information on the likely magnitude and frequency of such losses, and on physician and other provider situations most likely to be affected by such losses.

Of the remaining reforms, most have minor cost savings as shown in Table 1 through entries of $1 million or less. We welcome comments on whether some of these proposed reforms may create larger savings that we have failed to identify.

D. Uncertainty

Our estimates of the effects of this regulation are subject to significant uncertainty. While the Department is confident that these reforms will provide flexibilities to facilities that will yield cost savings, we are uncertain about the magnitude of these effects. In addition, as we previously explained, there may be significant additional health benefits. Thus, we are confident that the rule would yield net benefits. In this analysis we provided some illustrative estimates to suggest the potential savings these reforms could achieve under certain assumptions. We welcome comments on ways to better estimate the likely effects of these reforms.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), we have prepared an accounting statement. We estimate that the overall cost savings that this rule would create may approach $200 million in the first year. This includes the one-time savings related to ESRD reforms, as well as the savings to providers in lost billings, paperwork costs, confusion, and other burden reductions discussed throughout this preamble. There are also potentially substantial life-saving benefits that could reach hundreds of millions of dollars annually. Annualized savings are shown in the accounting statement below.

TABLE 4—ACCOUNTING STATEMENT

[Dollars in millions]

Category	Primary estimate	Year dollars	Discount rate (%)	Period covered
Benefits:				
Unquantified Qualitative Value of Lives Saved Through Increases in Organ Donations.	Potentially hundreds of lives saved but no precise estimate.	2012	7	2012–16
	Potentially hundreds of lives saved but no precise estimate.	2012	3	2012–16
Annualized savings from reduced ESRD facility investments and reduced ASC costs (see Table 3).	$30	2012	7	2012–16
	$30	2012	3	2012–16
Annualized savings to providers from billing improvements and other reforms (see Table 3).	$40	2012	7	2012–16
	$40	2012	3	2012–16
Costs:				
None.				
Transfers:				
None.				

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities when proposed rules create a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other Medicare or Medicaid providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a ''small entity.'' This proposed rule would reduce costs to tens of thousands of physicians, ASCs, ESRD facilities, and other small entities. Provisions in this proposed rule would benefit some providers or suppliers in all or virtually all of the industries identified as ''Ambulatory Health Care Services'' under the Census Bureau's North American Industry Classification System (NAICS, codes 621111 through 621999). While most of the effects would be minimal (for example, eliminating obsolete and redundant or confusing regulatory requirements), we estimate that the impact on at least several thousand of these small entities would be economically significant. The purpose of the RFA is to reduce burdens on regulated entities, and HHS interprets the RFA as requiring an Initial Regulatory Flexibility Analysis (IRFA) only when a proposed rule creates an adverse economic impact. Accordingly, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. HHS nonetheless voluntarily prepares an IRFA for rules that, like this one, create a significant positive economic impact by reducing burden on small entities. In this case all of the economic effects of the proposed rule are positive, and some are economically significant. In particular, provisions that allow physicians and other providers and suppliers to continue to participate in Medicare despite correspondence mishaps would save as many as 12,000 small entity providers annually thousands, and in some cases tens of thousands, of dollars in lost revenues, as well as reduce costs of confusion and correspondence to both these providers and their patients. Most of these providers are physicians, but other affected professionals include clinical psychologists, physician assistants, nurse practitioners, and physical therapists. Substantial savings would also accrue to most of about 6,500 ESRD providers from our proposal to eliminate fire safety requirements that are vital in residential provider settings, but unnecessary in ambulatory care facilities such as these. Approximately half of the 5,200 ASCs would benefit from more sensible emergency equipment policies. In addition, while we cannot estimate the number of positively affected entities for every provision we propose, these reforms would benefit about 6,400 Intermediate Care Facilities through elimination of pejorative nomenclature that pervasively affects their names and operations. All of the provisions included in the proposed rule aim to identify and eliminate duplicative, overlapping, outdated and conflicting regulatory requirements that unnecessarily add confusion or costs to various providers or patients as they attempt to navigate excessive or obsolete or contradictory regulatory requirements. By making these changes, we believe health professionals would have increased resources to devote to improving patient care, increasing accessibility to care and reducing associated health care costs. We invite and welcome comments on any and all of the provisions of the proposed rule with regard to the impacts of the burden reductions, as well as alternatives, if any, we should consider in the final rule or in future rulemaking on other regulatory provisions.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule has no direct effects on hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require expenditures in any 1 year of $100 million in 1995 dollars, updated

annually for inflation on either State, local, or tribal governments, or the private sector. In 2011, that threshold is approximately $136 million. This proposed rule mandates no new expenditures by either State, local, or tribal governments, or the private sector.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health Maintenance Organizations (HMO), Health professionals, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Medicaid, Nursing homes, Reporting and recordkeeping requirements.

