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Presidential Documents

Title 3—

The President

Proclamation 8765 of December 8, 2011

Human Rights Day and Human Rights Week, 2011

By the President of the United States of America

A Proclamation

With the adoption of the Universal Declaration of Human Rights on December 10, 1948, the United Nations General Assembly affirmed the eternal truths that all people have the right to liberty, equality, and justice under the law. On Human Rights Day and during Human Rights Week, we celebrate our fundamental freedoms and renew our commitment to upholding and advancing human dignity.

The human race reflects a myriad of vibrant cultures and unique identities, yet we are united by the innate liberties that are our common birthright. The rights to assemble peacefully, to speak and worship as we please, and to determine our own destinies know no borders. All people should live free from the threat of extrajudicial killing, torture, oppression, and discrimination, regardless of gender, race, religion, nationality, sexual orientation, or physical or mental disability.

Dictators seek to constrain these liberties through repressive laws and blunt force, but hope cannot be imprisoned and aspirations cannot be killed. We are reminded of this when demonstrators brave bullets and batons to sound the call for reform, when young women dare to go to school despite prohibitions, and when same-sex couples refuse to be told whom to love. The past year saw extraordinary change in the Middle East and North Africa as square by square, town by town, country by country, people rose up to demand their human rights. Around the world, we witnessed significant progress in consolidating democracy and expanding freedoms, often facilitated by critical assistance from the international community.

In the 63 years since the global community came together in support of human dignity and adopted the Universal Declaration of Human Rights, our futures have grown increasingly interconnected. We have a stake not only in the stability of nations, but also in the welfare of individuals. On this anniversary, we recognize human rights as universal, and we stand with all those who reach for the dream of a free, just, and equal world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 10, 2011, as Human Rights Day and the week beginning December 10, 2011, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

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

[FR Doc. 2011–32053
Filed 12–12–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8766 of December 8, 2011

Bill of Rights Day, 2011

By the President of the United States of America

A Proclamation

On December 15, 1791, the United States adopted the Bill of Rights, enshrining in our Constitution the protection of our inalienable freedoms, from the right to speak our minds and worship as we please to the guarantee of equal justice under the law. For 220 years, these fundamental liberties have shaped our national character and stirred the souls of all who dream of a freer, more just world. As we mark this milestone, we renew our commitment to preserving our universal rights and perfecting our Union.

Introduced in the First Congress in 1789, the Bill of Rights was born out of compromise. The promise of enumerated rights enabled the ratification of the Constitution without fear that a more centralized government would encroach on American freedoms. In adopting the first ten Amendments, our Founders put forth an ideal that continues to define our Nation—that we can have both liberty and security, that we need not sacrifice the rights of man for the rule of law.

Throughout our country's history, generations have risen to uphold the principles outlined in our Bill of Rights and advance equality for all Americans. The liberties we enjoy today are possible only because of these brave patriots, from the service members who have defended our freedom to the citizens who have braved billy clubs and fire hoses in the hope of extending America's promise across lines of color and creed. On Bill of Rights Day, we celebrate this proud legacy and resolve to pass to our children an America worthy of our Founders' vision.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 15, 2011, as Bill of Rights Day. I call upon the people of the United States to mark this observance with appropriate ceremonies and activities.

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

[FR Doc. 2011–32054
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Rules and Regulations

Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0649; Directorate Identifier 2011–NM–076–AD; Amendment 39–16882; AD 2011–25–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model MD–11 and MD–11F airplanes. This AD was prompted by a report that the rub strips attached to the horizontal stabilizer front spar access door location were manufactured improperly using anodized aluminum. This AD requires replacing the anodized rub strips with new alodined rub strips to prevent inadequate electrical bonding between the rub strips and the fuel access door, which can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 17, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 17, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; phone: (206) 544–5000, extension 2; fax: (206) 766–5683; email: *dse.boecom@boeing.com*; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5263; fax: (562) 627–5210; email: *philip.kush@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 30, 2011 (76 FR 38332). That NPRM proposed to require replacing the anodized rub strips of the tail fuel tank access door with new alodined rub strips.

Revisions to AD Language

In the NPRM (76 FR 38332, June 30, 2011) we specified that this AD was prompted by a report that the rub strips of the tail fuel tank access door were manufactured improperly. We are revising the statement to more accurately reflect the location of the rub strips. We have revised the summary section and paragraph (e) of this AD accordingly.

Also, to more accurately describe the rub strips, we have revised paragraph (g) of this AD to state, ''replace the anodized rub strips with new alodined rub strips.''

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

Request To Revise Part Number

UPS requested that Boeing revise the part number of the alodined rub strip specified in Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011. UPS stated that the existing anodized rub strip has the same part number as the new alodined rub strip, and this may cause confusion for the operators. UPS stated that changing the part number of the new alodined rub strip would prevent an anodized rub strip from being installed instead of the required alodined rub strip.

We disagree with the commenter's request to revise the part number of the alodined rub strip. Boeing has verified that prior to issuance of Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011, two alodined rub strips have been sold to the MD–11 operators. The rub strips are not part of the access door. They are riveted to the horizontal stabilizer front spar web and are not re-installable after drilling out rivets during replacement. Since only alodined rub strips are available and since the anodized rub strips are destroyed during removal, reinstalling anodized rub strips is not possible. We have determined that the only airplanes with anodized rub strips are the airplanes listed in the Applicability section of this AD. No change has been made to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 120 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace rub strips	32 work-hours × $85 per hour = $2,720	$0	$2,720	$326,400

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–25–06 The Boeing Company: Amendment 39–16882; Docket No. FAA–2011–0649; Directorate Identifier 2011–NM–076–AD.

(a) Effective Date

This AD is effective January 17, 2012.

(b) Affected ADs

None.

(c) Applicability

The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 5510: Horizontal stabilizer structure.

(e) Unsafe Condition

This AD was prompted by a report that the rub strips attached to the horizontal stabilizer front spar access door location were manufactured improperly using anodized aluminum. We are issuing this AD to prevent inadequate electrical bonding between the rub strips and the fuel access door, which can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Installation

Within 60 months after the effective date of this AD, replace the anodized rub strips with new alodined rub strips, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(i) Related Information

For more information about this AD, contact Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5263; fax: (562) 627–5210; email: *philip.kush@faa.gov.*

(j) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011, approved for IBR January 17, 2012,

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; phone: (206) 544–5000, extension 2; fax: (206) 766–5683; email: *dse.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.*

(3) You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/*

federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on November 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31269 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1040; Directorate Identifier 2011–CE–029–AD; Amendment 39–16889; AD 2011–26–01]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Piaggio Aero Industries S.p.A. Model P–180 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the baggage door lockpins not engaging properly and the baggage door open light illuminating when the baggage door is not open, which could lead to the pilot disregarding a valid warning. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 17, 2012.

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

For service information identified in this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/after-sales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 29, 2011 (76 FR 60396). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> One event of in-flight baggage door opening occurred on an in-service aeroplane due to a defective locking mechanism or installation thereof; the BAG DOOR warning light went on properly before the event, but was ignored by the pilot, who misinterpreted it as a false warning.
>
> NOTE: false in-service BAG DOOR warnings had occurred on other P.180 aeroplanes, and Piaggio Aero Industries (PAI) had issued Service Bulletin (SB) No. 80–0223 revision 1 to improve the installation of the baggage door warning microswitch and to modify the locking mechanism if necessary.
>
> This condition, if not detected and corrected, could lead to in-flight detachment of the door, which could hit and damage the left propeller and/or the vertical or horizontal stabilizer, possibly resulting in loss of control of the aeroplane, or in injuries to persons or damage to property on the ground.
>
> This AD requires an inspection of the locking mechanism of the baggage door and its proper adjustment, in accordance with PAI SB No. 80–0289 revision 1; if baggage door lockpins do not reach the correct engagement, or false BAG DOOR warnings were reported by flight crew, this AD requires also a modification of the door mechanism in accordance with PAI SB No. 80–0223 revision 1.

Instances of the baggage door open light illuminating have occurred when the baggage door was not open. This condition, if not corrected, could result in the pilot disregarding a valid warning. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 60396, September 29, 2011) or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the AD.

Costs of Compliance

We estimate that this AD will affect 102 products of U.S. registry. We also estimate that it would take about 29 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $4,482 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be 708,594, or $6,947 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under

Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 60396, September 29, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–26–01 Piaggio Aero Industries S.p.A.: Amendment 39–16889; Docket No. FAA–2011–1040; Directorate Identifier 2011–CE–029–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 17, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piaggio Aero Industries S.p.A. P–180 Model P–180 airplanes, serial numbers affected 1002 and 1004 through 1189, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 52: Doors.

(e) Reason

This AD was prompted by the baggage door lockpins not engaging properly and the baggage door open light illuminating when the baggage door is not open, which could lead to the pilot disregarding a valid warning. We are issuing this AD to detect and correct baggage door lockpins that do not engage properly and modify the locking mechanism, if necessary.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) If false in-flight BAG DOOR indications have occurred, within 165 hours time-in-service (TIS) after January 17, 2012 (the effective date of this AD) or within the next 60 days after January 17, 2012 (the effective date of this AD), whichever occurs first, do the following actions:

(i) Modify the locking mechanism following the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009.

(ii) Inspect the screws on the locking device installed on the door handle for proper tightness and correct as necessary after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(2) If false in-flight BAG DOOR indications have not occurred, within 165 hours TIS after January 17, 2012 (the effective date of this AD) or within the next 60 days after January 17, 2012 (the effective date of this AD), whichever occurs first, do the following actions:

(i) Inspect the baggage door and the baggage door locking mechanism and do the necessary corrective actions following Parts A and B of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(ii) If after the inspection required by paragraph (f)(2)(i) of this AD, the baggage door adjustment procedure was not required or was required and was done successfully, inspect the screws on the locking device on the door handle with the proper tightness. Take any necessary corrective actions after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(iii) If after the inspection required by paragraph (f)(2)(i) of this AD, the baggage door adjustment was required and was not done successfully, within the next 165 hours TIS after January 17, 2012 (the effective date of this AD) or within the next 60 days after January 17, 2012 (the effective date of this AD), whichever occurs first, do the following actions:

(A) Modify the locking mechanism following the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009.

(B) Inspect the screws on the locking device installed on the door handle for proper tightness and correct as necessary after applying a thread locker following Part D of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(3) If the inspections specified in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010, and the modification, if required, specified in Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009, were done before January 17, 2012 (the effective date of this AD), we will allow ''unless already done'' credit to comply with the actions required in this AD. After January 17, 2012 (the effective date of this AD), you must use Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011, to comply with this AD.

(g) FAA AD Differences

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

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current

valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0132, dated July 12, 2011; Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009; Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011, for related information.

(j) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on January 17, 2012:

(i) Piaggio Aero Industries S.p.A. Service Bulletin No. 80–0223, Revision 1, dated July 31, 2009;

(ii) Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, dated November 11, 2010; and

(iii) Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0289, Revision 1, dated January 11, 2011.

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/after-sales/service-support.*

(3) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on December 2, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31623 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0382; Directorate Identifier 2010–NM–063–AD; Amendment 39–16887; AD 2011–25–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all The Boeing Company 757–200, 757–200PF, 757–200CB, 757–300, 767–200, 767–300, and 767–300F series airplanes. That AD currently requires revising the Limitations section of the airplane flight manual (AFM) to advise the flightcrew of procedures to follow to ensure that a fuel filter impending bypass condition due to gross fuel contamination is detected in a timely manner. This new AD requires installing new operating program software (OPS) (Version 7) of the engine indication and crew alerting system (EICAS) in the EICAS computers. This AD also requires various concurrent actions. This AD also retains the existing AD provision that relieves certain airplanes (those equipped with certain EICAS OPS versions) from the requirements. Accomplishment of the new actions terminates the requirements of the existing AD. This AD was prompted by an error in the EICAS OPS. The error prevents the display of an advisory message to the flightcrew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 17, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 17, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6509; fax (425) 917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008). That AD applies to the specified products. The NPRM was published in the **Federal Register** on April 20, 2011 (76 FR 22059). That NPRM proposed to require installing new EICAS OPS (Version 7) in the EICAS computers. That NPRM also proposed to require various concurrent actions, depending on the airplane configuration, including installing a certain EICAS OPS version, making wiring changes, replacing the audio accessory unit, replacing certain handsets and EICAS computers, changing EICAS computer connector keying, and loading operational program configuration (OPC) software. That NPRM also proposed to retain the existing AD provision that relieves certain airplanes (those equipped with certain EICAS OPS versions) from the proposed requirements. That NPRM also specified that accomplishment of the new proposed actions would terminate the requirements of the existing AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments

received on the proposal and the FAA's response to each comment.

Support for NPRM

Boeing and Air Line Pilots Association, International, support the intent and contents of the NPRM (76 FR 22059, April 20, 2011).

Request To Remove Requirement To Install OPS Version 2

ABX Air requested that we revise the NPRM (76 FR 22059, April 20, 2011) to remove the requirement to install OPS Version 2 before installing OPS Version 7. ABX Air contended that OPS Version 2 is not a prerequisite to OPS Version 7, and does not need to be required in the AD.

We agree with the request, for the reasons provided by the commenter. Where paragraph (j)(12) of the proposed AD would have required installing ''EICAS OPS Version 2 and EICAS OPC software, as applicable,'' we have limited that requirement in this final rule to installing ''EICAS OPC software, as applicable.''

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 1,078 airplanes of U.S. registry. We estimate the costs to comply with the following requirements:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision (retained from AD 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23 2008).	1 work-hour × $85 per hour = $85.	0	85	$91,630
EICAS OPS installation (new proposed action)	1 work-hour × $85 per hour = $85.	0	85	91,630

We have no definitive data for the number of U.S.-registered airplanes subject to the proposed concurrent requirements in this AD, but we provide the following estimated per-airplane costs to comply with the concurrent actions.

ESTIMATED COSTS FOR CONCURRENT ACTIONS

Action	Labor cost	Parts cost	Cost per product
EICAS OPS installation	1–2 work-hours × $85 per hour = $85–$170	Negligible	$85–$170
Wiring change	5 work-hours × $85 per hour = $425	$501	926
AAU/handset replacement	1 work-hour × $85 per hour = $85	Negligible	85
EICAS computer replacement, wiring change, OPC installation.	5–24 work-hours × $85 per hour = $425–$2,040	Negligible	425–2,040
EICAS OPC installation	1 work-hour × $85 per hour = $85	Negligible	85

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008), and adding the following new AD:

2011–25–11 The Boeing Company: Amendment 39–16887; Docket No. FAA–2011–0382; Directorate Identifier 2010–NM–063–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 17, 2012.

(b) Affected ADs

This AD supersedes AD 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008).

(c) Applicability

This AD applies to all The Boeing Company 757–200, 757–200PF, 757–200CB, 757–300, 767–200, 767–300, and 767–300F series airplanes; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 31: Instruments.

(e) Unsafe Condition

This AD was prompted by an error in the operating program software (OPS) of the engine indication and crew alerting system (EICAS). The error prevents the display of an advisory message to the flightcrew of a left engine fuel filter contamination and imminent bypass condition, which may indicate an imminent multiple engine thrust loss or engine malfunction event due to fuel contamination. We are issuing this AD to prevent malfunction and thrust loss on both engines, which could result in a forced off-airport landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

Restatement of Requirements of AD 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008), With No Changes

(g) Revision of Airplane Flight Manual (AFM)

Except as provided by paragraphs (h) and (i) of this AD: Within 30 days after May 8, 2008 (the effective date of AD 2008–09–07, Amendment 39–15488 (73 FR 21811, April 23, 2008)), revise the Limitations section of the applicable AFM to include the following. This may be done by inserting a copy of this AD into the AFM.

''If the STATUS cue shows while on the ground after engine start or during flight, select the status page on the secondary EICAS display, and verify the ''L ENG FUEL FILT'' message is not shown. If the ''L ENG FUEL FILT'' message is not shown on the status page, the secondary engine parameters may be reselected on the secondary EICAS display, or the display may be blanked. If the ''L ENG FUEL FILT'' message is shown on the status display, accomplish the ENGINE FUEL FILTER non-normal checklist as published in the Boeing Quick Reference Handbook. If on the ground, check the Dispatch Deviations Guide (DDG), or operator equivalent.

In the event that the status level ''L ENG FUEL FILT'' and advisory level ''R ENG FUEL FILT'' messages are simultaneously shown, an impending fuel filter bypass condition exists on both engines. With both messages shown, airplane fuel system contamination may be present and may result in erratic engine operation or flameout. Further flight crew action in response to either or both the ''L ENG FUEL FILT'' status-level message and the ''R ENG FUEL FILT'' advisory level messages being shown are not established by Boeing or the FAA. Any further flight crew action should be determined by individual operator policy. Boeing policy on flight crew use of status-level messages has not changed. After engine start, any condition having an adverse effect on safe continuation of the flight appears as an EICAS alert message (Warning, Caution, or Advisory). If other status-level messages are shown as a consequence of complying with these temporary operating instructions, the flight crew should respond in accordance with the appropriate operator policy. Dispatch of the airplane with an inoperative EICAS display unit is prohibited.''

(h) Exception to AFM Limitations Requirement

If all affected airplanes in an operator's fleet have been verified by the operator to have EICAS computer part number S242N701–1001 and only EICAS OPS versions other than Version 6 software that are FAA approved for that airplane, then accomplishment of the actions specified in paragraph (g) of this AD is not required.

New Requirements of This AD

(i) EICAS OPS Installation

Except as provided by paragraph (k) of this AD: Within 90 days after the effective date of this AD, install EICAS OPS Version 7 in the left and right EICAS computers, in accordance with the applicable service information specified in paragraph (i)(1) or (i)(2) of this AD. Accomplishment of the applicable requirements of paragraphs (i) and (j) of this AD terminates the requirements of paragraph (g) of this AD, provided that those actions have been accomplished on all airplanes operated within an operator's fleet.

(1) For Model 757 airplanes: Use Boeing Special Attention Service Bulletin 757–31–0192, dated September 11, 2009.

(2) For Model 767–200, –300, and –300F series airplanes: Use Boeing Special Attention Service Bulletin 767–31–0267, dated September 11, 2009.

(j) Concurrent Requirements

For airplanes subject to the requirements of paragraph (i) of this AD: Before or concurrently with accomplishment of the requirements of paragraph (i) of this AD, do the applicable actions specified in paragraphs (j)(1) through (j)(12) of this AD.

(1) For Model 757–200, 757–200CB, 757–200PF series airplanes, as identified in Boeing Service Bulletin 757–31–0104, dated December 5, 2002: Install EICAS OPS Version 5, in accordance with Boeing Service Bulletin 757–31–0104, dated December 5, 2002.

(2) For Model 757–300 series airplanes, as identified in Boeing Service Bulletin 757–31–0105, dated December 5, 2002: Install EICAS OPS Version 5, in accordance with Boeing Service Bulletin 757–31–0105, dated December 5, 2002.

(3) For Model 767–200 and –300 airplanes, as identified in Boeing Service Bulletin 767–23–0159, Revision 2, dated January 11, 2007: Change wires from the audio accessory unit (AAU) on the E2–5 shelf to the bell chime module in the warning electronics unit (WEU) (P51), in accordance with Boeing Service Bulletin 767–23–0159, Revision 2, dated January 11, 2007.

(4) For Model 767–300 series airplanes, as identified in Boeing Special Attention Service Bulletin 767–23–0160, dated May 31, 2001: Replace the AAU with a new or serviceable unit, in accordance with Boeing Special Attention Service Bulletin 767–23–0160, dated May 31, 2001.

(5) For Model 767–300 series airplanes, as identified in Boeing Service Bulletin 767–23–0167, dated February 28, 2002: Replace the AAU with a new or serviceable unit, in accordance with Boeing Service Bulletin 767–23–0167, dated February 28, 2002.

(6) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–23–0164, dated May 31, 2001: Replace the pilots' handset on the P8 panel, replace 5 attendant handsets, and replace the AAU on the E2–5 shelf in the main equipment center, as applicable; in accordance with Boeing Service Bulletin 767–23–0164, dated May 31, 2001.

(7) For Model 767–200, 767–300, and 767–300F series airplanes, as identified in Boeing Service Bulletin 767–31–0091, Revision 4, dated July 7, 2005: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, and load operational program configuration (OPC) software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0091, Revision 4, dated July 7, 2005. These actions are also required by AD 2004–10–05, Amendment 39–13635 (69 FR 28051, May 18, 2004).

(8) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0098, including Appendixes A, B, and C, Revision 2, dated October 21, 1999: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, and load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0098, including Appendixes A, B, and C, Revision 2, dated October 21, 1999. These actions are also required by AD 2004–10–05 (69 FR 28051, May 18, 2004).

(9) For Model 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0099, including Appendixes A, B, and C, Revision 3, dated February 8, 2001: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, and load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0099, including Appendixes A, B, and C, Revision 3, dated February 8, 2001. These actions are also

required by AD 2004–10–05 (69 FR 28051, May 18, 2004).

(10) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0100, including Appendixes A, B, and C, Revision 2, dated July 29, 1999: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, and load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0100, including Appendixes A, B, and C, Revision 2, dated July 29, 1999. These actions are also required by AD 2004–10–05 (69 FR 28051, May 18, 2004).

(11) For Model 767–200 and 767–300 series airplanes, as identified in Boeing Service Bulletin 767–31–0101, including Appendixes A, B, and C, dated July 6, 2000: Replace the left and right EICAS computers in the E8 rack, make wire changes in the E8 shelf, change the left and right EICAS computer connector keying on the E8 shelf, and load OPC software into both left and right EICAS computers; in accordance with Boeing Service Bulletin 767–31–0101, including Appendixes A, B, and C, dated July 6, 2000. These actions are also required by AD 2004–10–05 (69 FR 28051, May 18, 2004).

(12) For Model 767–200, 767–300, and 767–300F series airplanes, as identified in the table in paragraph 3.D. of Boeing Service Bulletin 767–31–0114, Revision 1, dated June 8, 2000: Install EICAS OPC software, as applicable, in accordance with Boeing Service Bulletin 767–31–0114, Revision 1, dated June 8, 2000.

(k) Exception to OPS Installation Requirement

For any airplane verified by the operator to have EICAS computer part number S242N701–1001 and only EICAS OPS versions other than Version 6 software that are FAA approved for that airplane, the actions specified in paragraphs (i) and (j) of this AD are not required.

(l) Parts Installation

As of the effective date of this AD, no person may install EICAS OPS Version 6 software on any airplane.

(m) Credit for Actions Accomplished in Accordance With Previous Service Information

Accomplishment before the effective date of this AD of the actions specified in a service bulletin identified in table 1 of this AD is acceptable for compliance with the applicable requirements of paragraph (j) of this AD, except as noted.

TABLE 1—CREDIT SERVICE BULLETINS

Boeing Service Bulletin—	Revision—	Dated—	Airplanes excluded from compliance approval—
767–23–0159	1	December 5, 2002	No exceptions.
767–31–0091	1	February 4, 1999	Acceptable except for airplanes VN634, VN635, VH171, VN172, VF251, and VN198.
767–31–0091	2	February 24, 2000	Acceptable except for airplane VN198.
767–31–0091	3	April 27, 2000	No exceptions.
767–31–0098		August 27, 1998	Acceptable except for airplanes VB051 through VB054, VN307 through VN314, VN676, and VK046 through VK054.
767–31–0098	1	February 4, 1999	Acceptable except for airplanes VB051 through VB054, VN307 through VN314, VN676, and VK046 through VK054.
767–31–0099		August 6, 1998	Acceptable only for airplanes VL871 through VL873.
767–31–0099	1	February 4, 1999	Acceptable only for airplanes VL871 through VL873.
767–31–0099	2	June 17, 1999	Acceptable only for airplanes VL871 through VL873.
767–31–0100		August 20, 1998	No exceptions.
767–31–0100	1	February 4, 1999	No exceptions.
767–31–0114		March 18, 1999	Acceptable except for airplanes VL891 through VL910, VR201 through VR206, and VW701 through VW721.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(o) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6509; fax (425) 917–6590; email: *rebel.nichols@faa.gov.*

(p) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(i) Boeing Special Attention Service Bulletin 757–31–0192, dated September 11, 2009, approved for IBR January 17, 2012.

(ii) Boeing Special Attention Service Bulletin 767–31–0267, dated September 11, 2009, approved for IBR January 17, 2012.

(iii) Boeing Service Bulletin 757–31–0104, dated December 5, 2002, approved for IBR January 17, 2012.

(iv) Boeing Service Bulletin 757–31–0105, dated December 5, 2002, approved for IBR January 17, 2012.

(v) Boeing Service Bulletin 767–23–0159, Revision 2, dated January 11, 2007, approved for IBR January 17, 2012.

(vi) Boeing Special Attention Service Bulletin 767–23–0160, dated May 31, 2001, approved for IBR January 17, 2012.

(vii) Boeing Service Bulletin 767–23–0164, dated May 31, 2001, approved for IBR January 17, 2012.

(viii) Boeing Service Bulletin 767–23–0167, dated February 28, 2002, approved for IBR January 17, 2012.

(ix) Boeing Service Bulletin 767–31–0091, Revision 4, dated July 7, 2005, approved for IBR January 17, 2012.

(x) Boeing Service Bulletin 767–31–0098, including Appendixes A, B, and C, Revision 2, dated October 21, 1999, approved for IBR January 17, 2012.

(xi) Boeing Service Bulletin 767–31–0099, including Appendixes A, B, and C, Revision 3, dated February 8, 2001, approved for IBR January 17, 2012.

(xii) Boeing Service Bulletin 767–31–0100, including Appendixes A, B, and C, Revision 2, dated July 29, 1999, approved for IBR January 17, 2012.

(xiii) Boeing Service Bulletin 767–31–0101, including Appendixes A, B, and C, dated July 6, 2000, approved for IBR January 17, 2012.

(xiv) Boeing Service Bulletin 767–31–0114, Revision 1, dated June 8, 2000, approved for IBR January 17, 2012.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–

5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 29, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31418 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1190; Directorate Identifier 2010–SW–038–AD; Amendment 39–16877; AD 2011–25–01]

RIN 2120–AA64

Airworthiness Directives; Apical Industries, Inc., (Apical) Emergency Float Kits

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Apical emergency float kits installed on certain model helicopters under supplemental type certificates. This AD requires adding placards on each side of the fuselage to identify the location and operation of the liferaft external inflation handle. This AD also requires replacing each liferaft operation placard to state that external liferafts are installed. This amendment is prompted by a report of a helicopter that crashed into the water, and the pilot did not deploy the floats and liferafts. Two external T-handles were available for deployment of the liferafts but were not used by the passengers because they were unaware of their location. The actions specified by this AD are intended to prevent helicopter occupants from further injury due to unnecessary exposure to harsh water conditions and to aid in deploying liferafts when liferafts are available on the helicopter and can be activated after a water landing.

DATES: Effective January 17, 2012.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2012.

ADDRESSES: You may get the service information identified in this AD from Apical Industries, Inc., 2608 Temple Heights Drive, Oceanside, California 92056–3512, telephone (760) 724–5300, fax (760) 758–9612, *http://www.apicalindustries.com/.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Venessa Stiger, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5337, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for helicopters modified in accordance with certain supplemental type certificates with certain emergency float kits, was published in the **Federal Register** on December 7, 2010 (75 FR 75934). That action proposed to require, for certain model helicopters modified per Supplemental Type Certificate Number SR01535LA, SR01779LA, SR01813LA, SR01855LA, or SR00856LA, adding an external placard near the external T-Handles to provide instructions for the operation of the liferaft external inflation handle. That action also proposed to require replacing earlier installed liferaft operation placards with more recent placards.

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

We estimate that this AD will affect 324 helicopters of U.S. registry, and it will take about ½ work hour per helicopter to install 4 or 6 placards at an average labor rate of $85 per work hour. Required parts will cost about $70 per helicopter. Based on these figures, we estimate the total cost impact of this AD on U.S. operators is $36,450 for the entire fleet.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–25–01 Apical Industries, Inc.: Docket No. FAA–2010–1190; Directorate Identifier 2010–SW–038–AD.

Applicability: The helicopter models, certificated in any category, with an Emergency Float Kit with a part number (P/N) and serial number (S/N), installed by a supplemental type certificate (STC), as follows:

Kit P/N	Kit S/N	Affected helicopter model	STC No.
614.3001	080 and below	Bell Helicopter Textron (Bell) 407	SR01535LA
614.3003	133 and below	Bell 206L, L–1, L–3, and L–4	SR01535LA
614.3007	014 and below	Bell 206A and B	SR01535LA
614.7601	045 and below	Bell 210, 212, 412, 412CF, 412EP, AB412, and AB412EP	SR01779LA
634.2901	012 and below	Bell 427	SR01813LA
644.1801	031 and below	Eurocopter Deutschland Gmbh (Eurocopter) EC135	SR01855LA
20430–300	009 and below	Eurocopter BO–105A, C, S, LS A–1 and LS A–3	SR00856LA

Compliance: Within 180 days, unless accomplished previously.

To install placards to aid in locating and deploying liferafts to prevent further injury or loss of life in the event of a helicopter landing in the water, do the following:

(a) Install the Liferaft External Inflation Handle Placard, P/N 600.0897, shown in Figure 1 of Apical Industries Inc. Alert Service Bulletin SB2008–01, Revision A, dated March 3, 2010 (ASB), on the crosstubes or fuselage near the external T-Handles, as shown for two model helicopters in Figures 2 and 3, by following the Accomplishment Instructions, 1.0, paragraphs 1 through 5, of the ASB.

(b) Remove the Liferaft Operation Placard, P/N 634.9703, Revision N/C through B, as shown in Figure 4 of the ASB, and install Liferaft Operation Placard, P/N 634.9703, Revision C, as shown in Figure 5, above all aircraft exits, inside the aircraft in plain view.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, *ATTN:* Venessa Stiger, Aviation Safety Engineer, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5337, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Codes are 2564: Liferaft and 3212: Emergency Flotation Section.

(e) The modification shall be done in accordance with the specified portions of Apical Industries Inc. Alert Service Bulletin SB2008–01, Revision A, dated March 3, 2010. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Apical Industries, Inc., 2608 Temple Heights Drive, Oceanside, California 92056–3512, telephone (760) 724–5300, fax (760) 758–9612, *http://www.apicalindustries.com/*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on January 17, 2012.

Issued in Fort Worth, Texas, on November 18, 2011.

Lance T. Gant,

Acting Manger, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–30925 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0911; Directorate Identifier 2010–NM–248–AD; Amendment 39–16883; AD 2011–25–07]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model 4101 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A door failure mode has been reported by an operator.

Investigation has shown that the passenger/crew entry door pin-guide plates can fail prior to the expected fatigue life. A metallurgical examination of the failed component (lower guide plate) concluded that the occurred failure was due to exfoliation corrosion.

The current inspection regime is not adequate to identify early stages of this corrosion.

This condition, if not corrected, can lead to the sudden depressurisation of the aeroplane and consequently may injure the occupants.

* * * * *

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

DATES: This AD becomes effective January 17, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2012.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 31, 2011 (76 FR 54139). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A door failure mode has been reported by an operator.

Investigation has shown that the passenger/crew entry door pin-guide plates can fail prior to the expected fatigue life. A metallurgical examination of the failed component (lower guide plate) concluded

that the occurred failure was due to exfoliation corrosion.

The current inspection regime is not adequate to identify early stages of this corrosion.

This condition, if not corrected, can lead to the sudden depressurisation of the aeroplane and consequently may injure the occupants.

For the reasons described above, this [EASA] AD requires immediate and periodic ultrasonic inspections [for a split caused by exfoliation corrosion] of the door pin guides and the accomplishment of the relevant corrective actions [replacing the affected guideplates] as necessary.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 54139, August 31, 2011) or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $340, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $525 for a cost of $695 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 54139, August 31, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–25–07 BAE Systems (Operations) Limited: Amendment 39–16883. Docket No. FAA–2011–0911; Directorate Identifier 2010–NM–248–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 17, 2012.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

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

A door failure mode has been reported by an operator.

Investigation has shown that the passenger/crew entry door pin-guide plates can fail prior to the expected fatigue life. A metallurgical examination of the failed component (lower guide plate) concluded that the occurred failure was due to exfoliation corrosion.

The current inspection regime is not adequate to identify early stages of this corrosion.

This condition, if not corrected, can lead to the sudden depressurisation of the aeroplane and consequently may injure the occupants.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 6 months after the effective date of this AD, do an ultrasonic inspection of the passenger/crew door upper and lower guide

plates for a split caused by exfoliation corrosion, in accordance with the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Service Bulletin J41–52–064, dated September 15, 2009. Repeat the ultrasonic inspection, thereafter, at intervals not to exceed 48 months.

(h) If a split caused by exfoliation corrosion of an area of 78mm^2 (0.12 in.^{2}) or greater is found during any ultrasonic inspection required by paragraph (g) of this AD: Before further flight, replace any affected guide plates with a serviceable guide plate, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–52–064, dated September 15, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0179, dated August 30, 2010; and BAE Systems (Operations) Limited Service Bulletin J41–52–064, dated September 15, 2009; for related information.

Material Incorporated by Reference

(k) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) BAE Systems (Operations) Limited Service Bulletin J41–52–064, dated September 15, 2009, approved for IBR January 17, 2012.

(2) For BAE Systems (Operations) Limited service information identified in this AD, contact Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31314 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0710; Directorate Identifier 2010–NE–26–AD; Amendment 39–16892; AD 2011–26–02]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for the products listed above. This AD was prompted by Turbomeca restoring all or part of the life limits of the affected discs, and European Aviation Safety Agency's (EASA) issuance of AD 2010–0101R2, dated March 24, 2011, to do the same. Turbomeca has introduced a reinforced eddy-current inspection (ECI) which, combined with a revised analysis, allows the life limit of the affected discs to be extended. We are issuing this revision to prevent failure of the gas generator (GG) second stage turbine disc which could result in the release of high energy debris and damage to the helicopter.

DATES: This AD is effective January 17, 2012.

ADDRESSES: For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15; email: *noria-dallas@turbomeca.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: (781) 238–7779; fax: (781) 238–7199; email: *frederick.zink@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2010–19–06, amendment 39–16434 (75 FR 57371, September 21, 2010). That AD applies to the specified products. The NPRM published in the **Federal Register** on July 19, 2011 (76 FR 42610). That NPRM proposed to require removing GG second stage turbine discs, P/N 0 292 25 040 0, that do not have the ''CFR'' marking, from service before exceeding 4,000 cycles-in-service (CIS) since-new. That NPRM also proposed to require removing GG second stage turbine discs, P/N 0 292 25 040 0, that have the ''CFR'' marking, from service before exceeding 6,500 CIS since-new.

That NPRM was prompted by Turbomeca restoring all or part of the life limits of the affected discs, per

EASA's issuance of AD 2010–0101R2, dated March 24, 2011, to do the same. Turbomeca's reinforced ECI provides a lower (improved) detection threshold for metallurgical non-conformities. This reinforced ECI, combined with a revised analysis, allows the life limit of the post-TU347 GG second stage turbine discs identified as ''CFR'' to be extended to 6,500 CIS since-new. Further, as a result of this testing and analysis, the non-CFR 2nd stage turbine discs pre-TU347 inspection disc life has been extended to 4,000 CIS since-new. This new AD still prevents disc failure but also extends the life limits of the affected discs. We are issuing this revision to prevent failure of the GG second stage turbine disc which could result in the release of high energy debris and damage to the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 42610, July 19, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor clarifications. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 42610, July 19, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 42610, July 19, 2011).

Costs of Compliance

We estimate that this AD will affect 203 Turbomeca Arriel 1 series turboshaft engines on helicopters of U.S. registry. We estimate that no additional labor costs will be incurred to return part of the life limit of the discs that do not have the ''CFR'' marking to the original published life limit. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–19–06, Amendment 39–16434 (75 FR 57371, September 21, 2010), and adding the following new AD:

2011–26–02 Turbomeca: Amendment 39–16892; Docket No. FAA–2010–0710; Directorate Identifier 2010–NE–26–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 17, 2012.

(b) Affected ADs

This AD revises AD 2010–19–06, Amendment 39–16434.

(c) Applicability

This AD applies to Turbomeca Arriel 1A, 1A1, 1B, 1C, 1C1, 1C2, 1D, 1D1, and 1S1 turboshaft engines that have incorporated Modification TU347.

(d) Unsafe Condition

This AD was prompted by Turbomeca restoring all or part of the life limits of the affected discs. We are issuing this AD to prevent failure of the gas generator (GG) second stage turbine disc which could result in the release of high energy debris and damage to the helicopter.

(e) Compliance

(1) Comply with this AD within the compliance times specified, unless already done.

(2) Remove from service the GG second stage turbine discs, part number (P/N) 0 292 25 040 0, that do not have the ''CFR'' marking before exceeding 4,000 cycles-in-service (CIS) since-new.

(3) Remove from service gas generator second stage turbine discs, P/N 0 292 25 040 0, that have the ''CFR'' marking before exceeding 6,500 CIS since-new.

(f) Gas Generator Second Stage Turbine Installation Prohibition

(1) After the effective date of this AD, do not install into any engine gas generator second stage turbine discs, P/N 0 292 25 040 0, that do not have the ''CFR'' marking and have 4,000 or more CIS since-new.

(2) After the effective date of this AD, do not install into any engine gas generator second stage turbine discs, P/N 0 292 25 040 0, that have the ''CFR'' marking and have 6,500 or more CIS since-new.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) Refer to Turbomeca Alert Mandatory Service Bulletin No. A292 72 0831, Version C, for related information. Contact Turbomeca, 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15; or email: *noria-dallas@turbomeca.com* for a copy of this service information.

(2) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(3) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7779; fax: (781) 238–7199; email: *frederick.zink@faa.gov.*

(i) Material Incorporated by Reference

None.

Issued in Burlington, MA, on December 5, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31797 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1298; Directorate Identifier 2011–NE–39–AD; Amendment 39–16888; AD 2011–25–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pratt & Whitney Canada PT6A–15AG, –27, –28, –34, –34AG, –34B, and –36 series turboprop engines. This AD requires the removal of certain affected part manufacturer approval (PMA) replacement Timken Alcor Aerospace Technologies, Inc. (TAATI) first stage reduction sun gears and/or the interacting planetary gear sets from the propeller reduction gearbox assembly. This AD was prompted by a failure report of a certain TAATI PMA sun gear, installed since December 22, 2008. We are issuing this AD to prevent failure of the sun gear, which will result in an engine in-flight shut down, possible uncontained engine failure, aircraft damage, and serious injuries.

DATES: This AD is effective December 28, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 28, 2011.

We must receive any comments on this AD by January 27, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Timken Alcor Aerospace Technologies, Inc., 3110 N. Oakland, Mesa, Arizona 85215; phone: (480) 632–1039; Web site: *http://www.timken.com/mro.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Paul Craig, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Suite 100, Lakewood, CA 90712; phone: (562) 627–5252; fax: (562) 627–5210; email: *paul.craig@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On October 12, 2011, we issued AD 2011–20–51, Amendment 39–16843 (76 FR 64001, October 17, 2011), for Pratt & Whitney Canada PT6A–15AG, –27, –28, –34, –34AG, –34B, and –36 series turboprop engines having a TAATI PMA replacement first stage reduction sun gear, part number (P/N) E3024765, installed.

Actions Since AD 2011–20–51 (76 FR 64001, October 17, 2011) Was Issued

Since we issued AD 2011–20–51, we received a report of another failure of a sun gear not listed in that AD. Analysis has revealed that additional PMA replacement TAATI gears, installed since December 22, 2008, have the same failure potential as the gears affected by that AD. The additional gears are identified as follows:

- Replacement first stage reduction sun gears, P/N E3024765, serial numbers (S/Ns) PC5–051 through PC5–089, and S/Ns SG36–051 through SG36–120, including the associated planetary gears in propeller reduction gearbox assembly.
- Replacement planetary gear sets, P/N E3101455–02, S/Ns EE–051 through EE–197, S/Ns EE–4051 through EE–4094, and S/N EE–4113, including the associated sun gear in the propeller reduction gearbox assembly.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires the removal of affected sun gears and planetary gear sets described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time required in this AD to remove any affected parts from service. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1298 and directorate identifier 2011–NE–39–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that the inspection in this AD will affect about 5,000 engines installed on airplanes of U.S. registry. We also estimate that disassembly of reduction gearboxes will affect about 50 engines, and the gear removal will affect about 40 engines. We also estimate that it will take about 1 work-hour per engine for inspecting the engine records. We also estimate that for about 10 engines, records identifying the gear S/N for each gearbox do not exist, so that it will take about 10 work-hours to inspect gears for affected S/Ns and then to reassemble the reduction gearbox. We also estimate that it would take about 16 work-hours for parts replacement. The average labor rate is $85 per work-hour. Required parts for one engine will cost about $14,500. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,067,900.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–25–12 Pratt & Whitney Canada: Amendment 39–16888; Docket No. FAA–2011–1298; Directorate Identifier 2011–NE–39–AD.

(a) Effective Date

This AD is effective December 28, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada PT6A–15AG, –27, –28, –34, –34AG, –34B, and –36 series turboprop engines that have had maintenance done to the power section module involving the first stage reduction sun gear or planetary gear set replacement since December 22, 2008, and having a:

(1) Timken Alcor Aerospace Technologies, Inc. (TAATI) part manufacturer approval (PMA) replacement first stage reduction sun gear, part number (P/N) E3024765, serial numbers (S/Ns) PC5–051 through PC5–089, or S/Ns SG36–051 through SG36–120, installed; or

(2) TAATI PMA replacement planetary gear set, P/N E3101455–02, S/Ns EE–051 through EE–197, or S/Ns EE–4051 through EE–4094, or S/N EE–4113, installed.

(d) Unsafe Condition

This AD was prompted by a failure report of a certain TAATI PMA sun gear, installed since December 22, 2008. We are issuing this AD to prevent failure of the sun gear, which will result in an engine in-flight shut down, possible uncontained engine failure, aircraft damage, and serious injuries.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) Chip Detector Inspections

(1) Within 10 operating hours after the effective date of this AD:

(i) Inspect the chip detector on the propeller reduction gearbox assembly for metal debris.

(ii) Do the inspections in accordance with paragraph 1 of the Accomplishment Instructions of Timken Alcor Aerospace Technologies, Inc. Alert Service Bulletin No. T–804, Revision B, dated November 7, 2011. If the amount of metal debris found exceeds the allowable limits then, before further flight, permanently remove from service the affected gears as specified in paragraph (g) of this AD.

(2) Repeat the chip detector inspections within every 25 additional operating hours thereafter, until the affected gears are removed from service.

(g) Gear Removals From Service

Within 60 operating hours or 365 days after the effective date of this AD, whichever occurs first, permanently remove from service the PMA replacement TAATI first stage reduction sun gear and the interacting planetary gears, and the PMA replacement TAATI planetary gear sets and interacting gears, listed in paragraph (c) of this AD, from the propeller reduction gearbox assembly.

(h) Installation Prohibition

(1) After the effective date of this AD, do not install on any airplane, any engine or power section module with a TAATI PMA replacement first stage reduction sun gear, P/N E3024765, S/Ns PC5–051 through PC5–089, or S/Ns SG36–051 through SG36–120, or the associated planetary gears in the propeller reduction gearbox assembly.

(2) After the effective date of this AD, do not install on any airplane, any engine or power section module with a TAATI PMA planetary gear set, P/N E3101455–02, S/Ns EE–051 through EE–197, or S/Ns EE–4051 through EE–4094, or S/N EE–4113, or the associated first stage sun gear in the propeller reduction gearbox assembly.

(i) Gears Are Matched Sets

The sun gear and planetary gear sets as-installed are considered to be matched sets. Therefore, the sun gear and planetary gear sets associated as mating parts with an affected gear in the propeller reduction gearbox assembly must also be permanently removed from service.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(k) Related Information

For further information about this AD, contact: Paul Craig, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Suite 100, Lakewood, CA 90712; phone: (562) 627–5252; fax: (562) 627–5210; email: *paul.craig@faa.gov.*

(l) Material Incorporated by Reference

You must use the following service information to do the chip detector

inspections required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Timken Alcor Aerospace Technologies, Inc. Alert Service Bulletin No. T–804, Revision B, dated November 7, 2011, approved for IBR December 28, 2011.

(2) For service information identified in this AD, contact Timken Alcor Aerospace Technologies, Inc., 3110 N. Oakland, Mesa, Arizona 85215; phone: (480) 632–1039; Web site: *http://www.timken.com/mro.*

(3) You may review copies of the service information at the FAA, New England Region, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on December 1, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31868 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1341; Directorate Identifier 2011–NE–41–AD; Amendment 39–16891; AD 2011–25–51]

RIN 2120–AA64

Airworthiness Directives; Continental Motors, Inc. (CMI) Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Continental Motors, Inc. (CMI) models TSIO–520, TSIO–550–K, TSIOF–550K, and IO–550–N series reciprocating engines. This emergency AD was sent previously to all known U.S. owners and operators of these engines. This AD requires replacing affected CMI starter adapters with starter adapters eligible for installation. This AD was prompted by 5 reports received of fractures in starter adapter shaft gears in certain part number (P/N) CMI starter adapters. We are issuing this AD to prevent failure of the starter adapter gear shaft, leading to an inoperable oil scavenge pump and engine in-flight shutdown.

DATES: This AD is effective December 28, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–25–51, issued on November 29, 2011, which contained the requirements of this amendment.

We must receive comments on this AD by January 27, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Continental Motors, Inc., P.O. Box 90, Mobile, AL 36601; phone: (251) 438–3411, or go to: *http://tcmlink.com/servicebulletins.cfm.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Anthony Holton, Aerospace Engineer, Atlanta Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, Atlanta, GA 30337; phone: (404) 474–5567; fax: (404) 474–5567; email: *anthony.holton@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On November 29, 2011, we issued Emergency AD 2011–25–51, which requires replacing affected CMI starter adapters with starter adapters eligible for installation. This action was prompted by 5 reports received of fractures in starter adapter shaft gears in certain P/N CMI starter adapters. This condition, if not corrected, could result in failure of the starter adapter gear shaft, leading to an inoperable oil scavenge pump and engine in-flight shutdown.