42 CFR Part 486

Grant programs—health, Health facilities, Medicare, Reporting and recordkeeping requirements, X-rays.

42 CFR Part 494

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart B—Definitions

2. Section 400.200 is amended by adding the definition of ''beneficiary'' in alphabetical order to read as follows:

§ 400.200 General definitions.

* * * * *

Beneficiary means a person who is entitled to Medicare benefits and/or has been determined to be eligible for Medicaid.

* * * * *

§ 400.202 [Amended]

3. Section 400.202 is amended by removing the definition of ''beneficiary.''

4. Section 400.203 is amended by removing the definition of ''recipient'' and adding the definition of ''intellectual disability'' in alphabetical order to read as follows:

§ 400.203 Definitions specific to Medicaid.

* * * * *

Intellectual disability means the condition that was previously referred to as mental retardation.

* * * * *

Subpart C—[Removed and Reserved]

5. Subpart C, consisting of §§ 400.300 and 400.310, is removed and reserved.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

6. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

7. Redesignate § 405.706 in subpart G as § 405.925 in subpart I.

Subpart G—[Removed and Reserved]

8. Remove and reserve subpart G consisting of § 405.701 through § 405.705 and § 405.708 through § 405.753.

9. Subpart H is revised to read as follows:

Subpart H—Appeals Under the Medicare Part B Program

Sec.
405.800 Appeals of CMS or a CMS contractor.
405.803 Appeals rights.
405.806 Impact of reversal of contractor determinations on claims processing.
405.809 Reinstatement of provider or supplier billing privileges following corrective action.
405.812 Effective date for DMEPOS supplier's billing privileges.
405.815 Submission of claims.
405.818 Deadline for processing provider enrollment initial determinations.

Authority: Secs. 1102, 1866(j), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395cc(j), and 1395hh).

Subpart H—Appeals Under the Medicare Part B Program

§ 405.800 Appeals of CMS or a CMS contractor.

A CMS contractor's (that is, a carrier, Fiscal Intermediary or Medicare Administrative Contractor (MAC)) determination that a provider or supplier fails to meet the requirements for Medicare billing privileges.

(a) *Denial of a provider or supplier enrollment application.* If CMS or a CMS contractor denies a provider's or supplier's enrollment application, CMS or the CMS contractor notifies the provider or supplier by certified mail. The notice includes the following:

(1) The reason for the denial in sufficient detail to allow the provider or supplier to understand the nature of its deficiencies.

(2) The right to appeal in accordance with part 498 of this chapter.

(3) The address to which the written appeal must be mailed.

(b) *Revocation of Medicare billing privileges*—(1) *Notice of revocation.* If CMS or a CMS contractor revokes a provider's or supplier's Medicare billing privileges, CMS or a CMS contractor notifies the supplier by certified mail. The notice must include the following:

(i) The reason for the revocation in sufficient detail for the provider or supplier to understand the nature of its deficiencies.

(ii) The right to appeal in accordance with part 498 of this chapter.

(iii) The address to which the written appeal must be mailed.

(2) *Effective date of revocation.* The revocation of a provider's or supplier's billing privileges is effective 30 days after CMS or the CMS contractor mails notice of its determination to the provider or supplier, except if the revocation is based on a Federal exclusion or debarment, felony conviction, license suspension or revocation, or the practice location is determined by CMS or its contractor not to be operational. When a revocation is based on a Federal exclusion or debarment, felony conviction, license suspension or revocation, or the practice location is determined by CMS or its contractor not to be operational, the revocation is effective with the date of exclusion or debarment, felony conviction, license suspension or revocation or the date that CMS or its contractor determined that the provider or supplier was no longer operational.