Relevant Service Information

We reviewed CMI Mandatory Service Bulletin (MSB) No. MSB11–4, dated November 23, 2011. The MSB describes the affected starter adapters, and describes what starter adapters are eligible for installation.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires replacing affected CMI starter adapters with starter adapters eligible for installation.

Differences Between the AD and the Service Information

The CMI MSB No. MSB11–4, dated November 23, 2011 requires reporting. This emergency AD does not.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time required to remove the affected parts from service. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1341 and Directorate Identifier 2011–NE–41–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 195 engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 work-hours per engine to perform the actions required by this AD, and that the average labor rate is $85 per work-hour. Required parts will cost about $500 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $163,800.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–25–51 Continental Motors, Inc. (Formerly Teledyne Continental Motors, Continental): Amendment 39–16891; Docket No. FAA–2011–1341; Directorate Identifier 2011–NE–41–AD.

(a) Effective Date

This AD is effective December 28, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–25–51, issued on November 29, 2011, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This emergency AD applies to Continental Motors, Inc. (CMI) TSIO–520–B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, VB; TSIO–550–K; TSIOF–550–K; IO–550–N (Turbo-normalized only; STC SE10589SC); with a starter adapter part number (P/N) 642085A17, 642085A19, 642085A20, 642085–1A1, and R–642085A17, installed, where the engine was manufactured between January 1, 2011 and November 20, 2011, or, where a replacement new or rebuilt starter adapter that was purchased from Continental Motors, Inc. and installed between January 1, 2011 and November 20, 2011.

(d) Unsafe Condition

This AD was prompted by 5 reports received of fractures in starter adapter shaft gears in certain P/N CMI starter adapters. We are issuing this AD to prevent failure of the starter adapter gear shaft, leading to an inoperable oil scavenge pump and engine in-flight shutdown.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) For starter adapters with less than 75 hours of total time-in-service (TIS) on the effective date of this AD, before further flight, replace the starter adapter with a starter adapter eligible for installation.

(2) For starter adapters with between 75 and 100 hours of total TIS, inclusive on the effective date of this AD, within the next 10 hours of engine operation, or before exceeding 100 hours TIS, whichever occurs first, replace the starter adapter with a starter adapter eligible for installation.

(3) For starter adapters with more than 100 hours of total TIS on the effective date of this AD, no further action is required.

(f) Definition

For the purpose of this AD, a starter adapter eligible for installation is:

(1) A starter adapter with one of the P/Ns listed in this AD that has a vibro-peened manufacturer code below the ink stamped P/N on the starter adapter, or

(2) A starter adapter with one of the P/Ns listed in this AD that has more than 100 hours total TIS.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Atlanta Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For further information about this AD, contact: Anthony Holton, Aerospace Engineer, Atlanta Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, Atlanta, GA 30337; phone: (404) 474–5567; fax: (404) 474–5567; email: *anthony.holton@faa.gov.*

(2) CMI Mandatory Service Bulletin No. MSB11–4, dated November 23, 2011, pertains to this AD.

(3) For copies of the service information referenced in this AD, contact: Continental Motors, Inc., PO Box 90, Mobile, AL 36601; phone: (251) 438–3411, or go to: *http://tcmlink.com/servicebulletins.cfm.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Issued in Burlington, Massachusetts, on December 5, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31794 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0527; Airspace Docket No. 11–AWA–2]

Amendment of Class C Airspace; Palm Beach International Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Palm Beach International Airport, FL, Class C airspace area by raising the floor of Class C airspace over Palm Beach County Park Airport. The FAA is taking this action to enhance safety and increase the efficiency of air traffic operations in the Palm Beach, FL, terminal area.

DATES: *Effective Date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Palm Beach, FL, Class C airspace area (76 FR 36014). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Five comments were received.

Discussion of Comments

Two commenters wrote in support of the proposal. Three commenters suggested a larger expansion of the 1,600-foot mean sea level (MSL) cutout area in the vicinity of Palm Beach County Park Airport (LNA) than was proposed in the NPRM. The commenters said that further expanding the cutout would benefit LNA traffic that primarily arrives from, or departs to, the west and east of the airport. The commenters believed that this would also allow more room for transient traffic not under the control of Palm Beach Approach to maneuver, provide better transit to the practice areas to the west and permit straight-out departures from LNA for aircraft headed eastbound to the Bahama Islands. The FAA considered these suggestions but determined that expanding the cutout as requested is not possible due to the impact on Palm Beach International Airport (PBI) traffic flows and the provision of Class C services. Procedures for departures from PBI runways 10L/R include dispersing aircraft headings for separation and to expedite departures. Turboprop and prop departures climb to 1,500 feet to allow the faster climbing jets to climb above. The dispersal headings vary from 030 to 160 degrees and the southern most heading would exit Class C airspace if the cutout was expanded. Additionally, accommodating PBI arrivals to runways 28L/R (especially the shorter general aviation runway) requires aircraft to basically line up with runway 32 (modified base leg). These aircraft are vectored at 1,500 feet to allow a better chance of seeing the airport while allowing vertical separation from Instrument Flight Rules (IFR) traffic to runway 28L/R. PBI runway 32 allows for relief from runway 28L/R finals during busy periods. Runway 32 aircraft must be afforded Class C services while being vectored and descending on final. PBI runway 14 departures are capped at 1,500 feet to allow for crossing downwind runway 10R Visual Flight Rules traffic at 2,000 feet and IFR aircraft at 3,000 feet. These departures also require Class C services as they depart and start their climbs to higher altitudes. Most aircraft departing LNA that are headed northbound contact Palm Beach Approach for approval. When PBI is landing/departing runways 10L/R and 14, the LNA departures are afforded the opportunity to stay just east of the shoreline at 500 feet, fly one mile off shore at 1,000 feet, or proceed overhead PBI at 2,000 feet. They are also allowed to proceed west of PBI, depending on traffic. When PBI is departing west (runways 28L/R and 32) aircraft are offered overhead or following the intracoastal waterway at 2,000 feet to top the arrivals into PBI. Regarding aircraft headed to the Bahama Islands, most aircraft call Palm Beach Approach for advisories/flight following due to the Atlantic Ocean crossing. These aircraft are rarely restricted unless traffic becomes a factor. However, the ability to turn/level off these aircraft affords Air Traffic Control the ability to climb above them. Expanding the 1,600-foot cutout would reduce the availability of Class C airspace and adversely affect the operations discussed above.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by raising the floor of Class C airspace from 1,200 feet to 1,600 feet MSL within an area overlying, and to the south of, Palm Beach County Park Airport (see attached chart). Raising the Class C floor to 1,600 feet MSL enhances safety by providing additional clearance between rotorcraft and fixed-wing aircraft entering the traffic pattern at Palm Beach County Park Airport. This allows fixed-wing aircraft entering the traffic pattern to safely overfly the existing helicopter patterns and also allows Palm Beach County Park Airport helicopter training activities to take place at higher altitudes.

In addition, a minor correction is made to the latitude/longitude coordinates of Palm Beach County Park Airport to reflect the current information in FAA's aeronautical database.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area amendment in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a portion of the terminal airspace structure to enhance the safety of aircraft operating in the vicinity of Palm Beach, FL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental

Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011 and effective September 15, 2011, is amended as follows:

Paragraph 4000 Class C Airspace

* * * * *

ASO FL C Palm Beach International Airport, FL [Amended]

Palm Beach International Airport, FL
(Lat. 26°40′59″ N., long. 80°05′44″ W.)
Palm Beach County Park Airport
(Lat. 26°35′35″ N., long. 80°05′06″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Palm Beach International Airport, excluding that airspace within a 2-mile radius of the Palm Beach County Park Airport.

Area B. That airspace extending upward from 1,600 feet MSL to and including 4,000 feet MSL within an area bounded on the north by a line direct from the intersection of the Florida Turnpike (highway 91) and Lantana Road to the intersection of a 5-mile radius of the Palm Beach International Airport and a 2-mile radius west of the Palm Beach County Park Airport and a 2-mile radius north of the Palm Beach County Park Airport, on the east by a line direct from the intersection of a 5-mile radius of the Palm Beach International Airport and a 2-mile radius east of the Palm Beach County Park Airport to the intersection of a 10-mile radius of the Palm Beach International Airport and US 1, on the south by a 10-mile radius of the Palm Beach International Airport, and on the west by the Florida Turnpike.

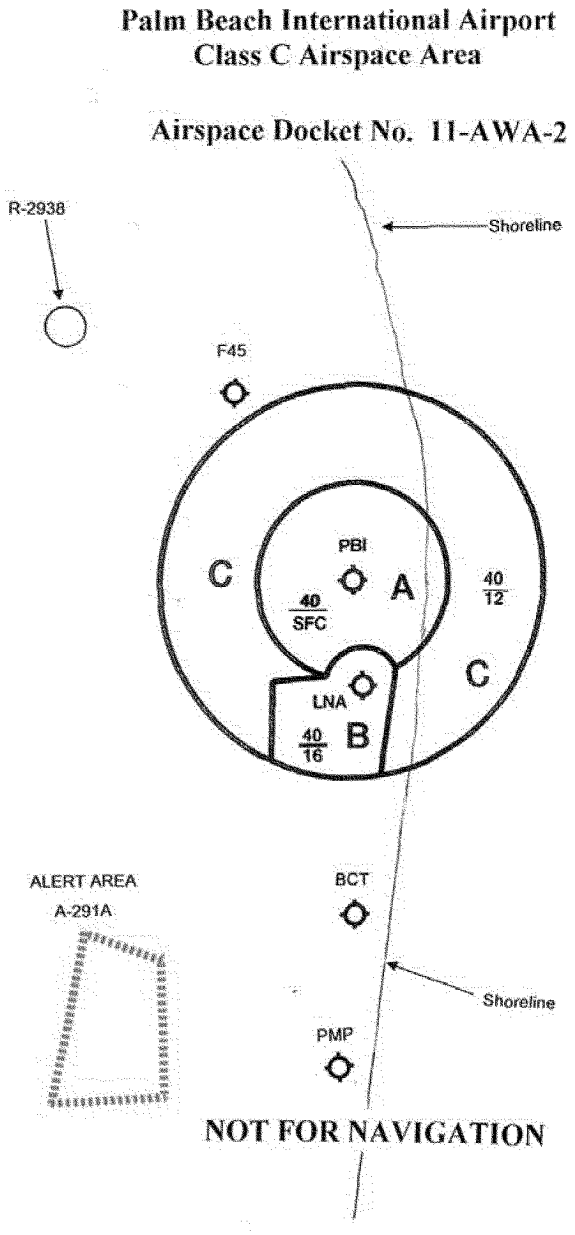
Area C. That airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Palm Beach International Airport, excluding Area B.

Issued in Washington, DC, on December 5, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

BILLING CODE 4910–13–P



[FR Doc. 2011–31847 Filed 12–12–11; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2011–0104; Airspace Docket No. 11–AEA–2]

RIN 2120–AA66

Amendment to and Establishment of Restricted Areas; Warren Grove, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes two new restricted areas at the Warren Grove Range, NJ. In addition, the using agency for all Warren Grove restricted areas is updated to reflect the current organization tasked with that responsibility. The FAA is taking this action to provide the airspace needed for realistic military training so that aircrews can acquire and maintain proficiency in high altitude weapons employment and other modern tactics.

DATES: *Effective Dates:* 0901 UTC, February 9, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 2, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to expand the Warren Grove Range in order to raise the maximum altitude of the range (76 FR 11399). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received. The commenters wrote that Warren Grove Range operations should be moved to another location that is less congested. As stated in the NPRM, military use of the airspace near Warren

Grove, Ocean County, NJ, dates back to World War II. The range is currently used as the primary training complex by numerous fighter units. In addition, all four military services use the range for a variety of military air and ground training exercises. Since no other ranges that can accommodate essential high altitude weapons delivery and precision munitions training are located within a reasonable flying distance of the using units, it is impractical to relocate the Warren Grove Range.

The Rule

The FAA is amending to 14 CFR part 73 to establish two new restricted areas (designated R–5002F and R–5002G) at the Warren Grove Range, NJ. This action raises the restricted area ceiling at the range from 14,000 feet mean sea level (MSL) to flight level (FL) 230. In addition this action expands the lateral limits of restricted airspace at the range, but only between the altitudes of FL 200 and FL 230. The new R–5002F overlies the existing R–5002A, and R–5002E, and part of R–5002B, and extends from 14,000 feet MSL up to, but not including, FL 200. A second new restricted area, R–5002G, extends from FL 200 up to FL 230. R–5002G overlies the new R–5002F. To provide the required expanded lateral space between FL 200 and FL 230, the boundaries of R–5002G extend approximately 15 nautical miles (NM) to the northeast and 8 NM to the east, of the current range boundaries.

In addition to the establishment of R–5002F and R–5002G, the following minor changes to the descriptions of the existing Warren Grove restricted areas are made. The using agency for the five existing areas is changed from the ''108th Air Refueling Wing, McGuire AFB, NJ,'' to the ''177th Fighter Wing, Atlantic City, NJ.'' This change reflects current organization responsible for the range. The new wording change is made to add the words ''to but not including'' before the 14,000 foot altitude. The boundaries and times of use of R–5002A, B, C, D and E are not changed by this action. The designated altitudes for R–5002C and D remain as currently published.

Use of the newly established R–5002F and G will be coordinated on a real time basis. The two areas will only be activated with concurrent release by New York Air Route Traffic Control Center (ARTCC) and Washington ARTCC. To minimize potential impact to Instrument Flight Rules (IFR) traffic flows, the FAA will only authorize activation of these areas when New York and Washington ARTCCs determine there would be minimal to no impact on IFR traffic operating in the affected area. In addition, the FAA will be able to recall the airspace, if needed, on five minutes notice. A Letter of Agreement between New York ARTCC, Washington ARTCC and the using agency will define the roles, responsibilities and procedures for the activation of R–5002F and G. Pilots seeking information about the activity status of R–5002 should contact New York ARTCC on the frequency listed in the ''Special Use Airspace'' panel of the Washington Sectional Aeronautical Chart. New York ARTCC will continue to provide VFR traffic advisories, as prescribed in current FAA directives, to those aircraft requesting them.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies restricted area airspace at Warren Grove, NJ.

Environmental Review

The FAA has conducted an independent evaluation of the proposed action under the National Environmental Policy Act. In accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'', paragraph 401(p)(5), the FAA has determined that the airspace action requires no further environmental analysis. This airspace action raises the ceiling of the special use airspace without increasing or changing operations; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.50 [Amended]

■ 2. Section 73.50 is amended as follows:

* * * * *

1. R–5002A Warren Grove, NJ [Amended]

By removing the current designated altitudes and using agency and substituting the following:

Designated altitudes. Surface to but not including 14,000 feet MSL.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

2. R–5002B Warren Grove, NJ [Amended]

By removing the current designated altitudes and using agency and substituting the following:

Designated altitudes. 1,000 feet MSL to but not including 14,000 feet MSL.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

3. R–5002C Warren Grove, NJ [Amended]

By removing the current using agency and substituting the following:

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

4. R–5002D Warren Grove, NJ [Amended]

By removing the current using agency and substituting the following:

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

5. R–5002E Warren Grove, NJ [Amended]

By removing the current designated altitudes and using agency and substituting the following:

Designated altitudes. 3,500 feet MSL to but not including 14,000 feet MSL.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

6. R–5002F Warren Grove, NJ [New]

Boundaries. Beginning at lat. 39°43′25″ N., long. 74°17′36″ W.;

to lat. 39°40′10″ N., long. 74°20′14″ W.; to lat. 39°38′50″ N., long. 74°21′19″ W.; to lat. 39°38′25″ N., long. 74°22′05″ W.; to lat. 39°38′25″ N., long. 74°24′19″ W.; to lat. 39°38′30″ N., long. 74°29′29″ W.; to lat. 39°39′20″ N., long. 74°29′59″ W.; to lat. 39°44′50″ N., long. 74°24′39″ W.; to lat. 39°44′50″ N., long. 74°19′19″ W.; to the point of beginning.

Designated altitudes. 14,000 feet MSL to but not including FL 200.

Time of designation. Sunrise to sunset; other times as activated by NOTAM issued at least 48 hours in advance.

Controlling agency. FAA, New York ARTCC.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

7. R–5002G Warren Grove, NJ [New]

Boundaries. Beginning at lat. 39°49′02″ N., long. 74°00′45″ W.; to lat. 39°38′18″ N., long. 74°12′34″ W.; to lat. 39°38′25″ N., long. 74°22′05″ W.; to lat. 39°38′25″ N., long. 74°24′19″ W.; to lat. 39°38′30″ N., long. 74°29′29″ W.; to lat. 39°39′20″ N., long. 74°29′59″ W.; to lat. 39°44′50″ N., long. 74°24′39″ W.; to lat. 39°49′02″ N., long. 74°16′18″ W.; to point of beginning.

Designated altitudes. FL 200 to FL 230.

Time of designation. Sunrise to sunset; other times as activated by NOTAM issued at least 48 hours in advance.

Controlling agency. FAA, New York ARTCC.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

Issued in Washington, DC, on December 5, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–31853 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0013; FRL–9503–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hiteman Leather Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA, Region 2, is publishing a direct final Notice of Deletion of the Hiteman Leather Superfund Site (Site), located in West Winfield, Herkimer County, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).This direct final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the New York State Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that all appropriate response actions under CERCLA, other than monitoring and maintenance (M&M) and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion will be effective February 13, 2012 unless EPA receives significant adverse comments by January 12, 2012. If significant adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0013, by one of the following methods:

Web site: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Email: mongelli.thomas@epa.gov.

Fax: To the attention of Thomas Mongelli at (212) 637–3966.

Mail: To the attention of Thomas Mongelli, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.

Hand Delivery: Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: (212) 637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0013. EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or via email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via email, your email address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD–ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the Docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *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 can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* (212) 637–4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m.

and

West Winfield Library, Bisby Hall, 179 South Street, West Winfield, NY 13491, *Phone:* (315) 822–6394, *Hours:* Monday, Tuesday, Thursday, and Friday from 12:30–5:30 p.m., Wednesday from 10 a.m.–12 p.m. and 6–8 p.m., and Saturdays from 10 a.m.–12 p.m. (Sept.–May).

FOR FURTHER INFORMATION CONTACT: Thomas Mongelli, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866; telephone at (212) 637–4256; fax at (212) 637–3966; or email at *mongelli.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 2 is publishing this direct final deletion of the Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in Section 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective February 13, 2012 unless EPA receives significant adverse comments by January 12, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to delete the Site in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

Section II below explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless significant adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where there is no risk posed or no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) EPA consulted with the State of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete also published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *The Observer Dispatch* (Utica). The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the Docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments. If appropriate, EPA may then continue with the deletion process based on the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA's management of sites. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides the Agency's rationale for deleting the Site from the NPL.

Background

The Site includes a former tannery and leather manufacturing facility located in the Village of West Winfield, New York at 173 South Street (Route 51) just south of the intersection of Route 51 with State Highway Route 20. The former tannery property, currently owned by the Village of West Winfield, is bordered to the north by commercial buildings and residences, to the east by South Street, to the south by a residential property, to the southwest by a landlocked, privately-owned 2-acre parcel, and to the west by the West Winfield Cemetery. The Site is approximately 12 acres in size and is traversed by approximately 800 feet of the Unadilla River. Ten acres are located on the northern bank of the river and 2 acres are located on the southern bank.

A tannery business was established at the Site in 1820 on the northern bank of the Unadilla River by a Mr. Adsit. In 1910, after several changes in ownership, the tannery business was acquired by the Hiteman family and the name of the business was later changed to the Hiteman Leather Company. In 1922, the company was reorganized as a corporation under the name of Hiteman Leather Company, Inc., and the name remained unchanged until the termination of the business in 1968.

In the leather tanning process, animal hides and skins absorb chemicals that prevent the resulting leather from decaying, make it resistant to wetting,

and keep it supple and durable. In the early years, tree bark extract containing tannins was used, but in later years, chromium salts were also used. Waste from tannery operations at the Site was originally discharged from the tannery buildings directly to the Unadilla River. During operation under the Hiteman family, the tannery and tannery property experienced many changes over the years to expand business and increase production, including a major change during the early 1900s to incorporate chromium-based tanning into the process. The chromium-based process, in combination with mechanization, reduced the time to manufacture leather from years to weeks; however, the wastes that were generated were more toxic and far more voluminous, resulting in the construction of two unlined lagoons in 1931 and a third unlined lagoon in 1959. Berms were constructed around the lagoons to increase their capacity.

Wastewater was discharged via a sluiceway to the lagoons. The wastewater lagoons reportedly discharged to the Unadilla River and to the wetland area to the northwest of the lagoons (which ultimately drains to the Unadilla River). Wastewater from the coloring process was discharged into two 240-cubic foot concrete dye tanks prior to being discharged to the Unadilla River. Sludge from the bottom of the lagoons was periodically dredged and was reportedly deposited as berm material surrounding the lagoons.

The inability to economically treat contaminated wastewater from the tannery forced the closing of tannery operations at the Site in 1968. The real property and buildings were sold in 1969 to Erle Davis of Clinton, New York, who subsequently rented the buildings in the 1970s, mostly for storage, to various small businesses including a cookie company and a tire company. The former tannery buildings were no longer occupied after 1982 and they gradually deteriorated.

In 1985, NYSDEC added the Site to its Registry of Inactive Hazardous Waste Disposal Sites and, thereafter, from 1988 to 1992, conducted environmental investigations of the Site that resulted in the Site being referred to EPA for further evaluation. In 1994, EPA performed some preliminary sampling at the former tannery property and fenced the northern part of the Site to prevent unauthorized access, particularly to the deteriorating buildings.

In 1996, EPA conducted a Site Investigation (SI) that found elevated concentrations of chromium in the surface soil, subsurface soils, and surface water. Several other contaminants were detected at low levels in soils, including metals, pesticides, semi-volatiles, and volatiles. The SI also found asbestos-covered pipes throughout the main former tannery building and determined that the wood-frame sections of the building were structurally unsound.

Based upon the SI, EPA conducted an asbestos removal pursuant to CERCLA and demolished the wood frame sections of the building, power house, and chimney stack in 1996. The remaining concrete and steel building was demolished by the Davis estate in 1998, with the latter demolition leaving piles of loose brick and concrete debris, as well as other concrete remnants (*e.g.,* building pillars, concrete dye tanks, etc.). Much of the loose debris was removed from the concrete foundation floor by EPA in May 2001 to facilitate sampling under the floor.

The Site was proposed to the NPL in March 1998 (*63 FR 51882*) and listed on the NPL in January 1999 (*64 FR 2942*).

In 2003, EPA awarded a $100,000 Federal grant to the Village of West Winfield to develop a reuse assessment and redevelopment plan for the Hiteman Leather site as part of the EPA's Superfund Redevelopment Initiative, a nationally coordinated effort to restore toxic waste sites to productive reuse. The Village's reuse assessment and redevelopment plan calls for the construction of a community center, development of recreational facilities, consolidation and modernization of the existing Department of Public Works facility, and commercial development.

Remedial Investigation and Feasibility Study

EPA conducted a remedial investigation and feasibility study (RI/FS) at the Site from 2001–2006. The findings are presented in an RI report and FS report. The results of the RI indicated that metals were the predominant contaminants in the soils in the northern 10 acres of the Site and in sediments in the wetland and in the Unadilla River. While carcinogenic risks were found to be within acceptable risk ranges, the results of the risk assessment indicated that former tannery property soil hot spots presented unacceptable increased non-cancer hazards. Contaminated soils along the river on the former tannery property area and contaminated wetland and river sediments posed unacceptable ecological risks. In addition, inorganic groundwater concentrations in the semi-confining unit exceeded their respective federally recognized Maximum Contaminant Levels, thereby posing a potential human health risk. Although a number of organic compounds were detected in the groundwater at the Site, they appear to be incidental, were found only infrequently and at relatively low concentrations, and could not be attributed to tannery operations. In addition, some of the organics appear to be from an upgradient source. The contaminants of concern identified for the Site include antimony, arsenic, cadmium, chromium, hexavalent chromium, lead, manganese, mercury, and nickel.

Selected Remedy

Based upon the results of the RI/FS, on September 28, 2006, a Record of Decision (ROD) was signed, selecting a remedy for the Site. The selected remedy included the excavation of contaminated soil from the former tannery property; excavation of contaminated riverbank soils; excavation/dredging of contaminated wetland and river sediments located adjacent to the former tannery property; treatment by solidification (the addition of cement additives to change the physical and chemical characteristics in order to immobilize contaminants) and consolidation of the excavated/dredged soils and sediments on the former tannery property; placement of a soil cover; and intermittent groundwater extraction and treatment. The ROD also indicated that the need for the remediation of river sediments in areas downstream of the former tannery would be determined based upon post-remediation sediment chemical analyses, sediment toxicity testing, and analysis of benthic macroinvertebrate communities. In addition, an environmental easement/restrictive covenant would be filed to restrict the future land use of the Site, and a Site Management Plan (SMP) would provide for the proper management of all post-construction remedy components.

The following remedial action objectives were established for the Site:

- Reduce or eliminate any direct contact, ingestion, or inhalation threat to future recreational users or construction workers to contaminated soils and sediments;
- Minimize exposure of wildlife or fish to contaminated soils and sediments;
- Protect human health by preventing exposure of future users to contaminated groundwater; and
- Restore groundwater to levels that meet state and Federal standards within a reasonable time frame.

Response Actions

Based upon the results of additional testing at the Site during the design, it

was determined, that the excavated Site soils and sediments did not require treatment prior to on-Site consolidation and containment as called for in the ROD.

The ROD also called for the excavation of a metals-contaminated strip along the top of the northern bank of the river to protect ecological resources. As part of plans to redevelop the Site, a walkway was placed along the top of the northern bank. Since the soils that would underlie the walkway would not be accessible to ecological receptors, the width of the area requiring excavation was changed. The remaining soil was to be covered with two feet of clean material.

The ROD identified the cleanup goal for manganese for the Site to be that level found to be present in the vicinity of the Site, or background. Based upon the results of more representative soil sampling in the area, the average background concentration for manganese was found to be higher than originally determined. The cleanup goal for manganese was changed to the updated higher average background concentration.

The above-noted changes to the remedy, which were documented in a June 2008 Explanation of Significant Differences (ESD), were incorporated into the soil and sediment design.

EPA, through its contractor, mobilized to the Site on May 5, 2008. During the course of the five-month construction effort, 16,000 cubic yards of contaminated soil, 8,700 cubic yards of contaminated wetland sediments, and 200 cubic yards of contaminated riverbank soils and sediments at the toe of the riverbank were excavated and consolidated in low-lying areas of the Site. A geomembrane liner and two-foot thick soil cover were placed over the consolidated soils and sediments. In addition, in areas where residual soil contamination exceeded the cleanup objectives, a soil cover with a thickness of two feet was placed in areas with ''active'' exposure potential (*e.g.,* playing fields) and a thickness of one foot in areas with ''passive'' exposure potential (*e.g.,* walking trails, parking lots). The ''active'' and ''passive'' areas were based on the future-use plan prepared by the Village of West Winfield. Approximately 7 acres of the Site (upland and the soil and sediment disposal area) was covered with a two-foot soil cover and 1.5 acres (building foundation) was covered with a one-foot cover.

The ROD indicated that the extent, if necessary, for the remediation of river sediments in areas downstream of the former tannery would be determined based upon post-remediation sediment and ecological sampling.

The results of these investigations suggest that there are no discernable downstream impacts to the Unadilla River ecosystem from the Site. Therefore, the downstream sediments were determined not to need remediation. In order to measure the success that the remediation of Site soils and sediments has had on downstream ecological receptors, downstream sediment (chemical analysis) and ecological monitoring was conducted for three years. The results of these monitoring events are discussed in the ''*Cleanup Goals''* section below.

During the RI, groundwater samples collected from the bedrock aquifer never exceeded groundwater standards. While there were groundwater exceedances in the shallow aquifer during early RI sampling rounds, these samples were highly turbid. Subsequent samples with lower turbidity did not exceed groundwater standards. Groundwater standards for inorganics were, however, exceeded in the semi-confining unit, which is located between the shallow and bedrock aquifers. Since similar contaminants were also present in Site soils, this contamination was believed to be Site-related. As a result of these findings, the ROD called for the extraction and treatment of contaminated groundwater on an intermittent basis from the semi-confining unit.

Based upon the results of sampling conducted during the design phase, it was concluded that the contamination present in the semi-confining unit is not related to disposal activities at the Site (*i.e.,* the contamination is naturally occurring). Based upon these findings, it was determined the contaminated groundwater would not be extracted and treated. These above-noted changes to the remedy were documented in a second ESD, issued in September 2008.

Based on the results of an EPA and NYSDEC pre-final inspection on September 30, 2008, a Preliminary Close-Out Report was approved on September 30, 2008.

A Remedial Action (RA) Report was approved by EPA in March 2009. The RA Report documented that the work was performed in accordance with the approved design, consistent with the decision documents and that appropriate construction standards and quality assurance/quality control procedures were used.

The ROD required the imposition of institutional controls to restrict the future development/use of the Site where contaminated sediments and soils were consolidated, prohibit excavation below the soil cover unless the activities are in accordance with an SMP, and restrict the use of groundwater. An Environmental Easement effecting such restrictions was recorded with the Herkimer County Clerk on July 22, 2010.

The ROD called for the development of an SMP to provide for the proper management of all post-construction remedy components. The SMP was issued on December 29, 2010.

On September 9, 2010, a final inspection was conducted by EPA and NYSDEC. Based on the results of this inspection, it has been determined that the construction for the entire Site had been completed and that the remedy as implemented was consistent with the ROD, as modified by the two ESDs.

Monitoring and Maintenance

Post-construction M&M activities at the Site called for in the SMP are being performed by NYSDEC and the Village of West Winfield. NYSDEC has entered into a Transfer Agreement (October 13, 2011) with EPA. The Site maintenance activities will be performed at three areas of the Site: Upland Area; Wetland Area; and Riverbank Area.

Five-Year Review

Hazardous substances remain at this Site above levels that would allow for unlimited use and unrestricted exposure. Therefore, pursuant to CERCLA Section 121(c), EPA is required to conduct a review of the remedy at least once every five years. The first five-year review will be performed before May 2013, which is five years following the initiation of construction.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process, the public was invited to comment on the proposed remedy. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion From the NCP

All of the completion requirements for this Site have been met, as described in the September 13, 2011 Final Close-Out Report. The State of New York, in a September 21, 2011 letter, concurred with the proposed deletion of this Site from the NPL.

The NCP specifies that EPA may delete a site from the NPL if ''all

appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

V. Deletion Action

EPA, with the concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA, other than M&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be noncontroversial and routine, EPA is taking this action without prior publication. This action will be effective February 13, 2012 unless EPA receives adverse comments by January 12, 2012. If adverse comments are received within the 30-day public comment period of this action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 22, 2011.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Hiteman Leather,'' ''West Winfield'', ''NY.''

[FR Doc. 2011–31912 Filed 12–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 156

[CMS–9983–F]

RIN 0938–AQ98

Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO–OP) Program

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule implements the Consumer Operated and Oriented Plan (CO–OP) program, which provides loans to foster the creation of consumer-governed, private, nonprofit health insurance issuers to offer qualified health plans in the Affordable Insurance Exchanges (Exchanges). The goal of this program is to create a new CO–OP in every State in order to expand the number of health plans available in the Exchanges with a focus on integrated care and greater plan accountability.

DATES: These regulations are effective February 13, 2012.

FOR FURTHER INFORMATION CONTACT:

Meghan Elrington, (301) 492–4388 for general issues and issues related to loan terms and governance standards.

Anne Bollinger, (301) 492–4395 for issues related to definitions and eligibility.

Ilana Cohen, (301) 492–4371 for issues related to CO–OP standards.

SUPPLEMENTARY INFORMATION: The Patient Protection and Affordable Care Act, (Pub. L. 111–148), enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), enacted on March 30, 2010, are collectively referred to in this final rule as the ''Affordable Care Act.'' The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), which amended Section 1322 of the Affordable Care Act, was enacted on April 15, 2011. Section 1322 of the Affordable Care Act created the Consumer Operated and Oriented Plan program (CO–OP) to foster the creation of new consumer-governed, private, nonprofit health insurance issuers. In addition to improving consumer choice and plan accountability, the CO–OP program also seeks to promote integrated models of care and enhance competition in the Affordable Insurance Exchanges (Exchanges) established under the Affordable Care Act.

The statute authorizes the Secretary to make loans to capitalize eligible prospective CO–OPs with a goal of having at least one CO–OP in each State. It also permits the funding of multiple CO–OPs in any State, provided that there is sufficient funding to capitalize at least one CO–OP in each State. There is $3.8 billion in appropriations for the program.

All CO–OP loans must be repaid with interest, and loans will only be made to private, nonprofit entities that demonstrate a high probability of becoming financially viable. The CO–OP program contains extensive provisions to protect against fraud, waste, and abuse. Loan recipients are subject to strict monitoring, audits, and reporting requirements for the length of the loan repayment period plus 10 years and CO–OPs must meet a series of milestones before drawing down disbursements, as described in their loan agreements.

This final rule—(1) Sets forth the eligibility standards for the CO–OP program; (2) establishes terms for loans; and (3) provides basic standards that organizations must meet to participate in this program and become a CO–OP. This rule is intended to provide flexibility for eligible organizations to encourage diversity in the organizational design and approach while ensuring that the statutory goals are met.

Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges (Exchanges). Insurance companies will compete for new business on the basis of price and value and consumers will have a choice of health plans to fit their needs. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) are seeking public input, providing guidance, and issuing regulations implementing Exchanges in several phases. A Request for Comment relating to Exchanges was published in the **Federal Register** on August 3, 2010. Initial Guidance to States on Exchanges was published on November 18, 2010. A proposed rule for the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011 (76 FR 13553). On July 15, 2011, two proposed regulations were

published in the **Federal Register** to implement components of the Exchange: ''Establishment of Exchanges and Qualified Health Plans'' and ''Standards Related to Reinsurance, Risk Corridors and Risk Adjustment.'' On August 17, 2011, three proposed regulations were published in the **Federal Register**: ''Eligibility Changes Under the Affordable Care Act of 2010,'' ''Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers,'' and ''Health Insurance Premium Tax Credit.'' Additional regulations will be published in the **Federal Register** to implement Exchange related components of the Affordable Care Act.

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Acronym List

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

CCIIO Center for Consumer Information & Insurance Oversight
CMS Centers for Medicare & Medicaid Services
CO–OP Consumer Operated and Oriented Plan
ERISA Employee Retirement Income Security Act
FACA Federal Advisory Committee Act
FOA Funding Opportunity Announcement
FQHC Federally Qualified Health Center
HHS U.S. Department of Health and Human Services
MLR Medical Loss Ratio
OIG Office of Inspector General
OMB Office of Management and Budget
PHS Act Public Health Service Act
QHP Qualified Health Plan
RFC Request for Comment
SHOP Small Business Health Options Program

I. Background

A. Overview of the Consumer Operated and Oriented Plan (CO–OP) Program

Section 1322 of the Affordable Care Act directs the Secretary to establish the CO–OP program to provide loans to foster the creation of new consumer-governed nonprofit health insurance issuers, referred to as CO–OPs, in every State. These new consumer-run, private, nonprofit insurers will be one vehicle for providing higher quality care that is affordable and uses innovative care models in the Exchanges starting in 2014.

The statute divides the CO–OP loans into two types: loans for start-up costs, to be repaid in 5 years (''Start-up Loans''), and loans to enable CO–OPs to meet State insurance solvency and reserve requirements, to be repaid in 15 years (''Solvency Loans''). Section 1322(b)(2)(A) of the Affordable Care Act directs CMS to ensure that there is sufficient funding to establish at least one CO–OP in each State and to give priority to organizations that can offer these CO–OP qualified health plans on a Statewide basis, provide integrated care, and have significant private support. Section 1301(a)(2) of the statute deems CO–OP qualified health plans offered by a qualified nonprofit health insurance issuer eligible to participate in the Exchanges. By creating more health plan choices, the CO–OP program can benefit all consumers.

The CO–OP program also seeks to promote improved models of care. Existing health insurance cooperatives and other business cooperatives provide possible models for the successful development of CO–OPs around the country. One major barrier to continued development of this model in the health insurance market has been the difficulty of obtaining adequate capitalization for start-up costs and State insurance reserve requirements. The CO–OP program is designed to help overcome this barrier to new issuer formation by providing loans specifically for these critical activities.

Pursuant to section 1322(b)(4) of the Affordable Care Act, the Comptroller General announced the appointment of a 15 member CO–OP Program Advisory Board on June 23, 2010 to make recommendations to CMS on awarding loans. Section 1322(b)(2)(A) directs the Secretary to consider the recommendations of this Advisory Board when awarding loans under the CO–OP program. After taking testimony from experts and comments in 3 day-long public hearings from January through March 2011 and examining written comments, the Advisory Board approved its final recommendations and submitted its public report on April 15, 2011. This final report is available at: *http://cciio.hhs.gov/resources/files/coop_faca_finalreport_04152011.pdf*. The Advisory Board generally advised the Department to develop flexible criteria that recognize the diversity of market conditions around the country to enable the development of various CO–OP models and allow different types of sponsorship. It also encouraged the Department to provide technical assistance at all stages of the process in order to enhance the viability of individual CO–OPs and the success of the program.

The Advisory Board recommended four major principles for awarding loans. CMS concurs with these principles:

(1) Consumer operation, control, and focus must be the salient features of the CO–OP and must be sustained over time;

(2) Solvency and the financial stability of coverage should be maintained and promoted;

(3) CO–OPs should encourage care coordination, quality and efficiency to the extent feasible in local provider and health plan markets; and

(4) Initial loans should be rolled out as expeditiously as possible so that CO–OPs can compete in the Exchanges in the critical first open enrollment period.

This final rule and the Funding Opportunity Announcement (FOA) for the CO–OP program incorporate these four principles endorsed by the Advisory Board.

On February 2, 2011, CMS published a Request for Comment (RFC) in the **Federal Register** (76 FR 5774) seeking public comment on the rules that will govern the CO–OP program. The public comments received in response to the RFC were considered in the development of the proposed rule published in the **Federal Register** on July 20, 2011 with a comment period that ended on September 16, 2011 (76

FR 43237). In addition, a Funding Opportunity Announcement (FOA) for the CO–OP program, available at *www.grants.gov* (CFDA Number 93.545), was published on July 28, 2011 (and amended on September 16, 2011) and provides detailed information regarding the application and award administration process for the CO–OP program.

B. Statutory Basis for the Consumer Operated and Oriented Plan (CO–OP) Program

Section 1322(a) of the Affordable Care Act directs CMS to establish the CO–OP program to foster the creation of member-governed qualified nonprofit health insurance issuers to offer CO–OP qualified health plans in the individual and small group markets in the States in which they are licensed.

Section 1322(b)(1) of the Affordable Care Act directs CMS to make two types of loans available to organizations applying to become qualified nonprofit health insurance issuers: Start-up Loans and repayable grants (Solvency Loans). Start-up Loans will provide assistance with start-up costs and Solvency Loans will provide assistance in meeting solvency requirements of State regulators in the States in which the organization is licensed to issue CO–OP qualified health plans. Although the statute refers to Solvency Loans as ''grants,'' they are loans because they must be repaid.

Section 1322(b)(2) provides that in making awards, CMS must take into account the recommendations of the Advisory Board further described in section 1322(b)(4) and give priority to applicants that offer CO–OP qualified health plans on a Statewide basis, use integrated care models, and have significant private support.

Section 1322(b)(2) also directs CMS to ensure that there is sufficient funding to establish at least one qualified nonprofit health insurance issuer in each State and the District of Columbia. It permits CMS to fund additional qualified nonprofit health insurance issuers in any State if the funding is sufficient to do so. If no entities in a State apply, CMS may use funds to encourage the establishment of a qualified nonprofit health insurance issuer in the State or the expansion of another qualified nonprofit health insurance issuer from another State to that State.

Section 1322(b)(2) also directs any organization receiving a loan to enter into an agreement to meet the standards to become a qualified nonprofit health insurance issuer and any other terms and conditions of the loan awards. Under section 1322(b)(2)(C)(ii), the agreement must provide that no portion of the loans be used for propaganda purposes, attempts to influence legislation, or marketing.

Section 1322(b)(2)(C)(iii) provides that, if CMS determines that an organization has failed to meet any provisions of the loan agreement or failed to correct such failure within a reasonable period of time, the organization must repay an amount equal to the sum of:

- 110 percent of the aggregate amount of loans received; plus
- Interest on the aggregate amount of loans for the period the loans were outstanding starting from the date of drawdown.

CMS must notify the Department of the Treasury of any determination of a failure to comply with the CO–OP program standards (including the provisions of a loan agreement) that may affect an issuer's tax-exempt status under section 501(c)(29) of the Internal Revenue Code of 1986 (the Code).

Under section 1322(b)(3), Start-up Loans must be repaid within 5 years, and Solvency Loans must be repaid within 15 years. Repayment terms in the award of loans must take into consideration any appropriate State reserve requirements, solvency regulations, and requisite surplus note arrangements that must be constructed by a qualified health insurance issuer in a State to receive and maintain licensure. Section 1322(b)(3) provides that, not later than July 1, 2013 and prior to awarding loans, CMS must promulgate these regulations, ''with respect to the repayment'' of the loans. Legal obligations regarding repayment as well as other obligations required for program compliance will be included in loan agreements.

Section 1322(c)(1) defines ''qualified nonprofit health insurance issuer'' as an organization that:

- Is organized under State law as a private, nonprofit, member corporation;
- Conducts activities of which substantially all consist of the issuance of CO–OP qualified health plans in the individual and small group markets in each State in which it is licensed to issue such plans; and
- Meets the other requirements in subsection 1322(c).

Section 1322(c)(2) states that an organization is not eligible to become a qualified nonprofit health insurance issuer if the organization or a related entity (or any predecessor of either) was a health insurance issuer on July 16, 2009. In addition, an organization cannot be treated as eligible to apply for a loan under the CO–OP program if a State or local government, any political subdivision thereof, or any instrumentality of such government or political subdivision sponsors it.

Section 1322(c)(3) establishes governance requirements for a qualified nonprofit health insurance issuer. To ensure consumer control, the governance of the organization must be subject to a majority vote of its members. The organization's governing documents must incorporate ethics and conflict of interest standards to protect CO–OP members against insurance industry involvement and interference. To ensure consumer orientation, the organization is required to operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members.

Section 1322(c)(4) directs the organization to use any profits to lower premiums, improve benefits, or for other programs intended to improve the quality of health care delivered to its members.

Section 1322(c)(5) states that the organization must meet all the State standards for licensure that other issuers of qualified health plans must meet in any State where the issuer offers a CO–OP qualified health plan, including solvency and licensure requirements and any other State law described in section 1324(b).

Section 1322(c)(6) prohibits a qualified nonprofit health insurance issuer from offering a health plan in a State until that State has in effect (or CMS has implemented for the State) the market reforms outlined in part A of title XXVII of the Public Health Service Act (as amended by subtitles A and C of title I of the Affordable Care Act).

Section 1322(d) enables qualified nonprofit health insurance issuers to establish a private purchasing council to enter into collective purchasing arrangements for items and services that increase administrative and other cost efficiencies including claims administration, administrative services, health information technology, and actuarial services. The private purchasing council is prohibited from setting payment rates for health care facilities or providers that contract with qualified nonprofit health insurance issuers.

Section 1322(e) prohibits representatives of any Federal, State, or local government (or of any political subdivision or instrumentality thereof), and representatives of an organization that was an existing issuer or a related entity (or predecessor of either) on July 16, 2009, from serving on the board of directors of the qualified nonprofit health insurance issuer or a private

purchasing council established under section 1322(d).

Together, these provisions form the statutory basis for the CO–OP program established under this rule.

C. Structure of the Final Rule

The regulations outlined in this final rule will be codified in 45 CFR part 156 subpart F. The major subjects covered in this final rule are described below.

- Section 156.500 describes the statutory basis of the CO–OP program and the scope of this proposed rule;
- Section 156.505 sets forth definitions for the terms applied in subpart F;
- Section 156.510 specifies the criteria to be eligible for a loan under the CO–OP program;
- Section 156.515 sets forth the standards for a CO–OP; and
- Section 156.520 sets forth the terms for loans awarded under the CO–OP program including repayment terms and interest rates.

II. Summary of the Proposed Provisions and Responses to Comments on the CO–OP Proposed Regulation

The proposed rule was published in the **Federal Register** on July 20, 2011 with a comment period that ended on September 16, 2011 (76 FR 43237). In addition, a Funding Opportunity Announcement for the CO–OP program, available at *http://www.grants.gov* (CFDA Number 93.545), was published on July 28, 2011 (and amended on September 16, 2011) and provides detailed information regarding the application and award administration process for the CO–OP program. We received approximately 45 public comments that addressed many topics in the proposed rule. Interested parties that submitted comments included private citizens, organizations interested in applying to the CO–OP program, State Departments of Insurance, health insurance issuer trade associations, medical associations, provider and hospital associations, and advocacy groups. In this preamble we provide a summary of each proposed provision, a summary of the public comments received, our responses to them, and any changes to the CO–OP program that we are implementing in the final regulation as a result of comments received. At the end of the comment and response sections of this preamble, we also reference comments we received that were outside the scope of the provisions set forth in the proposed rule. Several of these comments pertain to the provisions of the Funding Opportunity Announcement and will be addressed in program guidance or in loan agreements. Loan recipients will be subject to legal obligations outlined in the loan agreements. Those obligations are not reiterated here.