(3) *Payment after revocation.* Medicare does not pay, and the CMS contractor rejects, claims for services submitted with a service date on or after the effective date of a provider's or supplier's revocation.

§ 405.803 Appeals rights.

(a) A provider or supplier may appeal the initial determination to deny a provider or supplier's enrollment application, or if applicable, to revoke current billing privileges by following the procedures specified in part 498 of this chapter.

(b) The reconsideration of a determination to deny or revoke a provider or supplier's Medicare billing privileges is handled by a CMS Regional Office or a contractor hearing officer not involved in the initial determination.

(c) Providers and suppliers have the opportunity to submit evidence related to the enrollment action. Providers and suppliers must, at the time of their request, submit all evidence that they want to be considered.

(d) If supporting evidence is not submitted with the appeal request, the contractor contacts the provider or supplier to try to obtain the evidence.

(e) If the provider or supplier fails to submit the evidence before the contractor issues its decision, the provider or supplier is precluded from introducing new evidence at higher levels of the appeals process.

§ 405.806 Impact of reversal of contractor determinations on claims processing.

(a) Claims for services furnished to Medicare beneficiaries during a period in which the supplier billing privileges were not effective are rejected.

(b) If a supplier is determined not to have qualified for billing privileges in one period but qualified in another, Medicare contractors process claims for services furnished to beneficiaries during the period for which the supplier was Medicare-qualified. Subpart C of this part sets forth the requirements for the recovery of overpayments.

(c) If a revocation of a supplier's billing privileges is reversed upon appeal, the supplier's billing privileges are reinstated back to the date that the revocation became effective.

(d) If the denial of a supplier's billing privileges is reversed upon appeal and becomes binding, then the appeal decision establishes the date that the supplier's billing privileges become effective.

§ 405.809 Reinstatement of provider or supplier billing privileges following corrective action.

If a provider or supplier completes a corrective action plan and provides sufficient evidence to the CMS contractor that it has complied fully with the Medicare requirements, the CMS contractor may reinstate the provider's or supplier's billing privileges. The CMS contractor may pay for services furnished on or after the effective date of the reinstatement. The effective date is based on the date the provider or supplier is in compliance with all Medicare requirements. A CMS contractor's refusal to reinstate a supplier's billing privileges based on a corrective action plan is not an initial determination under part 498 of this chapter.

§ 405.812 Effective date for DMEPOS supplier's billing privileges.

If a CMS contractor, contractor hearing officer, or ALJ determines that a DMEPOS supplier's denied enrollment application meets the standards in § 424.57 of this chapter and any other requirements that may apply, the determination establishes the effective date of the billing privileges as not earlier than the date the carrier made the determination to deny the DMEPOS supplier's enrollment application. Claims are rejected for services furnished before that effective date.

§ 405.815 Submission of claims.

A provider or supplier succeeding in having its enrollment application denial or billing privileges revocation reversed in a binding decision, or in having its billing privileges reinstated, may submit claims to the CMS contractor for services furnished during periods of Medicare qualification, subject to the limitations in § 424.44 of this chapter, regarding the timely filing of claims. If the claims previously were filed timely but were rejected, they are considered filed timely upon resubmission. Previously denied claims for items or services furnished during a period of denial or revocation may be resubmitted to CMS within 1 year after the date of reinstatement or reversal.

§ 405.818 Deadline for processing provider enrollment initial determinations.

Contractors approve or deny complete provider or supplier enrollment applications to approval or denial within the following timeframes:

(a) *Initial enrollments*—Contractors process new enrollment applications within 180 days of receipt.

(b) *Revalidation of existing enrollments*—Contractors process revalidations within 180 days of receipt.

(c) *Change-of-information and reassignment of payment request*—Contractors process change-of-information and reassignment of payment requests within 90 days of receipt.

PART 416—AMBULATORY SURGICAL SERVICES

10. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

11. Section 416.44 is amended by—

a. Removing paragraph (a)(3).

b. Revising paragraph (c).

The revisions read as follows:

§ 416.44 Condition for coverage—Environment.

* * * * *

(c) *Standard: Emergency equipment.* The ASC medical staff and governing body of the ASC coordinates, develops, and revises ASC policies and procedures to specify the types of emergency equipment required for use in the ASC's operating room. The equipment must meet the following requirements:

(1) Be immediately available for use during emergency situations.

(2) Be appropriate for the facility's patient population.

(3) Be maintained by appropriate personnel.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

12. The authority citation for part 423 continues to read as follows:

Authority: Section 1860D–4(e) of the Social Security Act (42 U.S.C 1395w–104(e)).

Subpart D—Cost Control and Quality Improvement Requirements

13. Section 423.160 is amended by revising paragraph (b)(3) to read as follows:

§ 423.160 Standards for electronic prescribing.

* * * * *

(b) * * *

(3) *Eligibility.* (i) The Accredited Standards Committee X12N 270/271–Health Care Eligibility Benefit Inquiry and Response, Version 5010, April 2008, ASC X12N/005010x279 (incorporated by reference in paragraph (c)(2)(i) of this section), for transmitting eligibility inquiries and responses between prescribers and Part D sponsors.

(ii) The National Council for Prescription Drug Programs Telecommunication Standard Specification, Version D, Release 0 (Version D.0), August 2007, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 2 (Version 1.2), January 2006 supporting Telecommunications Standard Implementation Guide, Version D, Release 0 (Version D.0), August 2007, for the NCPDP Data Record in the Detail Data Record (incorporated by reference in paragraph (c)(1)(iii) of this section), for transmitting eligibility inquiries and responses between dispensers and Part D sponsors.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

14. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart P—Requirements for Establishing and Maintaining Medicare Billing Privileges

15. Section 424.510 is amended by revising paragraph (a) to read as follows:

§ 424.510 Requirements for enrolling in the Medicare program.

(a) Providers and suppliers must submit enrollment information on the applicable enrollment application. Once the provider or supplier successfully completes the enrollment process, including, if applicable, a State survey and certification or accreditation process, CMS enrolls the provider or supplier into the Medicare program. To be enrolled, a provider or supplier must meet enrollment requirements specified in paragraph (d) of this section.

* * * * *

16. Section 424.535 is amended by revising paragraph (c) to read as follows:

§ 424.535 Revocation of enrollment and billing privileges in the Medicare program.

* * * * *

(c) *Reapplying after revocation.* After a provider, supplier, delegated official, or authorizing official has had their billing privileges revoked, they are barred from participating in the Medicare program from the effective date of the revocation until the end of the re-enrollment bar. The re-enrollment bar is a minimum of 1 year, but not greater than 3 years, depending on the severity of the basis for revocation. The re-enrollment bar does not apply in the event a revocation of Medicare billing privileges is imposed under paragraph (a)(1) of this section based upon a provider or supplier's failure to respond timely to a revalidation request or other request for information.

* * * * *

17. Section 424.540(a) is revised to read as follows:

§ 424.540 Deactivation of Medicare billing privileges.

(a) *Reasons for deactivation.* CMS may deactivate the Medicare billing privileges of a provider or supplier for any of the following reasons:

(1) The provider or supplier does not submit any Medicare claims for 12 consecutive calendar months. This requirement does not apply to suppliers that enroll in the Medicare program using a Form CMS–855I. The 12-month period will begin the 1st day of the 1st month without a claims submission through the last day of the 12th month without a submitted claim.

(2) The provider or supplier does not report a change to the information supplied on the enrollment application within 90 calendar days of when the change occurred. Changes that must be reported include, but are not limited to, a change in practice location, a change of any managing employee, and a change in billing services. A change in ownership or control must be reported within 30 calendar days as specified in § 424.520(b) and § 424.550(b).

(3) The provider or supplier does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

18. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 302).

Subpart A—Definitions

19. Section 440.110 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 440.110 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

(a) * * *

(2) A ''qualified physical therapist'' is an individual who meets personnel qualifications for a physical therapist at § 484.4.

(b) * * *

(2) A ''qualified occupational therapist'' is an individual who meets personnel qualifications for an occupational therapist at § 484.4.

* * * * *

PART 442—STANDARDS FOR PAYMENT TO NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

20. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart B—Provider Agreements

21. Section 442.15 is revised to read as follows:

§ 442.15 Duration of agreement for ICFs/ID.