A. Basis and Scope (§ 156.500)

Section 156.500 specifies the general statutory authority for and scope of standards proposed in subpart F. The CO–OP program awards loans to foster the creation of qualified nonprofit health insurance issuers to offer CO–OP qualified health plans in the individual and small group markets. Subpart F establishes certain eligibility, governance, and health plan issuance standards for CO–OPs as well as certain terms for loans awarded under the CO–OP program. Applicants may apply for loans to help fund start-up costs and meet the solvency requirements of States in which the applicant seeks to be licensed to issue a CO–OP qualified health plan.

Comment: One commenter opposed implementation of the CO–OP program and indicated that no government loan program can bring meaningful resolution to the lack of consumer choice in the health insurance market. The commenter stated that the likelihood of failure will be higher for these start-up organizations than it otherwise would be in the market because the organizations with the best prospects of being able to repay loans, pre-existing health insurance issuers, are excluded from the CO–OP program. The commenter recommended that CMS delay awarding loans. Another commenter expressed concern that the funding appropriated for the CO–OP program will be reduced by the Congress.

Response: We recognize that loan recipients will face challenges entering highly concentrated health insurance markets. This is true for any new market entrant. However, the CO–OP program is responsive to these barriers. The CO–OP program offers resources, in the form of loans, to responsibly capitalize new, private, consumer-oriented issuers by increasing the availability of adequate reserve funding and boosting the ability of CO–OPs to compete in a brand new, broader insurance marketplace. Insurance markets will change and expand considerably in 2014 with the implementation of Exchanges. In order to obtain a loan and be successful, CO–OPs must demonstrate the ability to gain sufficient enrollment and revenue to sustain their organization. Therefore, it is important that CMS begin awarding loans consistent with current law and the Advisory Board's recommendation to give loan recipients sufficient time to become operational and begin accepting enrollment during the first Exchange open enrollment period in the Fall of 2013.

We have considered the comments received regarding the basis and scope of the CO–OP program and are finalizing the provisions of § 156.500 as proposed.

B. Definitions (§ 156.505)

Section 156.505 sets forth definitions for terms that are used throughout subpart F and are not intended to apply to other subparts of section 156. Many of the definitions presented in § 156.505 of the proposed rule were taken directly from the Affordable Care Act, but new definitions were created when necessary. Some of the definitions presented in § 156.505 of the proposed rule have since been revised based on the comments received, including: ''qualified nonprofit health insurance issuer,'' ''related entity,'' and ''sponsor.'' We originally proposed that a ''qualified nonprofit health insurance issuer'' be defined as a loan recipient that satisfies or can reasonably be expected to satisfy the standards in section 1322(c) of the Affordable Care Act and § 156.515 within the time frames specified in this subpart, until such time as CMS determines the loan recipient does not satisfy or cannot reasonably be expected to satisfy these standards. Generally, an entity that has received a loan and has met program requirements for the loan is reasonably expected to satisfy these standards. This definition was proposed to ensure that loan recipients can receive the benefits of section 1322(h), addressing the Federal income tax exemption for qualified nonprofit health insurance issuers, at the appropriate time as determined by the Internal Revenue Service.

We proposed the definition of ''related entity'' be an organization that shares common ownership or control with a pre-existing issuer or a trade association whose members consist of pre-existing issuers, and satisfies at least one of the following conditions: (1) Retains responsibilities for the services to be provided by the issuer; (2) furnishes services to the issuer's enrollees under an oral or written agreement; or (3) performs some of the issuer's management functions under contract or delegation. Thus, CMS proposed permitting a nonprofit organization that is not an issuer or the representative of an issuer but shares control with an existing issuer to ''sponsor'' or facilitate the creation of a CO–OP if the applicant (and resulting CO–OP) and the existing issuer do not share the same chief executive or any of the board of directors. In the proposed

rule, ''sponsor'' was defined as an organization or individual that is involved in the development, creation, or organization of the CO–OP or provides financial support to a CO–OP. The comments we received on these proposed definitions and our responses are provided below.

Comment: Several commenters requested that the definition of ''qualified nonprofit health insurance issuer'' be revised so that qualified nonprofit health insurance issuers may access multiple forms of investment and philanthropic capital (including debt, equity or equity-equivalent, grants, bonds, etc.) in a manner that does not compromise their primary commitment to mission.

Response: Although other legal requirements, including state nonprofit corporation laws and tax rules applicable to tax-exempt grantors and CO–OPs seeking tax-exempt status, may limit the availability to CO–OPs of certain kinds of investments, section 1322 of the Affordable Care Act and the proposed definition of a ''qualified nonprofit health insurance issuer'' do not impose limitations on the capital that may be invested in a ''qualified nonprofit health insurance issuer.'' However, the organization's surplus funds (that is, revenue in excess of expenses) must be ''used to lower premiums, to improve benefits, or for other programs intended to improve the quality of health care delivered to its members.'' In addition, as stated in the FOA and recommended by the Advisory Board, CO–OPs may also use their surplus funds to conduct marketing, repay loans awarded under the CO–OP program, meet State solvency requirements, and provide for enrollment growth, financial stability, and stable coverage for its members. The proposed rule does not prohibit but encourages private investment that can be demonstrated to meet this standard on the application of profits. Therefore, it is not necessary to revise the definition of ''qualified nonprofit health insurance issuer'' to allow CO–OPs to access investment. Other legal requirements applicable to investments in CO–OPs are outside the scope of this rulemaking.

However, in the definition of ''qualified nonprofit health insurance issuer,'' we have replaced the phrase ''loan recipient'' with the word ''entity.'' Because only a loan recipient can satisfy the standards in section 1322(c) and § 156.515, we do not view this as a substantive change from the proposed rule. It is being made to ensure flexibility in determining when entities qualify for the Federal income tax exemption.

Comment: Several commenters requested that the definition of ''member'' be revised to include only those covered lives who are at least 18 years old.

Response: We agree that voting rights should be limited to covered lives who are at least 18 years old, and we have revised § 156.515 accordingly. However, this change to the proposed rule does not necessitate a revision to the definition of member, and we are finalizing the definition as proposed.

Comment: Several commenters requested clarification on whether the definition of ''member'' includes dependents, and some commenters requested that the definition of ''member'' be limited to one adult covered life within each family plan.

Response: The term ''member'' includes all individuals covered under health insurance policies issued by a loan recipient, including dependents. As discussed above, we have also limited voting rights to members over 18 years old. We understand the commenter's concern that allowing adult dependents in family coverage to vote will create an imbalance in the representation of different member interests on the board. However, the statute provides no basis for discriminating among covered lives on the basis of the source of coverage. The limitation proposed by the commenter would prevent certain adults receiving health care coverage under a CO–OP from participating in the organization's governance. As indicated in the testimony from existing health insurance cooperatives, all adults in existing health insurance cooperatives have voting privileges regardless of family or employment status. Therefore, we have concluded that every adult covered by the CO–OP must be eligible to vote and serve on the board of directors in order to ensure that decisions are made in the best interest of all covered lives consistent with both the statute and the traditional model of a cooperative.

Comment: Several commenters requested clarification as to what the term ''representative'' means.

Response: We understand the need for clarification of this term and have included a definition of ''representative'' in this final rule. ''Representative'' means an individual who stands or acts for an organization or group of organizations through a formal agreement or financial compensation such as a contractor, broker, official, or employee.

Comment: Due to the statutory prohibition on the use of loan funding for ''marketing,'' several commenters requested guidance as to what activities are considered ''marketing.'' Several commenters indicated that the description in the FOA released on July 28, 2011 that described marketing as ''activities that promote the purchase of a specific health care plan or explain a product's benefit structure, whether targeted at new or current members'' is overly broad, prohibiting CO–OPs from using loan funds to educate their members. In the Request for Comment (RFC), several commenters recommended that CMS define ''marketing'' narrowly to allow loan recipients to use loan funds to conduct community outreach and member education.

Response: Marketing was not discussed in the proposed rule and therefore, is outside the scope of this rule. Please see the amended FOA, released on September 16, 2011, for additional guidance regarding the activities included in the term marketing.

Comment: Several commenters supported the proposed definition of ''issuer'' because it prohibits insurance companies that were in existence prior to July 16, 2009, from participating in the CO–OP program. One commenter requested that reinsurers be categorized as a qualified sponsor under the term ''issuer.''

Response: The intent of the proposed definition was to prohibit any insurance companies that were in existence prior to July 16, 2009, from participating in the CO–OP program, consistent with the statutory directive. Reinsurers are typically licensed as issuers under State law, and therefore are generally captured under the definition of ''issuer.''

Comment: One commenter requested that multiple employee welfare arrangements (MEWAs) and their affiliates be included within the class of entities that are excluded from the definition of ''issuer.''

Response: MEWAs and their affiliates are typically not licensed by States as ''issuers'' and, therefore, would appear to be eligible for loans if they meet all other eligibility criteria. The definition of ''issuer'' clearly states that an entity is an ''issuer'' if it is ''licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance.'' Consistent with the statute, if a MEWA is not a pre-existing issuer and otherwise meets the eligibility criteria, it would be eligible to apply for CO–OP loans.

Comment: Several commenters concurred with the proposed definition of ''pre-existing issuer'' but requested clarification on whether it prevents existing consumer run healthcare organizations from providing expertise and assistance to prospective CO–OPs. One commenter requested that a new term be used in place of ''pre-existing issuer'' because it is easily confused with a health insurance issuer that excludes coverage for ''pre-existing conditions.''

Response: Section 156.510(b)(2)(i) of this subpart allows a CO–OP to purchase assets and contract services from a ''pre-existing issuer'' as long as it is an arm's length transaction in which each party acts independently of the other and has no relationship with the other. Although we understand and appreciate the commenter's concern, we do not find it necessary to replace the term ''pre-existing issuer.'' Given differences in context, we do not believe that this term will be confused with the term ''pre-existing conditions.''

Comment: We received comments expressing concern that holding companies (companies that exist primarily to own stock in other companies) that control pre-existing issuers are typically not licensed as issuers and therefore, would be eligible to participate in the CO–OP program.

Response: We agree with this concern and have modified the eligibility criterion in § 156.510(b) to exclude holding companies that control pre-existing issuers, foundations established by pre-existing issuers, and trade associations comprised of pre-existing issuers whose purpose is to represent the interests of the health insurance industry. Through its inclusion in the eligibility criteria, this provision will ensure that entities controlled by or serving the interests of pre-existing issuers are unable to participate in the CO–OP program or sponsor a CO–OP. Therefore, no changes to the definition itself of pre-existing issuer are necessary.

Comment: Several commenters supported the proposed definition of ''related entity.'' Some commenters requested that the definition be expanded in order to ensure that CO–OPs are truly independent of pre-existing health insurance issuers. Specifically, one commenter recommended that the term ''related entity'' be expanded so that neither preexisting issuers nor related entities would be permitted to become or sponsor a CO–OP. Conversely, several commenters recommended that a nonprofit organization that is not an issuer but shares control with a pre-existing issuer should be allowed to sponsor or facilitate the creation of a CO–OP.

Response: The primary goal of the CO–OP program is to foster new consumer-governed, private, nonprofit health insurance issuers. The statute expressly prohibits the participation of issuers, related entities, or the predecessors of either, in the CO–OP program. We believe that the intent of this prohibition is to encourage the participation of sponsors that can create a new competitive presence in the marketplace. We agree with the commenters' concerns that the proposed definition did not foreclose avenues of influence that the statute intended to prohibit. Accordingly, we have revised the definition of ''related entity'' to reflect that organizations that share a common governance structure with a pre-existing issuer (for example, their management team or board of directors) are ineligible for the CO–OP program if they also provide services or management functions to the pre-existing issuer.

In addition, we agree that the statute prohibits pre-existing issuers from sponsoring a CO–OP. However, nonprofit, not-for-profit, public benefit, or similarly organized entities that do not sell insurance as their primary purpose or mission but share control with a pre-existing issuer should be permitted to sponsor a CO–OP. For example, a religious organization that is not a health insurance issuer, but is affiliated with one to help its members obtain health insurance would be able to also sponsor a CO–OP to offer a health plan in the Exchanges. This is permitted because all pre-existing issuers are prohibited from sharing control or having undue influence over the governance of the CO–OP itself. Therefore, we have expanded the exclusions from eligibility in § 156.510(b)(1)(i) to exclude organizations sponsored by a pre-existing issuer. Due to this addition, no further changes to the definition of ''related entity'' are necessary to reflect that pre-existing issuers are not permitted to sponsor a CO–OP. A nonprofit, not-for-profit, public benefit, or similarly organized entity that is not an issuer but shares common control or governance with a pre-existing issuer would not be considered a ''related entity'' and hence, excluded from sponsorship of a CO–OP, unless it—(1) Retains responsibilities for the services to be provided by the pre-existing issuer, (2) furnishes services to the pre-existing issuer's enrollee under contract, or (3) performs some of the pre-existing issuer's management functions under contract or delegation.

Comment: One commenter stated that the term ''related entity'' unnecessarily limits the types of associations allowed to sponsor a CO–OP and requested that all nonprofits regardless of board composition be able to sponsor a CO–OP because to do otherwise would limit the experience and financial support available to a prospective CO–OP to create a working, stable insurance entity.

Response: It is important for a CO–OP to have adequate financial support and an experienced management team and governing board in order to be viable in the market. However, the statute expressly prohibits ''related entities'' from becoming qualified nonprofit health insurance issuers and without this prohibition, a CO–OP becomes vulnerable to undue influence from pre-existing issuers, which would undermine the statutory goals of this program. As set forth in § 156.515(b) of this subpart, CO–OPs may contract for services with experienced entities and include individuals with expertise on their board of directors to gain the benefit of experience.

Based on the comments received, we are finalizing the definitions proposed in § 156.505 of the proposed rule, along with the exception of revisions to the definitions of ''qualified nonprofit health insurance issuer'' and ''related entity,'' described in our responses above and revisions to the definitions of ''sponsor'' and ''Start-up Loan'' discussed in the Eligibility and Loan Terms sections of the preamble, respectively. In addition, we have added a definition for ''representative'' in response to the comments received. We define ''representative'' as an individual who stands or acts for an organization or group of organizations through a formal agreement or financial compensation such as a contractor, broker, official, or employee.

Because the proposed rule ''Establishment of Exchanges and Qualified Health Plans'' (76 FR 41866) has not yet been finalized, we have revised the definitions for the terms ''individual market,'' ''small group market,'' ''SHOP,'' ''Exchange,'' and ''CO–OP qualified health plan'' to remove references to this rule. We also include definitions of ''group health plans,'' ''health insurance coverage,'' ''small employer,'' ''qualified employer,'' and ''qualified health plan'' as they were proposed in ''Establishment of Exchanges and Qualified Health Plans'' (76 FR 41866), because those terms are referred to within other definitions used in this

subpart. Once the ''Establishment of Exchanges and Qualified Health Plans'' rule has been finalized, the definitions in this subpart will be revised in the final ''Establishment of Exchanges and Qualified Health Plans'' rule to incorporate the definitions adopted in the new part 155.

C. Eligibility (§ 156.510)

Section 156.510 of the proposed rule outlined the minimum standards that an organization must meet to be eligible to receive a loan from the CO–OP program in order to create a new private consumer-operated insurer. We proposed codification of the conditions in section 1322(c)(2) of the Affordable Care Act under which an organization will not be eligible to participate in the CO–OP program. If an organization is a pre-existing issuer, a related entity, or any predecessor of either, it is not eligible for loans under the CO–OP program and therefore, cannot become a CO–OP. In addition, an organization is not eligible for the CO–OP program if the organization or a related entity (or any predecessor of either) is a trade association whose members consist of pre-existing issuers. We also proposed codification of the requirement that, if an organization is sponsored by a State or local government, any political subdivision thereof, or any instrumentality of such government or political subdivision, it is not eligible to be a CO–OP and cannot apply for a loan under the CO–OP program.

Under § 156.510(b)(2)(i) of the proposed rule, a nonprofit organization that is not an issuer but that currently sponsors an issuer would remain eligible to sponsor an applicant for a CO–OP loan in certain circumstances. Specifically, we proposed that such an organization could sponsor an applicant for a CO–OP loan provided that the pre-existing issuer does not share any of the board or the same chief executive with the applicant. In § 156.510(b)(2)(ii), we further proposed that an organization that has purchased assets from a pre-existing issuer in an arm's-length transaction where each party acts independently of the other and has no other relationship with the other is eligible to apply for a CO–OP loan. We also proposed that an applicant and a pre-existing issuer could have common control by a non-issuer organization. The applicant and pre-existing issuer would not be related entities unless the pre-existing issuer also provided the CO–OP's services or management functions.

The comments we received on the proposed eligibility criteria and our responses are provided below.

Comment: Several commenters requested that CMS expand the eligibility criteria to allow the participation of for-profit consumer-oriented health insurance issuers. Conversely, a few commenters suggested that CMS bar entities affiliated with pre-existing issuers—such as organizations that sponsor pre-existing issuers, foundations established by pre-existing issuers, holding companies that control pre-existing issuers, or associations that represent pre-existing issuers—from sponsoring a CO–OP. One commenter suggested that CMS evaluate whether applicants have previously competed in insurance markets before awarding any funding.

Response: As stated in section 1322 of the Affordable Care Act, the goal of the CO–OP program is to ''foster the creation of qualified nonprofit health insurance issuers.'' Accordingly, eligibility is limited to nonprofit member organizations as previously defined. In response to concerns about permitting entities that are controlled by or serve the interests of pre-existing issuers from participating in the CO–OP program or sponsoring a CO–OP, we modified the eligibility criteria in § 156.510(b) to exclude (1) Holding companies that control pre-existing issuers, foundations established by pre-existing issuers, and trade associations that are comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry (2) organizations sponsored by a pre-existing issuer, and (3) organizations that receive more than 25% of their total funding (excluding any loans received from the CO–OP program) from pre-existing issuers. This modification would allow applicants to receive limited funding from pre-existing issuers (up to 25% of their total funding excluding any loans received from the CO–OP program) to help with application costs and other expenses while ensuring that pre-existing issuers are not providing a level of funding that would give them meaningful control of each CO–OP. We believe that these exclusions from eligibility are consistent with the intent and direction of the statute as written. These exclusions will help to ensure that CO–OP loans are provided to new organizations and are not used to further develop plans offered by current health insurers.

Comment: Two commenters expressed support for our statement that the prohibition against sponsorship of a CO–OP by a State or local government would not apply to Indian tribes because a tribe is neither a State nor local government.

Response: We agree with the commenters that this prohibition would not apply to Indian tribes.

Comment: Several commenters requested that CMS clarify whether private non-profit hospitals and physician hospital organizations, State-affiliated academic medical centers, three-share and multi-share programs, and other organizations that receive grant funding and other financial support from a State or local government would be eligible to participate in the CO–OP program.

Response: Recognizing that the term ''instrumentality'' does not effectively distinguish among the organizations that could arguably be classified as related to a State or local government, we are revising the eligibility criterion in § 156.510(b)(1)(ii) to provide additional guidance regarding the types of organizations that would be excluded from eligibility as instrumentalities of a State or local government. Specifically, an organization would not be considered an instrumentality of a State or local government and therefore, would be eligible to sponsor a CO–OP if:

- The entity is a not a government organization under State law;
- No employee of a State or local government acting in his or her official capacity serves as a senior executive (for example, President, chief executive officer, or chief financial officer) for the organization; and
- Fewer than half of the organization's directors are employees of a State or local government acting in their official capacities.

Thus, an organization, such as an academic medical center, that has received funding from a State or local government but has a governance structure that satisfies all three of these criteria and otherwise meets the eligibility criteria in § 156.510 and the FOA would be eligible to sponsor a CO–OP. A private organization that receives disproportionate share hospital payments or grants from State-appropriated funds but has a governance structure that satisfies the three criteria listed above and is otherwise qualified could sponsor a CO–OP. In addition, a three-share or multi-share program that accepts funding from State-appropriated funds in the course of a business relationship with a State would not be considered an instrumentality of the State as long as it meets these criteria.

In addition, we are revising the definition of ''sponsor'' in § 156.505 of this subpart and the eligibility criteria in § 156.510(b)(1) to allow organizations that receive funding from pre-existing

issuers or State or local governments to participate in the CO–OP program, provided that the pre-existing issuers or State or local governments are not involved in the applicant's development, creation, or organization, and that pre-existing issuers do not contribute more than 25 percent of the organization's funding (excluding any loans received from the CO–OP program) and no single State or local government contributes more than 40 percent of the organization's funding (excluding any loans received from the CO–OP program). We have established a lower limit on funding from pre-existing issuers than grants and other funding provided by State and local governments to ensure that CO–OPs are free from any undue influence that may result from receiving substantial funding from pre-existing issuers. We believe that applicants may receive greater levels of funding from State and local governments without serving as an actor or instrumentality of the government.

Comment: Many commenters asked CMS to clarify the entities that are eligible to receive loan funding. Two commenters suggested that CMS impose additional prohibitions on the relationship between a CO–OP and a sponsor. One commenter suggested that any entity that shares common leadership with a pre-existing issuer be barred from sponsoring a CO–OP; another suggested that CMS prohibit sponsors and CO–OPs from sharing any financial interest. Finally, two commenters suggested CMS further consider eligibility for specific types of applicants, such as those that have previously participated in the issuance of health insurance.

Response: We appreciate the concern that permitting entities with financial or organizational ties to pre-existing issuers to sponsor CO–OPs could allow de facto conversions of pre-existing issuers and conflict with the statutory intent to foster the creation of new market entrants. However, the statute excludes from eligibility only those organizations that were existing issuers on July 16, 2009, and their related entities and predecessors. An organization that was not licensed to issue health insurance policies on July 16, 2009; is not a foundation established by a pre-existing issuer; is not a holding company that controls a pre-existing issuer; is not a trade association that is comprised of pre-existing issuers and whose purpose is to advocate for the interests of pre-existing issuers; and is not a related entity or predecessor to a pre-existing issuer would be eligible to participate in the CO–OP program provided that it meets all other eligibility criteria. CMS believes that permitting such organizations to sponsor CO–OPs maintains the appropriate balance between preventing the flow of program funds to entities that are not new market entrants and promoting the success of CO–OPs by permitting a variety of sponsorship and partnership arrangements.

Comment: One commenter asked CMS to clarify how antitrust rules may affect providers who wish to develop CO–OPs and expressed concern that antitrust and self-referral laws may limit provider participation in the development and sponsorship of CO–OPs.

Response: We believe that it is possible for providers to create viable CO–OPs within the boundaries of existing anti-trust and self-referral laws. Promoting competition within the health insurance marketplace is a key goal of the CO–OP program, but the statute does not give us authority to waive or exempt CO–OPs from anti-trust or self-referral laws. Therefore, it is the responsibility of each applicant to assess the relevant laws and regulations and ensure compliance.