(a) The agreement for an ICF/MR remains in effect until the Secretary determines that the facility no longer meets the applicable requirements. The State Survey Agency must conduct a survey of the facility to determine compliance with the requirements at a survey interval of no greater than 15 months.

(b) FFP is available for services furnished by a facility for up to 30 days after its agreement expires or terminates under the conditions specified in § 441.11 of this subchapter.

§ 442.16 [Removed and Reserved]

22. Section 442.16 is removed and reserved.

Subpart C—Certification of ICFs/ID

23. Section 442.109 is revised to read as follows:

§ 442.109 Certification period for ICFs/ID: General provisions.

(a) A survey agency may certify a facility that fully meets applicable requirements. The State Survey Agency must conduct a survey of each ICF/MR not later than 15 months after the last day of the previous survey.

(b) The statewide average interval between surveys must be 12 months or less, computed in accordance with paragraph (c) of this section.

(c) The statewide average interval is computed at the end of each Federal fiscal year by comparing the last day of the most recent survey for each participating facility to the last day of each facility's previous survey.

24. Section 442.110 is amended by revising paragraph (b) to read as follows:

§ 442.110 Certification period for ICFs/ID with standard-level deficiencies.

* * * * *

(b) The survey agency may certify a facility for a period that ends no later than 60 days after the last day specified in the plan for correcting deficiencies. The certification period must not exceed 15 months, including the period allowed for corrections.

* * * * *

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

25. The authority citation for part 486 continues to read as follows:

Authority: Secs. 1102, 1138, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320b–8, and 1395hh) and section 371 of the Public Health Service Act (42 U.S.C. 273).

Subpart G—Requirements for Certification and Designation and Conditions for Coverage: Organ Procurement Organizations

26. Section 486.302 is amended by revising the definition of ''donor document'' to read as follows:

§ 486.302 Definitions.

* * * * *

Donor document means any documented indication of an individual's choice that was executed by the patient, in accordance with any applicable State law, prior to his or her death, and that states his or her wishes regarding organ and/or tissue donation.

* * * * *

§ 486.324 [Amended]

27. Section 486.324 is amended by removing the second paragraph (e).

PART 494—CONDITIONS FOR COVERAGE FOR END-STAGE RENAL DISEASE FACILITIES

28. The authority citation for part 494 continues to read as follows:

Authority: Secs.1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Patient Safety

29. Section 494.60(e) is revised to read as follows:

§ 494.60 Condition: Physical environment.

* * * * *

(e) *Standard: Fire safety.* (1) Except as provided in paragraph (e)(2) of this section, by February 9, 2009, dialysis facilities that are located adjacent to high hazardous occupancies or do not provide one or more exits to the outside at grade level from the patient treatment area level, must comply with applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference at § 403.744(a)(1)(i) of this chapter).

(2) Notwithstanding paragraph (e)(1) of this section, dialysis facilities participating in Medicare as of October 14, 2008 that require sprinkler systems are those housed in multi-story buildings of construction Types II(000), III(200), or V(000), as defined in the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference at § 403.744(a)(1)(i) of this chapter), section 21.1.6.3, which were constructed after January 1, 2008; and those housed in high rise buildings over 75 feet in height.

* * * * *

Nomenclature Changes

30. In 42 CFR chapter IV, remove ''Recipient'' and ''Recipients'' wherever they appear and add in their place ''Beneficiary'' and ''Beneficiaries,'' respectively.

31. In 42 CFR chapter IV, remove ''Mental Retardation,'' ''Mentally Retarded'' and the abbreviated form ''MR'' wherever they appear and add in their place ''Intellectual Disability,'' ''Intellectually Disabled'' and ''ID,'' respectively.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 28, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 6, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–27176 Filed 10–18–11; 11:15 am]

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H.R. 771/P.L. 112–38
To designate the facility of the United States Postal Service located at 1081 Elbel Road in Schertz, Texas, as the "Schertz Veterans Post Office". (Oct. 12, 2011; 125 Stat. 399)

H.R. 1632/P.L. 112–39
To designate the facility of the United States Postal Service located at 5014 Gary Avenue in Lubbock, Texas, as the "Sergeant Chris Davis Post Office". (Oct. 12, 2011; 125 Stat. 400)

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