Comment: While several commenters supported CMS' proposal to permit CO–OPs to purchase assets from or contract with existing issuers, some commenters were concerned about the potential for issuers to exert undue influence on CO–OPs. For example, one commenter suggested that CO–OPs be prohibited from contracting with pre-existing issuers that represent more than five percent of the local market. Similarly, another commenter suggested specific requirements around the purchase of reinsurance; for example that reinsurance be purchased at a fair market price.

Response: Under the rule, loan recipients and CO–OPs may purchase assets and services, such as premium billing services, from pre-existing issuers through arm's length transactions. Based on the comments received, we are further clarifying ''arm's length transaction'' to mean a transaction in which the buyer and seller act independently and have no relationship to one another. We believe that applying the arm's length standard prevents loan recipients from entering into agreements or transactions that could jeopardize member control while maintaining flexibility for recipients to enter into the business agreements that best meet their needs. In addition, pursuant to § 156.515(b)(3), each CO–OP must have procedures in place to protect against insurance industry interference and address any conflict of interests, such as those between the CO–OP and its sponsor(s).

We have considered the many comments received regarding eligibility and are finalizing the provisions in § 156.510 of the proposed rule with the exception of the revisions described above and the revision to § 156.510(b)(2)(i) discussed in the Definitions section of the preamble. Specifically, § 156.510(b) is revised to exclude foundations established by a pre-existing issuer, holding companies that control pre-existing issuers, organizations sponsored by pre-existing issuers, and organizations that receive more than 25% of their total funding (not including loans under the CO–OP program) from pre-existing issuers from eligibility for the CO–OP program. Section 156.510(b)(1)(iii) is revised to clarify that organizations that receive funding from a State or local government but are not government organizations under State law and are not governed or controlled by a State or local government may be eligible for the CO–OP program. Section 156.510(b)(2)(i) is revised to clarify that certain nonprofit, not-for-profit, public benefit, or similarly organized entities that are also a sponsor for a pre-existing issuer are permitted to sponsor a CO–OP provided that the pre-existing issuer does not share any of its board or the same chief executive with the CO–OP. Section 156.510(b)(2)(ii) is revised to clarify that an ''arm's length transaction'' consists of a transaction between two parties in which neither party is in a position to exert undue influence on the other.

D. CO–OP Standards (§ 156.515)

1. General

A CO–OP must satisfy the *standards* set forth in all statutory, regulatory, or other requirements as applicable. CMS proposed additional standards that a CO–OP must meet in § 156.515, many of which are recommendations made by the Advisory Board in the final report dated April 15, 2011. We requested public comments on these proposed standards.

2. Governance Requirements

Section 1322(c)(3)(C) of the Affordable Care Act directs the Secretary to promulgate regulations requiring the organization to operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members. Pursuant to this authority, CMS proposed governance standards in § 156.515(b) of the proposed rule that reflect the

recommendations of the Advisory Board. We proposed that the organization be governed by an operational board with each of its directors elected by a majority vote of its members. We also proposed that the first election of the operational board of directors occur no later than one year after the effective date on which the CO–OP provides coverage to its first member to protect against delaying the introduction of consumer governance beyond a point where it can have an impact on the strategic direction of the CO–OP.

Section 156.515(b)(2)(v) of the proposed rule codified the limitation in section 1322(e) of the Affordable Care Act that no representative of any Federal, State or local government (or of any political subdivision or instrumentality thereof) and no representative of a pre-existing issuer, a trade association whose members consist of pre-existing issuers, a related entity, or a predecessor of either may serve on the board of directors.

The comments we received on these proposed governance standards and our responses are provided below.

Comment: While several commenters expressed support for the proposed governance requirements as written, several commenters suggested that CMS extend the period of transition from the formation board to the operational board to two years after enrollment begins and to permit staggered election of the operational board over the two-year period. Commenters also suggested that CO–OPs be permitted to fill director positions vacated due to resignation, death, or removal except removal by the CO–OP members.

Response: We agree that staggered elections over a longer period will provide additional flexibility for loan recipients and will allow operational boards to retain important expertise and experience gained during formation. Allowing CO–OPs to fill vacant director positions in the specific circumstances outlined above will permit efficient operation and governance of the CO–OP without compromising the consumer role.

Therefore, we have revised § 156.515 of the regulations to provide that a loan recipient may implement a staggered transition from the formation board to the operational board over a period of two years. The transition to a member-elected operational board must begin within one year of a loan recipient first providing coverage to its first enrollee. The operational board must be in place in its entirety two years after the loan recipient begins providing coverage to its first enrollee. Additionally, in the case of resignation, death, or removal, CO–OPs may fill vacant director positions for the remainder of the relevant term without conducting a contested election.

Comment: One commenter requested clarification regarding whether a loan recipient may begin the loan process with an initial management team that will transition to a permanent management team as dictated by the organization's board of directors. The commenter indicated that many potential long-term management candidates are currently employed and cannot quit their jobs to join a CO–OP until they know it will be funded.

Response: Under the proposed rule, loan recipients may establish an initial management team that will transition to a permanent management team. Loan recipients should clearly outline their process for identifying and transitioning to a permanent management team in their applications.

Comment: Several commenters supported CMS' decision to permit designated seats on the board of directors. However, one commenter suggested that CMS strike or modify this provision due to the potential difficulty of classifying directors based on designated seat categories (for example, provider, employer). Commenters also asked CMS to clarify the role of non-members on the board of directors and to clarify whether representatives or officers of certain entities, such as sponsors or employers, may sit on the board.

Response: It is important to balance meaningful member governance with experienced management. Some of the skills and expertise necessary to administer a CO–OP successfully may be unavailable among the membership. Therefore, we are finalizing the proposal to permit a CO–OP to designate certain seats on its operational board for individuals with specified areas of expertise and backgrounds. How each CO–OP identifies the designations—for example, providers, employers, or representatives from the CO–OP's sponsoring organization—to best serve the needs of the members is a business decision for the CO–OP. We note, however, that seats designated for individuals with specialized expertise, experience, or affiliation cannot comprise the majority of the operational board.

Comment: Several commenters asked that CMS clarify the meaning of ''contested'' with respect to elections of the board of directors. One commenter suggested that CMS permit the establishment of member classes, each of which would represent a specified share of votes. Several commenters recommended that CMS permit CO–OPs to elect directors based on a majority of a quorum of the CO–OP's members. Finally, one commenter requested that CMS clarify that each member may vote for each contested seat in an election.

Response: The proposed rule stated that ''there must be more candidates for open positions on the board than there are positions.'' This requirement applies to all positions open during a particular election, and not to individual open positions. We have revised § 156.515(b)(1) of the regulation to clarify this requirement.

The establishment of member classes could jeopardize the role of members in governance by permitting one type of member to exert disproportionate influence on the direction of the organization. Also, the establishment of member classes conflicts directly with the principle of one member, one vote, which we believe is critical to protecting the voice of consumers and the accountability of a CO–OP to its membership. Further, as indicated in testimony before the Advisory Board, existing successful health insurance cooperatives do not classify their members.

We agree that it may be burdensome or logistically impossible for all members of a CO–OP to participate in each election for the board of directors. Therefore, we have revised § 156.515(b)(1) to allow CO–OPs to conduct elections for the board of directors based on a quorum of members and to clarify that members may vote for each seat during an election.

Comment: Several commenters suggested that CMS clarify additional features of board operations. One commenter suggested that CMS expressly allow boards to include members-at-large; another suggested that CMS direct CO–OPs to impose term limits. Another commenter suggested that CMS strengthen its proposed requirement on disclosure of financial relationships and require recusal in certain circumstances.

Response: Beyond the minimum requirements to ensure that members of the CO–OP are a majority of the operational board, CO–OPs have substantial flexibility in the structure and operation of the board of directors. At its option, a CO–OP may choose to have designated seats or non-voting directors, or impose term limits or additional disclosure requirements on board members. Decisions of this type should be made by individual CO–OPs based on their expected business needs. In addition, each CO–OP is responsible for establishing procedures for

identifying and addressing potential conflicts of interest, including conflicts arising from financial relationships.

Comment: One commenter recommended that there be an active structure supported by the CO–OP board to incorporate geographic and ethnic diversity into their policies and decisions based on the State's demographics. Another commenter sought additional guidance on the relationship between sponsors and CO–OP boards and whether issues between these two parties will be addressed in the contracts between sponsors and CO–OPs. The commenter indicated that sponsors investing significant amounts in a prospective CO–OP need assurance that the board of directors has sufficient expertise to fulfill its fiduciary responsibilities and will be held accountable so that the sponsor can meet its own fiduciary responsibilities

Response: CO–OPs must abide by the governance standards set forth under § 156.515 to ensure that they operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members. Decisions on how to ensure that a CO–OP's governing board has sufficient expertise are best made by the individual CO–OP based on its market, enrollment, and business plan. CO–OPs have the flexibility to make additional requirements and/or decisions on their governance structure beyond these rules, including how they define the ability to have designated seats on the board or promote diversity among board members.

Comment: One commenter asked CMS to clarify whether directors may consider interests other than those of the CO–OP—such as the interests of the local community or of the organization's employees—when making decisions.

Response: We agree that considering the interests of a CO–OP's local geographic community and acting in the interest of the CO–OP are not mutually exclusive.

Comment: One commenter stated that the governance requirements in § 156.515 may conflict with State nonprofit governance requirements and recommended that CMS give deference to State laws and regulations regarding governance of nonprofit risk bearing entities.

Response: Loan recipients must comply with all applicable State laws and should apply organizational structures that will minimize the potential for conflicting governance requirements.

We have reviewed and considered the comments received and are finalizing the standards set forth in § 156.515(b) of the proposed rule with the exception of the revisions described above and the revisions to the governance provisions in § 156.515(b)(1) discussed in the Definitions section of the preamble. We have modified the governance provisions in § 156.515(b)(1) to limit voting to members over the age of 18 and provide loan recipients with greater flexibility in electing directors and transitioning from a formation board to an operational board. We have also modified § 156.515(b)(2) and § 156.515(b)(3) to permit a loan recipient's board of directors to consider the interests of the loan recipient's local community.

3. Requirements To Issue Health Plans and Become a CO–OP

Section 156.515(c)(1) of the proposed rule codified section 1322(c)(1)(B) of the Affordable Care Act that provides that substantially all of the activities of the CO–OP consist of the issuance of CO–OP qualified health plans in the individual and small group markets in each State in which it is licensed to issue such plans. CMS proposed that a CO–OP will satisfy this standard if at least two-thirds of the contracts for health insurance coverage issued by a CO–OP are CO–OP qualified health plans offered in the individual and small group markets in the States in which the CO–OP operates. An organization must continually meet this requirement to be considered a CO–OP. Each insurance policy or contract that an issuer sells constitutes a single activity. We requested public comments on whether two-thirds is the appropriate threshold for this standard. This proposed standard would allow providers wishing to sponsor CO–OPs to enroll their own employees in the CO–OP and thereby encourage provider participation and would also permit CO–OPs to participate in Medicaid and the Children's Health Insurance Program (CHIP). CO–OP participation in public programs would enable individuals and families to remain with the same health insurance issuer and providers if family income fluctuates.

In paragraph (c)(2), CMS proposed that a CO–OP applicant receiving a Start-up Loan or Solvency Loan offer at least one CO–OP qualified health plan at both the silver and gold benefit levels, as defined in section 1302(d) of the Affordable Care Act, in every individual market Exchange that serves the geographic market in which it is licensed and intends to provide health care coverage (market area). In addition, if a CO–OP chooses to offer coverage in the small group market outside the Exchange, a CO–OP must commit to offering at least one CO–OP qualified health plan at both the silver and gold benefit levels in the SHOP of any market area where the CO–OP is licensed.

Within the earlier of 36 months following the initial drawdown of a Start-up Loan or 6 months following the initial drawdown of the Solvency Loan, we proposed that a loan recipient must be licensed in a State and offer at least one CO–OP qualified health plan at the silver and gold benefit levels (as defined in section 1302(d) of the Affordable Care Act) in an individual market Exchange and, if offering a health plan in the small group market, in a SHOP. Thus, the loan recipient must satisfy the requirements of title XXVII of the Public Health Service Act applicable to health insurance coverage in the individual market and small group market, if applicable, and comply with all standards generally applicable to qualified health plan issuers. To continue offering CO–OP qualified health plans in the Exchanges, a CO–OP must continue to meet these standards.

Due to concerns regarding the ability of a CO–OP to establish sufficient enrollment to make its health plans viable, CMS proposed that when offering a CO–OP qualified health plan in an Exchange for the first time, loan recipients may only begin to offer health plans and accept enrollment during an open enrollment period for the applicable Exchange when they can attract the largest and most diverse enrollment. This limitation does not affect when a CO–OP may offer plans in the market outside the Exchanges.

We proposed that a loan recipient must also satisfy the requirements of section 1322(c) of the Affordable Care Act and § 156.515 and become a CO–OP within fifty-four months following the first drawdown of a Start-up Loan or eighteen months following the initial drawdown of a Solvency Loan. These provisions were intended to ensure that loan recipients actively work toward becoming a CO–OP that offers CO–OP qualified health plans in the Exchanges.

The comments we received on these proposed standards and our responses are provided below.

Comment: A few commenters asked CMS to clarify that CO–OPs must become licensed before issuing any health insurance policies inside or outside of any Exchange.

Response: As stated in the proposed rule and § 1322(c)(5) of the Affordable Care Act, loan recipients under the CO–OP program must satisfy all requirements and comply with all standards that generally apply to qualified health plan issuers including State insurance laws and regulations. Accordingly, loan recipients must be

licensed by the relevant State agency before issuing any individual or small group health insurance policies regardless of whether they are offered inside or outside of the Exchanges.

Comment: One commenter requested clarification regarding licensure for CO–OPs that operate in multiple States. The commenter recommended that CMS require licensure in one State and allow operation in additional States through a multi-state agreement or licensure provided to a foreign-domiciled issuer.

Response: The statute requires that a CO–OP be licensed in each State in which it operates and licensure is controlled by State law. No carrier may conduct business in a State market without appropriate licensure approved by the applicable State insurance department. CO–OPs have the same options for licensure as other health insurers that operate in multiple States. For example, CO–OPs may establish a State of domicile for licensure and file expansion applications to achieve licensure in other States.

Comment: Two commenters disagreed with the proposed interpretation of ''activity'' when applying the substantially all requirement under section § 156.515(c)(1). These commenters stated that defining ''activities'' in terms of contracts or policies rather than the number of covered lives diminishes the focus on individual and small group coverage. However, most other commenters on this issue and the Advisory Board recommendation supported the interpretation that each insurance policy or contract that an issuer sells constitutes a single activity. Commenters in support of this interpretation felt that it provides flexibility that is essential in the development of successful CO–OP models. They indicated that this flexibility would lead to better health care coverage for patients, particularly low-income working families and individuals in the individual and small group markets.

Response: We considered alternative methods to evaluate the definition of ''activity'' but concluded that the final rule will maintain the proposed policy that each insurance policy or contract that an issuer sells constitutes a single activity, consistent with the proposed rule. Alternatives would unreasonably burden enrollment operations for CO–OPs by requiring ongoing counting of covered lives as family size or number of employees change, could violate guaranteed issue requirements by placing caps on the number of members that could be accepted from different groups that do not apply to other issuers, and may result in disruptions of coverage. Such a requirement may create a competitive disadvantage for CO–OPs that is not required by the statute and a significant ongoing administrative burden. Also, the CMS interpretation of ''activity'' is consistent with the interpretation generally used by State regulators in measuring issuer activity, which typically includes the following: Number of plans in the individual market, number of plans in the small group market, and number of plans in the large group market. Moreover, in using the term ''activities consisting of the issuance of plans,'' the statute makes no reference to enrollment or covered lives. This definition will provide the flexibility needed for CO–OPs to become viable in the health care market and ensure repayment of loans.

Comment: CMS received several comments in response to § 156.515(c)(1) which states that a CO–OP will satisfy the ''substantially all'' standard at section 1322(c)(1) if at least two-thirds of the contracts for health insurance coverage issued by a CO–OP are CO–OP qualified health plans offered in the individual and small group markets in the States in which the CO–OP operates. The Advisory Board recommended that CMS apply the most flexible standard possible in interpreting ''substantially all.'' Most commenters on this issue stated that measuring two-thirds of the contracts for the substantially all standard was an appropriate level, was easy to measure, and would give CO–OPs the needed flexibility to implement successful health plans. Two commenters felt that the two-thirds standard was too low and should be raised to 80–90 percent to ensure that CO–OPs operate primarily in the individual and small group markets. Other commenters felt that measuring two-thirds of the contracts was too high a standard and should be lowered to 50 percent. One commenter recommended that CMS explore ways to allow CO–OPs to participate in other markets, such as providing coverage for large employers or State employees.

Response: In order for these new health insurers to be viable, CO–OPs must achieve a minimum level of enrollment as soon as possible. Therefore, we believe that measuring two-thirds of the contracts when applying the substantially all requirement is an appropriate threshold.

The two-thirds standard for the issuance of health plans applies to all of the activities of the CO–OP, including plans issued outside of the Exchanges. This interpretation allows CO–OPs to have a stable base of enrollment that will enhance a CO–OP's long-term success in the individual and small group market and ensure repayment of loans. It will also encourage providers who may want to offer a CO–OP option to their employees to participate in CO–OP provider networks and permit CO–OPs to participate in the Medicaid and CHIP program.

The two-thirds standard used in this rule is consistent with other regulations in which CMS has interpreted the term ''substantially all.'' An example is the mental health parity regulations for group health plans and group health insurance coverage under section 712 of the Employee Retirement Income Security Act of 1974 (ERISA), section 2726 of the PHS Act, and section 9812 of the Code.

Comment: Several commenters recommended that section § 156.515(c) be modified to permit CO–OPs to market themselves and accept enrollment before an Exchange open-enrollment period or prior to market reform rules having been implemented in a State.

Response: Section 1322(c)(6) of the Affordable Care Act explicitly prohibits a CO–OP from ''offer[ing] a health plan in a State until that State has in effect (or the Secretary has implemented for the State) market reforms required by part A of title XXVII of the Public Health Service Act.'' Therefore, a loan recipient cannot offer health coverage in a State until market reforms under the Affordable Care Act have been put into effect in the State. Once reforms have been put into effect in a State and a CO–OP satisfies State requirements such as licensure, a CO–OP may offer coverage in that State.

Comment: One commenter requested clarification regarding the difference between a loan recipient and a CO–OP.

Response: A loan recipient is any organization that has received a loan under the CO–OP program. As defined in § 156.505, a CO–OP is a loan recipient that has established a member elected operational board, is offering CO–OP qualified health plans at the gold and silver benefit levels in the Exchanges serving the CO–OP's target markets, and meets the other requirements in § 156.515.

Comment: Several comments addressed the timelines for beginning to offer CO–OP qualified health plans and for becoming a CO–OP. One commenter recommended that the deadline for meeting the ''substantially all'' and other standards to become a CO–OP under § 156.515(c) be 48 months from Start-up loan drawdown rather than 54 months. Other commenters recommended that this deadline be extended because it will be difficult for

CO–OPs as new entities to conform to these requirements within 54 months.

Response: Given the process and requirements for achieving licensure in each State, we agree that the deadline to meet the requirements under section § 156.515(c) should be extended. Therefore, we have revised the final rule. A loan recipient must meet the standards set forth under § 156.515(c)(3) within 36 months following the initial drawdown of the Start-up Loan (as indicated in the proposed rule) or one year following the initial drawdown of the Solvency Loan as opposed to the initially proposed timeframe of six months. In addition, since we have extended the timeframe for a loan recipient to transition from a formation board to an operational board from one year to two years, we have extended the timeframe for a loan recipient to become a CO–OP. Specifically, we have changed the timeframe from within the earlier of 54 months following the initial drawdown of the Start-up Loan or 18 months following the initial drawdown of the Solvency Loan to within 5 years and 3 years respectively. This policy generally gives a loan recipient two years after it begins providing health care coverage through the Exchanges to fully implement its member elected operational board and meet all of the CO–OP minimum standards. We do not anticipate that these changes will affect when a loan recipient can offer coverage either through the Exchanges. This change will simply allow loan recipients to receive Solvency loans earlier, which will provide them with more time to ensure licensure before offering coverage.

Comment: Two commenters requested modifications to § 156.515(d) that would exempt health plans sponsored by Indian tribes from State insurance standards and provide Indian tribes flexibility in setting up and operating a CO–OP. Commenters also recommended that CO–OP enrollment eligibility criteria allow for a CO–OP to focus on a defined subset of the population.

Response: Pursuant to section 1322(c)(5) and (c)(6) of the Affordable Care Act, a loan recipient must comply with all standards required under applicable State insurance laws and regulation in the State in which the CO–OP operates as well as the market reforms required by part A of the title XXVII of the Public Health Service Act. These standards include the requirement that qualified health plans abide by guaranteed issue and other State insurance laws in order to maintain a level playing field with health insurance issuers. Therefore, loan recipients cannot offer qualified health plans to only a defined subset of enrollees in their target area. The statute does not provide authority to modify these requirements.

We have reviewed and considered the comments received and are finalizing the standards set forth in § 156.515(c) and § 156.515(d) of the proposed rule with the exception of the revisions described above. We have modified the standards in § 156.515(c)(3) and § 156.515(d) to provide additional time for loan recipients to begin offering CO–OP qualified health plans and become a CO–OP.

E. Loan Terms (§ 156.520)

1. Overview of Loans

Organizations that meet the eligibility standards in § 156.510 and the CO–OP program FOA may apply for two types of loans: Start-up Loans and Solvency Loans. Start-up loans assist with the start-up costs associated with establishing a CO–OP. Solvency Loans are intended to help loan recipients meet the reserve requirements, solvency regulations, and requisite surplus note arrangements in each State in which the applicant seeks to be licensed. We proposed that all loans awarded under the CO–OP program must be used in a manner that is consistent with the FOA, loan agreement, and all other statutory, regulatory, or other requirements established by CMS.

Solvency and the financial health of insurance issuers is historically a State-regulated function. As a condition of licensure as a health insurance issuer, State insurance departments require that an issuer maintain an amount of capital that is consistent with its size and risk profile. This measure of reserve is called risk-based capital (RBC). A loan is considered a liability and typically would not assist an organization in meeting solvency requirements, since the liability would have to be subtracted from the calculation of reserves in order to determine the net protection afforded to enrollees. Since Solvency Loans must be repaid to the Federal government within 15 years, the Advisory Board expressed concern that they will be treated by States as debt rather than capital that satisfies State solvency and reserve requirements.

Per section 1322(b)(3) of the Affordable Care Act, the standards for the repayment of loans awarded under the CO–OP program must take into consideration ''any appropriate State reserve requirements, solvency regulations, and requisite surplus note arrangements that must be constructed in a State.'' Therefore, in § 156.520(a)(3) of the proposed rule, CMS proposed to structure Solvency Loans to each loan recipient in a manner that meets State reserve and solvency requirements so that the loan recipient can fund its required capital reserves. In order to assist CO–OPs in meeting State solvency requirements, the loans will be structured so that premiums would be used to meet cash reserve requirements before repayment to CMS. This ensures that the Solvency Loans are recognized as contributing to State reserve and solvency requirements in the States in which the applicant intends to offer CO–OP qualified health plans. We requested public comment on this provision.

The comments received on the loan terms in § 156.520(a) of the proposed rule and our responses are provided below.

Comment: One commenter requested clarification regarding whether the terms of each CO–OP's Solvency Loan will be tailored to the specific requirements of each State in which the CO–OP intends to offer health care coverage. Several commenters supported our proposal to structure Solvency Loans so that they are recognized as contributing to State reserve and solvency requirements. They acknowledged the concern discussed in the proposed rule that solvency requirements vary across States and that loans are typically considered debt rather than capital for the purposes of State reserve requirements. Generally, commenters agreed that Solvency Loans should be structured so that each CO–OP's premium revenue is applied towards paying claims and meeting cash reserve requirements before loan repayments to CMS. However, some commenters indicated that such a structure would be insufficient. They explained that Solvency Loans must be structured as surplus notes as they are the only types of loans that State insurance regulators will recognize as assets rather than debt. One commenter advised against creating a new Federal requirement that States treat Solvency Loans as ''capital.'' It was also recommended that CMS coordinate with NAIC to establish a means for CO–OPs to meet State solvency and reserve requirements.

Response: We will work with each loan recipient to structure their Solvency Loans in a manner that will contribute towards meeting State reserve and solvency requirements consistent with State insurance regulation. States are not required to take action that would be inconsistent with State insurance regulation. Therefore, loan recipients must work with State insurance regulators to

identify loan structures that will meet State requirements. Significant flexibility is afforded to loan applicants in structuring their Solvency Loans to meet State standards. Applicable loan structures may include but are not limited to structuring a Solvency Loan as a surplus note or responsibly structuring a Solvency Loan so that premium revenue is applied towards paying claims for covered services to enrollees and meeting cash reserve requirements before loan repayments to CMS.

Comment: One commenter asked what actions can be taken if a State is unwilling to recognize a loan recipient's Solvency Loan as meeting State reserve and solvency requirements. The commenter recommended that CMS exercise flexibility in structuring and, if necessary, re-structuring Solvency Loans if a State revises its reserve and solvency requirements.

Response: It is incumbent upon applicants to work with their State insurance regulators to identify appropriate loan structures that will meet the requirements of their State insurance department.

Comment: One commenter requested clarification regarding whether CMS will provide loan recipients with sufficient funding to meet State solvency requirements in the initial distributions of loan funds. In addition, commenters including State Departments of Insurance requested clarification regarding whether additional loan funding will be made available if a loan recipient requires additional Solvency Loans after 2012 and recommended that loan funding remain available after 2012.

Response: The full amount of Solvency Loans anticipated should be requested in the loan application. Loan disbursements will be made available to loan recipients on a timetable based on the business plan and milestones proposed and approved in their applications after we review the loan recipient for compliance. The initial solvency disbursements received by loan recipients should allow a loan recipient to meet their applicable State solvency and reserve requirements. Applicants should consider the potential needs for funding due to unforeseen market changes or changes in State regulatory requirements as well as unforeseen enrollment and benefit cost growth. These will be considered in the size of the initial award. A loan recipient may draw down on the Start-up Loans and Solvency loans to the extent such conditions exist, consistent with the terms of the loan agreement.

Comment: One commenter recommended that CMS prohibit loan recipients from using their loan funding to pay claims or subsidize reimbursements to providers in any way that would give them an advantage over existing health insurance issuers.

Response: Under the Affordable Care Act, loan recipients are permitted to use their loan funds to assist with their start-up costs and State solvency requirements, provided that the funds are not used to conduct propaganda, or otherwise attempt to influence legislation, or for marketing. The purpose of State reserve requirements is to preserve the financial viability of carriers and enable the payment of claims when provider costs exceed premium revenue. A CO–OP that fails to maintain appropriate reserves or surplus may be subject to regulatory action, seizure, or liquidation. Such a prohibition would therefore not only defeat the purpose of the loans but would be contrary to the framework of State regulation. Furthermore, the statute does not prohibit these costs. Given that these loans must be repaid to us in full and that CO–OPs should structure their premiums, claims, and administrative costs to ensure sustainability, we do not believe that the use of loan funds to pay claims would give CO–OPs an advantage over existing health insurance issuers. Existing health insurance issuers may use their reserves to pay claims under equivalent circumstances.

We have considered the comments received and are finalizing the provisions set forth in § 156.520(a) of the proposed rule.

2. Repayment Period

Section § 156.520(b) of the proposed rule codified the standard in section 1322(b)(3) of the Affordable Care Act that Start-up Loans and Solvency Loans awarded must be repaid within 5 years and 15 years respectively, taking into consideration any appropriate State reserve requirements, solvency regulations, and requisite surplus note arrangements that must be constructed in a State. Loan recipients must make loan payments consistent with the repayment schedule approved by CMS and agreed to by the loan recipient in the loan agreement until the loans have been paid in full. CMS proposed to permit individualized repayment schedules to promote the growth of CO–OPs, ensure compliance with the laws of different States, serve the interests of the CO–OP members and the public, and enhance the likelihood of full repayment. Flexibility in the repayment schedule helps address the diversity in each CO–OP's local market conditions, projected member risk profiles, business strategy, and projected enrollment size. The repayment schedule is submitted with the application and may include features such as a grace period, graduated repayments, or balloon payments at the end of the repayment period.

The Advisory Board recommended an enhanced oversight process for cases where a loan recipient is not meeting the terms and conditions of its loan but where CMS has concluded that discontinuing funding is not in the best interest of the CO–OP's members, the public, or the government. Consistent with the Advisory Board's recommendation, a loan modification or workout may be executed when a loan recipient is having difficulty making loan repayments. If a loan recipient is unable to (1) Make repayments or meet other conditions of the loan without adversely affecting coverage stability, member control, quality of care, or the public interest generally or (2) meet State reserve and solvency requirements, CMS would have the discretion to execute a loan modification or workout if appropriate, or terminate the agreement and recoup the loans in accordance with the loan agreement.

The comments received on the repayment periods described in § 156.520(b) of the proposed rule and our responses are provided below.

Comment: Most commenters expressed support for our flexibility in allowing applicants to propose individualized repayment schedules consistent with their business plans. They indicated that loan recipients will likely need time to build enrollment and revenue before beginning their loan repayments. Some commenters recommended that CMS not permit CO–OPs to wait until the end of their repayment period to make a balloon payment. They stated that instead CO–OPs should be required to make payments at regular intervals in order to reduce the cost of the program and ensure that CO–OPs are factoring loan repayments into their premium pricing.

Response: Flexible repayment schedules promote the growth of each CO–OP and improve each CO–OP's ability to fully repay its loans. We agree that CO–OPs must factor loan repayments into their premium pricing; however, we do not believe that it is necessary to require repayment at uniform intervals among all CO–OPs. As described in the FOA, all loan applicants must demonstrate their ability to repay their loans and describe

their process for determining accurate and appropriate premium pricing.

Comment: One commenter requested guidance regarding whether a repayment schedule can be established on a per member per month basis.

Response: Applicants have flexibility in proposing a responsible repayment schedule. A loan may have a repayment schedule on a per member per month basis, provided that each loan is fully paid within the repayment period and the proposed repayment schedule is supported by the CO–OP's business plan. CMS will consider the applicant's proposed schedule and has discretion in determining a responsible repayment schedule that will be approved and established in the loan agreement.

Comment: One commenter recommended that we add ''market competition'' to the list of considerations for modifying loan terms. The commenter stated that terminating a functioning CO–OP due to loan repayment issues could significantly reduce competition and harm the enrollees in areas with few active health plans.

Response: We have added ''market stability'' as a consideration for executing a loan workout or modification.

We have considered the comments received and are finalizing the provisions set forth in § 156.520(b) of the proposed rule with the exception of the revisions described above. Specifically, we have revised § 156.520(b)(3) to reflect that a loan modification or workout may be executed if we determine that a loan recipient is unable to repay its loans under its original loan agreement without destabilizing the loan recipient's target market.

3. Interest Rates

In § 156.520(c), we proposed that loan recipients pay an interest rate benchmarked to the average interest rate on marketable Treasury securities of similar maturity. In the FOA, we specified that the interest rate for Start-up loans is the average interest rate on marketable Treasury securities of similar maturity minus one percentage point and the interest rate cannot be less than zero percent. In addition, we specified that the interest rate for Solvency loans is the average interest rate on marketable Treasury securities of similar maturity minus two percentage points and the interest rate cannot be less than zero percent. These interest rates are tied to prevailing market conditions while providing low cost loans that are consistent with the statute's direction to foster the development of viable CO–OPs.

The comments we received on the interest rates described in § 156.520(c) of the proposed rule and our responses are provided below.

Comment: Commenters supported establishing low interest rates for loan recipients to give CO–OPs the best chance of success, to protect the Federal investment, and to encourage new market entrants to provide coverage to medically underserved communities. Lastly, one commenter stated that the interest rates for Start-up Loans and Solvency Loans could determine, in large measure, the ability of CO–OPs to successfully compete with other health insurers.

Response: We agree with the commenters and therefore, are codifying the interest rates announced in the FOA in § 156.520(c) of this final rule. These interest rates will encourage and promote the success of CO–OPs.

Comment: One commenter requested guidance regarding whether loan recipients may be charged a lower interest rate during their initial years of operation.

Response: The interest rates for Start-up Loans and Solvency Loans will be determined based on the date of award and will be fixed for the life of the loan. If an applicant anticipates difficulty making repayments during the initial years of operation, it may request a repayment schedule where repayments begin later in the loan repayment period.

Comment: Pursuant to section 1322(b)(2)(C)(iii) of the Affordable Care Act, if an organization fails to meet any provisions of the loan agreement or has not corrected such a failure within a reasonable period of time established by CMS, the organization must repay an amount equal to 110 percent of the total loans received plus interest. One commenter recommended that we codify this provision in the final rule in addition to the FOA in order to give this penalty more weight and ensure greater compliance.

Response: We agree with the commenter and therefore, are codifying this provision of the Affordable Care Act as described in the FOA in § 156.520(c) of this final rule.

Comment: One commenter expressed support for the proposed interest rates and asked if CMS could take any additional steps to reduce the financial barriers that CO–OPs face when entering a concentrated health insurance market. Another commenter indicated that CMS should encourage States to offer CO–OPs the lowest possible premium rates or a tax-free status because State taxation requirements may create significant barriers for CO–OPs. Commenters also recommended that CMS develop national purchasing pools or mechanisms to assist CO–OPs in adequately spreading their risk (for example, with a national CO–OP risk pool, Federally-funded stop-loss insurance, or Federally-funded reinsurance), particularly in the first few years of operation.

Response: In addition to providing low-interest loans with tailored repayment schedules to assist with start-up cost and State reserve requirements, the Affordable Care Act reduces the financial barriers for CO–OPs by creating a new Federal income tax exemption under 501(c)(29) of the Internal Revenue Code for qualified nonprofit health insurance issuers that have received loans under the CO–OP program. These measures provide CO–OPs with significant assistance in overcoming financial barriers to entering a health care market while maintaining a level playing field with other issuers. We do not have the authority to require States to offer CO–OPs tax-exempt status or the lowest possible premium tax rates. CO–OPs, like other health insurers that participate in the Exchanges, will benefit from premium and risk stabilization programs, risk adjustment, risk corridors, and reinsurance programs operating under sections 1341, 1342, and 1343 of the Affordable Care Act. In addition, CO–OPs may purchase reinsurance and other administrative services individually or through a private purchasing council.

Comment: One commenter recommended that CMS give deference to State statutory interest rate caps on Solvency Loans.

Response: The interest rates for Solvency Loans are below market rates. We do not anticipate that they will exceed any interest rate caps established by a State regulation. However, loan recipients must comply with all applicable State insurance laws.

We have considered the comments received and are finalizing the provisions set forth in § 156.520(c) of the proposed rule. We have also added provisions (1) To reflect that the interest rate for Start-up Loans equals the greater of the average interest rate on marketable Treasury securities of similar maturity minus 1 percentage point or 0 percent; (2) to reflect that the interest rate for Solvency loans equals the greater of the average interest rate on marketable Treasury securities of similar maturity minus 2 percentage points or 0 percent; and (3) to codify the penalty described in 1322(b)(2)(C)(iii) of

the Affordable Care Act. If a loan recipient fails to meet any provisions of the CO–OP program or their loan agreement and has not corrected such failure within a reasonable period of time established by CMS, the organization must repay an amount equal to 110 percent of the total loans received plus interest.

4. Failure To Pay

In § 156.520(d), CMS proposed to use any and all remedies available to it under law to collect loan payments or penalty payments if a loan recipient fails to make payments consistent with the repayment schedule in its loan agreement or in a loan modification or workout.

The comments we received on the failure to pay provisions described in § 156.520(d) of the proposed rule and our responses are provided below.

Comment: One commenter stated that the terms of a loan recipient's obligations in the event of a loan default or failure to meet loan requirements seems overly punitive.

Response: A loan recipient's obligations in the event of a loan default or failure to meet loan requirements are consistent with the provisions in section 1322(b)(2)(C)(iii) of the Affordable Care Act and are appropriate to protect Federal investment in the CO–OP program. We will work with loan recipients experiencing difficulty making timely repayments and will provide the option to request a loan workout. Furthermore, organizations that fail to meet program requirements, depending on the nature of the failure, may be given sufficient opportunity (as determined by CMS) to take corrective action.

Comment: One commenter recommended that CMS not hold a loan recipient's incorporators and formation board liable for loan repayment unless they engaged in fraud or any other prohibited conduct. The commenter indicated that such an assurance would encourage additional participation in the CO–OP program.

Response: Under the rule, loan applicants are incorporated or organized entities under State law. Therefore, the liability of the loan recipient's incorporators and formation board will, in part, be determined by the organizational vehicles, including corporations or other limited-liability organizations, the applicants use under State law.

We have considered the comments received and are finalizing the provisions set forth in § 156.520(d) of the proposed rule.

5. Deeming of CO–OP Qualified Health Plans

Section 156.520(e) of the proposed rule codified the ''deeming'' provisions of section 1301(a)(2) of the Affordable Care Act. A loan recipient that is deemed certified to participate in the Exchanges would be exempt from the certification procedures for each applicable Exchange. To be deemed certified to participate in an Exchange, we proposed that a loan recipient must be in compliance with the terms of the CO–OP program, the Federal standards for CO–OP qualified health plans set forth pursuant to section 1311(c) of the Affordable Care Act, and State standards that are applicable to all insurers. CMS or an entity designated by CMS will make a determination regarding whether or not a loan recipient meets these standards based on evidence provided by the loan recipient. CMS or its designee will notify the Exchange in which the loan recipient proposes to operate that the loan recipient is deemed certified to participate. Similarly, if a loan recipient loses its deemed status for any reason, CMS or its designee will provide notice to the applicable Exchanges.

The comments we received on the ''deeming'' provisions described in § 156.520(e) of the proposed rule and our responses are provided below.

Comment: Several commenters recommended that CMS subject CO–OPs to the same standards, operational requirements, and certification processes as other health insurance issuers participating in the Exchanges including any competitive bidding process or selective contracting process in order to maintain a level playing field. State regulators requested that CMS defer to the relevant Exchange for certification. Commenters indicated that States are in the best position to assess whether a CO–OP meets the standards of an Exchange. Two commenters welcomed a prominent Federal role in the ''deeming'' of health plans offered by CO–OPs and indicated that such a role would remove a potential barrier to the sponsorship of CO–OPs by Indian tribes and ensure that Indian tribes are not subjected to State-specific attempts to regulate their CO–OP plans.

Response: CO–OPs must comply with all of the same requirements as other qualified health plans. CO–OPs will be subject to the same State and Federal standards as other health insurance issuers to ensure a level playing field. However, to ensure CO–OPs are not held to standards that it is not possible for them to meet as CO–OPs, we have revised the final rule to clarify that to be deemed as certified, loan recipients must meet all State-specific standards established by an Exchange except for those State-specific standards that operate to exclude loan recipients due to being new issuers or based on other characteristics that are inherent in the design of a CO–OP. Enforcing such standards would defeat the statutory purpose of the CO–OP program. CMS (or an entity designated by CMS) will work with each CO–OP to ensure that they are meeting the applicable standards, including program standards.

The goal of the CO–OP program is to provide additional options for consumers in the Exchanges that are consumer governed and consumer focused. The ''deeming'' provision of section 1301(a)(2) of the Affordable Care Act is pursuant to this goal and ensures that qualified health plans offered by CO–OPs are made available to consumers in the Exchanges.

Comment: One commenter requested confirmation that CO–OPs will participate in the reinsurance, risk corridors, and risk adjustment programs envisioned by the Affordable Care Act and thus are subject to the same taxes, assessments, and costs as other qualified health plans.

Response: CO–OPs will participate in the reinsurance, risk corridor, and risk adjustment programs implemented under sections 1341, 1342, and 1343 of the Affordable Care Act as issuers in the individual and small group markets. They are responsible for the same costs as other qualified health plans.

Comment: Commenters expressed concern that deeming CO–OPs for up to 10 years following the life of their loans would remove incentives for CO–OPs to perform at the market standard, harm meaningful competition in the Exchanges, and potentially put consumers at risk. Two commenters recommended that CMS clarify when the 10-year period would begin and that CMS exempt CO–OPs sponsored by an Indian tribe, tribal organization, or an Indian-controlled Managed Care Entity from this time limit so that they could be deemed as certified to participate in the Exchanges indefinitely. Commenters also requested additional information regarding the deeming process.

Response: Based on comments received, we are revising the final rule to implement a recertification process for all loan recipients including CO–OPs sponsored by an Indian tribe, tribal organization, or an Indian-controlled Managed Care Entity. Loan recipients will be deemed as certified to participate in the Exchanges for two years and may apply to CMS for ''deeming'' recertification every two

years for up to a total of 10 years following the date their loans have been fully repaid. To be deemed as certified or recertified to participate in the Exchanges, a loan recipient must provide evidence to CMS (or an entity designated by CMS) that it complies with the applicable Federal and State standards for qualified health plans. If a loan recipient fails to provide sufficient evidence that it is in compliance with Federal and State standards, the organization will no longer be deemed as certified to participate in the Exchanges. Additional information regarding the deeming process will be provided in program guidance.

Comment: One commenter requested clarification regarding whether CMS intends to designate an entity to deem qualified health plans offered by CO–OPs as certified to participate in the Exchanges. In addition, the commenter requested the specific criteria for selecting a designated entity.

Response: Additional information regarding the deeming process will be provided in program guidance.

Comment: One commenter requested confirmation that loan recipients must be accredited as required under section 1311(c)(1)(D)(i) of the Affordable Care Act and recommended giving loan recipients a maximum of 18 months to complete accreditation. The commenter also recommended granting provisional accreditation status, for fulfilling some, but not all, accreditation requirements.

Response: Consistent with section 1322(c)(5) of the Affordable Care Act, loan recipients must meet the same requirements as other similarly situated issuers including rules regarding network adequacy, solvency, and guaranteed issue. Therefore, loan recipients will be subject to the same standards as other health insurers in the Exchanges and must meet the same applicable accreditation requirement.

We have considered the comments received and are finalizing the deeming provisions set forth in § 156.520(e) of the proposed rule with the exceptions described above. Specifically, we have revised the provisions in § 156.520(e) to clarify that loan recipients are deemed as certified to participate in the Exchanges for 2 years and may be recertified every 2 years for up to 10 years following the life of their loans. We have also revised the provisions in § 156.520(e) to clarify that loan recipients will be subject to all State-specific standards established by an Exchange except for those State-specific standards that operate to exclude loan recipients due to being new issuers or based on other characteristics that are inherent in the design of a CO–OP.

6. Conversions

Due to concerns that successful CO–OPs may become targets for conversion to for-profit, non-consumer operated entities, we proposed to prohibit such conversions. Conversions would likely reduce consumer control, limit choice, and weaken competition in the insurance marketplace and would be contrary to the goals of the CO–OP program. We also proposed to prohibit any transaction by a CO–OP that would result in a change to a governance structure that does not meet the standards in § 156.515 or any other program standards. These prohibitions would ensure that loans awarded under this program are used to sustain program goals over time.

The comments we received on the conversion prohibitions described in § 156.520(e) of the proposed rule and our responses are provided below.

Comment: Several commenters expressed strong support for the proposed prohibition on conversions to for-profit or non-consumer operated entities. They indicated that such a conversion would be contrary to the legislative intent and that organizations receiving Federal funding to develop a CO–OP should not be permitted to abandon the mission of the CO–OP program. Commenters requested additional guidance regarding this prohibition and any exceptions to the prohibition. Some commenters recommended allowing CO–OPs to convert to a different organizational structure under certain circumstances, such as to preserve plan coverage, avert plan insolvency, or respond to subsequent changes in the Affordable Care Act. One commenter recommended establishing penalties for CO–OPs that convert to a for-profit or non-consumer governed entity.

Response: We believe that successful CO–OPs may be targets for conversions and agree with commenters that such conversions would be inconsistent with the legislative intent. As a result, we are not implementing any exceptions to this policy. CO–OPs are not permitted to convert to a for-profit or non-consumer operated entity at any time or to partake in any activities that have the effect of such a conversion (for example, selling a substantial portion of its enrollment to a for-profit entity), even after they have fully repaid their Start-up Loans and Solvency Loans. In the potential case of insurer financial distress, a CO–OP follows the same process as traditional issuers and must comply with all applicable State laws and regulations.

We have considered the comments received and are finalizing the provisions set forth in § 156.520(f) of the proposed rule.

F. Comments Beyond the Scope of the Final Rule

In response to the proposed rule, many commenters chose to raise issues that are beyond the scope of the proposed rule. Several of these comments pertain to the provisions of the Funding Opportunity Announcement (FOA) and will be addressed in subsequent program guidance. These comments are summarized below.

Comment: One commenter requested that this final rule prohibit discrimination in the operation of the CO–OP program. In addition, the commenter requested that State law prevail over the minimum protections codified in the CO–OP rules if a State provides additional protections to consumers.

Response: Loan recipients must comply with applicable Federal law regarding discrimination. In addition, we intend to include provisions in the loan agreement with each loan recipient that will prohibit discrimination. Under section 1322(c) of the Affordable Care Act, a CO–OP must meet all State standards for licensure under the market reforms outlined in the Affordable Care Act. Per § 156.520(e) of this subpart, CO–OPs must also comply with the standards for CO–OP qualified health plans set forth pursuant to section 1311(c) of the Affordable Care Act, all State-specific standards established by an Exchange that apply to all qualified health plans, and the standards of the CO–OP program.

Comment: One commenter expressed concern that the Governance and Licensure criteria in the FOA do not sufficiently emphasize the importance of the licensure requirements. The commenter recommended that licensure requirements account for up to five points in the application reviews.

Response: The review criteria for CO–OP loan applications are addressed in the Funding Opportunity Announcement. We recognize that establishing a reasonable strategy for achieving licensure is critical for the success of every prospective CO–OP.

Comment: One commenter suggested that this final rule explicitly require Federally Qualified Health Centers (FQHCs), or at least ''safety net providers,'' to be included in the provider networks of all CO–OPs since FQHCs already demonstrate and will ensure that the CO–OP program succeeds in its purpose of providing care coordination, quality, and efficiency.

Response: Section 1311(c)(1)(C) of the Affordable Care Act governs the inclusion of safety net providers for issuers that participate in the Affordable Insurance Exchanges.

Comment: Commenters requested clarification regarding whether CO–OPs are required to operate statewide. Two commenters recommended that CMS permit CO–OPs to limit their service areas to regions primarily comprised of Indian reservations and other tribally controlled land. One commenter recommended that an applicant's feasibility study dictate how quickly a CO–OP expands its service area. Another commenter requested clarification regarding whether an applicant can receive preference in the application reviews if they plan to offer coverage initially in a local service area and then expand to statewide.

Response: Loan recipients are not required to offer coverage statewide. For CO–OPs that intend to provide coverage across an entire State, we recognize that depending on local market conditions, it may be more prudent for a CO–OP to offer coverage in a locally defined service area first and then expand coverage to the entire State. However, applicants should define a potential service area in conjunction with the State insurance department, as they must comply with all applicable State laws. Accordingly, as indicated in the FOA, applicants will be awarded points toward their application review based on their ability to operate statewide over time. Applicants may also receive points towards their application review by providing evidence of private support or submitting a reasonable plan to provide integrated or coordinated care.

Comment: One commenter recommended that CMS encourage all applicants to build expenses related to networking and information sharing into their financial projections and business plans.

Response: Networking and information sharing between CO–OPs will be beneficial for CO–OPs. Reasonable expenses related to information sharing may be eligible costs funded through Start-up Loans.

Comment: One commenter recommended that CMS re-invest funds that have been paid back by loan recipients to capitalize future CO–OP applicants.

Response: We are not authorized under the statute to award additional loans using repaid loan amounts.

Comment: One commenter recommended that we increase the $100,000 limit on the retroactive reimbursement of costs associated with preparing a feasibility study and business plan for the CO–OP loan application.

Response: See section IV.E. of the FOA for more information regarding the start-up costs eligible for retroactive reimbursement. We recognize that there are other costs that applicants may incur in developing their applications. Therefore, applicants are encouraged to solicit private support (for example, grants and in-kind services) to assist with these costs.

Comment: We received a comment regarding whether we envision CO–OPs competing with one another if their service areas overlap.

Response: The statute permits us to award loans to multiple applicants in a State if there is sufficient funding. Loans will be awarded, in part, based on the feasibility of an applicant developing a viable CO–OP given existing and expected market conditions. We will examine the service areas in evaluating CO–OP applications and implementation to ensure actuarial viability of the CO–OPs.

Comment: One commenter requested additional information regarding the technical assistance that CMS will offer to applicants and loan recipients. Another commenter recommended that CMS identify other organizations to provide technical assistance, if CMS does not intend to perform this function.

Response: As stated in the FOA, technical assistance and support will be provided to applicants and loan recipients as available and when deemed appropriate. Information regarding available technical assistance will be provided in subsequent program guidance.

Comment: One commenter requested that CMS permit CO–OPs to outsource administrative functions to organizations such as private purchasing councils.

Response: Under section 1322(d)(1) of the statute, CO–OPs may establish private purchasing councils to enter into collective purchasing arrangements for administrative services to increase administrative and cost efficiencies. As described in the FOA, the costs associated with establishing a private purchasing council are eligible costs for Start-up Loans.

Comment: One commenter requested guidance regarding whether CO–OPs must provide additional reporting demonstrating compliance with Federal law. Another commenter recommended that CMS establish an autonomous body, with the power to issue sanctions, to monitor CO–OPs and ensure that the goals of the CO–OP program are met.

Response: As described in the FOA, CMS will closely monitor and assess the performance of each loan recipient in complying with Federal law, the requirements of the CO–OP program including its reporting requirements, and the specific terms of its loan agreement.

Comment: One commenter stated that CO–OPs offer a unique opportunity for providers to foster emerging models of integrated delivery systems, improve quality and health outcomes, and reduce costs. When reviewing CO–OP loan applications, the commenter recommended that CMS consider an applicant's plan to collect quantifiable health outcomes data, their willingness to adjust clinical behavior based on the informatics collected, and the likelihood that they will minimize costs and achieve improvements in patient outcomes through reliance on quantifiable data metrics. The commenter provided specific examples of questions that should be asked of CO–OPs in order to ensure the most efficient patient outcomes.

Response: We share the commenter's goals of improved patient care and improved health outcomes. The extent to which an applicant intends to monitor quality of care and use information technology to evaluate and improve care outcomes are components of the operational criteria used in the evaluation of CO–OP loan applications as described in the FOA.

Comment: Several commenters suggested that CMS allow CO–OPs to use or implement new care models, systems, and products over time such as value-based insurance design (VBID) products.

Response: CO–OPs have the flexibility to implement care models, systems, and products that best serve the needs of their members as long as the CO–OP abides by the standards and requirements set forth in this final rule, the FOA, the loan agreement, and other program guidance. In accordance with the statute, care models that improve the integration or coordination and value of care will receive points contributing to the overall score of their application in the award of loans.

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; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited comments on the extension of the information collection requests associated with the implementation of the CO–OP program (for example, application, reporting) currently approved under 0938–1139 in a 60-day notice that was published in the **Federal Register** on August 5, 2011 (76 FR 47591). OMB previously reviewed and approved the Information Collection Request under emergency processing according to 5 CFR 1320.13. We did not receive any public comments regarding this extension and therefore, are finalizing the information collection.

IV. Regulatory Impact Analysis (RIA)

A. Introduction

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). An RIA must be prepared for rules with economically significant effects ($100 million or more in any 1 year). This final rule is economically significant. Accordingly, the Office of Management and Budget has reviewed this final rule.

B. Summary and Need for Regulatory Action

The Affordable Care Act established the CO–OP program and requires CMS to promulgate regulations to implement this program. The purpose of this program is to create a new CO–OP in every State to expand the number of qualified health plans available in the Exchanges with a focus on integrated care and greater plan accountability.

Only a handful of insurance choices are available that are sponsored and managed by entities primarily focused on meeting the health insurance needs and preferences of consumers, as determined directly by consumers or their elected representatives. There are four issuers in the country that meet this standard, located in the States of Minnesota, Washington, Idaho, and Wisconsin. The combined membership for these four health insurance cooperatives is approximately 2.1 million, meaning that the current CO–OP market share is a little over one percent of the total enrollment in the private insurance market.[1]

There are $3.8 billion in appropriations for loan subsidy and program administration costs to assist sponsoring organizations in creating such plans and to do so with enough capital and reserves to become licensed and ultimately effective competitors in State insurance markets. These funds will enable CO–OPs to use Federal government loans (''Solvency Loans'') to meet the requirements for risk-based capital that State insurance departments require of health plans to ensure that they will be able to meet future obligations they have contractually promised their enrollees.

The Affordable Care Act, as implemented through this regulation, prohibits issuers that existed on July 16, 2009 from participating in the CO–OP program but allows CO–OPs to use experienced managers and health care organizations to manage the functions they have to perform in providing health insurance. Further, as indicated throughout the preamble to this final rule, the CO–OP Advisory Board in its advice to the Secretary and the Department has consistently favored provisions that would give CO–OPs flexibility, within the statutory boundaries, in setting up and operating these plans. At least two-thirds of a CO–OP's activities must consist of the issuance of policies in the individual and small group market.

C. Costs

There will be costs involved in administration of the program, and we currently estimate that these could be approximately $10 million a year on an annualized present value basis, as shown in the Accounting Statement. Actual administrative costs may be higher or lower, and are expected to vary over time.

D. Transfers

As previously explained, the Congress has provided $3.8 billion to assist sponsoring organizations in creating CO–OPs with enough capital and reserves to become licensed and ultimately effective competitors in State insurance markets.[2] The capital requirements for CO–OPs would be financed, in part, by member premiums and in part by the $3.8 billion appropriation.

The net Federal subsidies provided through CO–OP Start-up and Solvency Loans are referred to as ''transfers.'' These transfers result from (1) Assessing below-Treasury interest rates over the relevant 5-year (Start-up Loan) and 15-year (Solvency Loan) periods assuming full and timely repayment and (2) losses due to delayed repayment in accordance with the loan terms designed to comply with State insurance regulations, failure to repay in accordance with the loan contract (losses due to default net of loan recoveries), and other factors that affect the cash flows to and from the Federal government resulting from these loans. Actual subsidy costs for these loans will be determined per the requirements of the Federal Credit Reform Act of 1990, as amended (FCRA). The cost to the Federal government of these subsidies is the net present value of all cash flows to and from the Federal government resulting from the loans, excluding administrative costs, and will be recorded at the time they are incurred. These costs and associated transfers will reflect the terms and conditions of the loans as well as the performance of the loans. The business plan, disbursement schedule, and repayment terms will vary for each loan recipient. As such, these transfers are uncertain, and will vary from loan to loan. In the Accounting Statement in Table 1 below, the analysis reflects annualized estimated transfers associated with below-Treasury interest rates over the anticipated repayment period for a notional borrower with $115 million in CO–OP loans ($15 million for start-up funding and $100 million for solvency funding). This analysis assumes full and timely repayment. Consistent with the final rule, we use one percent below the current yields for 5-year U.S. Treasury bonds as the repayment interest rate on Start-up Loans and two percent below the current yields for U.S. Treasury

[1] The membership counts for Health Partners, Group Health Cooperative, and Group Health Cooperative of Eau Claire are based on their testimony to the CO–OP program Advisory Board available at *http://cciio.cms.gov/resources/co_op/index.html*. The membership count for Group Health Cooperative of South Central Wisconsin is based on its annual report available at *https://ghcscw.com/Media/Annual_Report_2010/annual_report_2010_web.pdf*.

[2] We note that these capital requirements are not ''costs'' for the purpose of calculating the benefits and costs of this Federal program. Costs, in the context of this program, are the resources spent on applying for and complying with the terms of the loans.

Bonds with a similar maturity to the repayment terms for the Solvency Loans. There will be additional transfers due to delayed repayment in accordance with the loan terms designed to comply with State insurance regulations, failure to repay in accordance with the loan contract (losses due to default net of loan recoveries), and other factors that affect the cash flows to and from the Federal government resulting from these loans. These transfers may vary significantly between different loans and borrowers. The actual credit subsidy costs will recognize these costs at the time they are incurred, pursuant to FCRA.

E. Benefits

CO–OPs also offer a unique opportunity to foster and spread emerging models of integrated delivery systems, both to improve health outcomes and to lower health costs (see, for example, testimony of Sara Collins before the Advisory Committee, The Consumer Operated and Oriented Plan (CO–OP) Program Under the Affordable Care Act: Potential and Options for Spreading Mission-Driven Integrated Delivery Systems, at *http://www.commonwealthfund.org/~/media/Files/Publications/Testimony/2011/Jan/Collins_CoOp%20testimony_11311.pdf*). CO–OPs can adopt new models and new arrangements that are more patient-centered than the current fragmented delivery system. Improved delivery systems may provide better health outcomes due to coordinated care, better chronic disease management, and improved quality of care.

In addition, by adding competition to State markets, CO–OPs have the potential to promote efficiency, reduce premiums and/or premium growth, and improve service and benefits to enrollees. By their nature, traditional cooperatives, on which the CO–OP program is modeled, focus on responsiveness to their members and accountability to member needs, which may create flexibility to reduce administrative costs. Direct savings could be substantial after the initial start-up period. Resulting attempts to maintain or regain market share by traditional insurance issuers competing with CO–OPs could lead to system-wide savings across millions of enrollees.

F. Alternatives Considered

Throughout this final rule, we have presented and analyzed alternatives, including not only those originally proposed, but also useful options presented in the public comments. In this final rule, we have sought to choose implementation options that would best enable newly formed CO–OPs to offer CO–OP qualified health plans, as this is the primary goal of the program.

The most important alternatives to our originally proposed standards would be to impose either a higher or lower interest repayment on loans. Among the Federal programs providing financial assistance to this sector, many make grants that are not required to be repaid. The Federal government also provides financial assistance through loan programs. Borrower interest rates, in some cases, are higher than Treasury rates, while in other cases rates are subsidized by the Federal government (see the estimates in the Federal Credit Supplement volume of the Budget of the United States Government for FY 2012, at *http://www.gpoaccess.gov/usbudget/fy12/cr_supp.html*). As discussed elsewhere in the preamble, generally commenters agreed with our proposed interest rates and this final rule codifies the proposed interest rates.

We received no comments directed specifically at the Regulatory Impact Analysis. Several commenters did, however, raise the question of potential insolvencies. Specific issues related to reducing the risk of insolvency or managing insolvency are discussed elsewhere in the preamble, as are many issues related to strengthening the ability of CO–OPs to survive in the market for health insurance. We believe that the changes we have made to the proposed rule improve the potential viability of CO–OPs. Most of those who have expressed interest in the program are provider organizations and small business organizations that are likely to be viable because of their private support, healthcare experience, and business expertise.

G. Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement. We have provided a quantitative estimate for one hypothetical CO–OP receiving both a Start-up loan of $15 million and a Solvency loan of $100 million, assuming repayment of both in full. The transfers shown are notional estimated costs resulting from below Treasury interest rates over the relevant 5-year (Start-up Loan) and 15-year (Solvency Loan) periods. As previously explained, the notional estimates in Table 1 are not subsidy cost estimates under FCRA and do not include transfers due to delayed payment, defaults net of recoveries, or other losses. Transfers will vary from borrower to borrower and each type is not included in the notional estimate because of uncertainty. Pursuant to FCRA, the lifetime estimated cost will be recorded up front as they are incurred.

Table 1 also reflects estimates of $200 million total for program administration over the first 20 years of the program. Consistent with the final rule, we use 1 percent below the current yields for 5-year U.S. Treasury bonds as the repayment interest rate on Start-up loans and 2 percent below the current yields for the average of 10-year and 20-year U.S. Treasury Bonds as the repayment rate for the Solvency Loans (see *http://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield*). The figures shown are the annualized estimated Federal administrative costs for the entire program and estimated means of financing transactions for one notional loan, as described above.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS

[$ in millions]

Category	Primary estimate	Units		
		Year dollars	Discount rate	Period covered*
Benefits				
Qualitative: New CO-OP enrollees served may experience better care. There are also potential cost savings system-wide from competitive effects on other health care plans. Net benefits will depend on the extent to which CO-OP plans augment or substitute for other health care insurance and services.				

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS—Continued

[$ in millions]

Category	Primary estimate	Units		
		Year dollars	Discount rate	Period covered*
Costs				
Qualitative: Costs include administrative burdens associated with applying for and complying with the terms of the loans and program oversight.				
Quantified, Annualized Program Oversight and Administration for all loans ..	$10 $10	2012 2012	7% 3%	2011–31 2011–31
Transfers				
Qualitative: Amounts below reflect means of financing transfer related only to charging below-Treasury rate interest on CO-OP loans to one notional borrower. There are expected transfers in addition to those quantified below that may result from variations in size of loan, delayed repayment, defaults net of loan recoveries, and other potential losses. These transfers vary between loans and borrowers. The full, estimated effects of all such transfers will be recorded up front as costs are incurred, pursuant to FCRA.				
Quantified, Annualized Federal Government Loan Interest Subsidies for 1 notional joint Start-up Loan and Solvency Loan	$5* $1*	2012 2012	7% 3%	2012–31 2012–31

* Reflects notional estimate of transfers related to interest subsidies for one performing loan. Actual costs to the Government will vary loan by loan.

V. Other Requirements for Analysis of Economic Effects

The Regulatory Flexibility Act (RFA) requires agencies to determine whether final rules would have a ''significant economic impact on a substantial number of small entities'' and, if so, to prepare a Regulatory Flexibility Analysis to identify options that could mitigate the impact of the proposed regulation on small businesses.

All CO-OPs established under the program will be private nonprofit organizations and qualify as small entities under the RFA. CMS interprets the requirement as applying only to regulations with negative impacts but routinely prepares a voluntary Regulatory Flexibility Analysis for regulations with significant positive impacts.

The positive economic impacts of the program on CO-OPs will clearly be ''significant,'' particularly in the effects on thousands of small businesses that are likely to purchase insurance through the Exchanges and would benefit from the lower premium costs that CO-OPs will likely create. Moreover, small businesses will have the opportunity to create consortia to help sponsor CO-OPs and may actively pursue these savings. In light of the benefits to these small entities, the Department has prepared a voluntary Regulatory Flexibility Analysis. The preceding economic analysis, together with the remainder of this preamble, constitutes that analysis.

Section 202 of the Unfunded Mandates Reform Act 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 1 year of $100 million in 1995 dollars, updated annually for inflation. This final rule would impose no such mandates. Accordingly, no analysis under UMRA is required.

Executive Order 13132 on Federalism establishes requirements that an agency must meet when a proposed rule imposes substantial costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule does not trigger these requirements.

List of Subjects in 45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Loan programs—health, Organization and functions (Government agencies), Medicaid, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, and Technical Assistance.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B by adding part 156 to read as follows:

PART 156—HEALTH PLAN REQUIREMENTS UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, INCLUDING REQUIREMENTS RELATED TO EXCHANGES

Subparts A–E—[Reserved]

Subpart F—Consumer Operated and Oriented Plan Program

Sec.
156.500 Basis and scope.
156.505 Definitions.
156.510 Eligibility.
156.515 CO–OP Standards.
156.520 Loan terms.

Authority: Secs. 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1342–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

Subparts A–E—[Reserved]

Subpart F—Consumer Operated and Oriented Plan Program

§ 156.500 Basis and scope.

This subpart implements section 1322 of the Affordable Care Act by establishing the Consumer Operated and Oriented Plan (CO–OP) program to foster the creation of new consumer-governed, private, nonprofit health insurance issuers, known as ''CO–OPs.'' Under this program, loans are awarded to encourage the development of CO–OPs. Applicants that meet the eligibility standards of the CO–OP program may apply to receive loans to help fund start-up costs and meet the solvency requirements of States in which the applicant seeks to be licensed to issue CO–OP qualified health plans. This

subpart sets forth the eligibility and governance requirements for the CO–OP program, CO–OP standards, and the terms for loans awarded under the CO–OP program.

§ 156.505 Definitions.

The following definitions apply to this subpart:

Applicant means an entity eligible to apply for a loan described in § 156.520 of this subpart.

Consumer operated and oriented plan (CO–OP) means a loan recipient that satisfies the standards in section 1322(c) of the Affordable Care Act and § 156.515 of this subpart within the timeframes specified in this subpart.

CO–OP qualified health plan means a health plan that has in effect a certification that it meets the standards established by CMS pursuant to section 1311(c) of the Affordable Care Act, except that the plan can be deemed certified by CMS or an entity designated by CMS as described in § 156.520(e).

Exchange means a governmental agency or non-profit entity that meets the applicable requirements established by CMS, pursuant to sections 1311 and 1321 of the Affordable Care Act, and makes qualified health plans available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

Formation board means the initial board of directors of the applicant or loan recipient before it has begun accepting enrollment and had an election by the members of the organization to the board of directors.

Group health plan has the meaning given to the term in § 144.103 of this subchapter.

Health insurance coverage has the meaning given to the term in § 144.103 of this subchapter.

Individual market means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

Issuer means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance.

Member means an individual covered under health insurance policies issued by a loan recipient.

Nonprofit member organization or *nonprofit member corporation* means a nonprofit, not-for-profit, public benefit, or similar membership entity organized as appropriate under State law.

Operational board means the board of directors elected by the members of the loan recipient after it has begun accepting enrollment.

Predecessor, with respect to a new entity, means any entity that participates in a merger, consolidation, purchase or acquisition of property or stock, corporate separation, or other similar business transaction that results in the formation of the new entity.

Pre-existing issuer means a health insurance issuer that was in existence on July 16, 2009.

Qualified employer means a small employer that elects to make, at a minimum, all full-time employees of the employer eligible for one or more qualified health plan (QHPs) in the small group market offered through a small business health options program (SHOP). Beginning in 2017, if a State allows large employers to purchase coverage through the SHOP, the term ''qualified employer'' shall include a large employer that elects to make all full-time employees of such employer eligible for one or more QHPs in the large group market offered through the SHOP.

Qualified health plan or *QHP* means a health plan that has in effect a certification that it meets the standards established by CMS pursuant to section 1311(c) of the Affordable Care Act issued or recognized by each Exchange through which such plan is offered pursuant to the process established by CMS pursuant to sections 1311(d) and 1311(e) of the Affordable Care Act.

Qualified nonprofit health insurance issuer means an entity that satisfies or can reasonably be expected to satisfy the standards in section 1322(c) of the Affordable Care Act and § 156.515 of this subpart within the time frames specified in this subpart, until such time as CMS determines the entity does not satisfy or cannot reasonably be expected to satisfy these standards.

Related entity means an entity that shares common ownership, control, or governance structure (including management team or Board members) with a pre-existing issuer, and satisfies at least one of the following conditions:

(1) Retains responsibilities for the services to be provided by the issuer.

(2) Furnishes services to the issuer's enrollees under an oral or written agreement.

(3) Performs some of the issuer's management functions under contract or delegation.

Representative means an individual who stands or acts for an organization or group of organizations through a formal agreement or financial compensation such as a contractor, broker, official, or employee.

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small employer by substituting ''50 employees'' for ''100 employees.''

SHOP means a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more qualified health plans.

Small group market means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

Solvency Loan means a loan provided by CMS to a loan recipient in order to meet State solvency and reserve requirements.

Sponsor means an organization or individual that is involved in the development, creation, or organization of the CO–OP or provides 40 percent or more in total funding to a CO–OP (excluding any loans received from the CO–OP Program).

Start-up Loan means a loan provided by CMS to a loan recipient for costs associated with establishing a CO–OP.

State means each of the 50 States and the District of Columbia.

§ 156.510 Eligibility.

(a) *General.* In addition to the eligibility standards set forth in the CO–OP program Funding Opportunity Announcement (FOA), to be eligible to apply for and receive a loan under the CO–OP program, an organization must intend to become a CO–OP and be a nonprofit member organization.

(b) *Exclusions from eligibility.* (1) Subject to paragraph (b)(2) of this section, an organization is not eligible to apply for a loan if:

(i) The organization or a sponsor of the organization is a pre-existing issuer, a holding company (an organization that exists primarily to hold stock in other companies) that controls a pre-existing issuer, a trade association comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, a foundation

established by a pre-existing issuer, a related entity, or a predecessor of either a pre-existing issuer or related entity;

(ii) The organization receives 25 percent or more of its total funding (excluding any loans received from the CO–OP Program) from pre-existing issuers, holding companies (organizations that exists primarily to hold stock in other companies) that control pre-existing issuers, trade associations comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, foundations established by a pre-existing issuer, a related entity, or a predecessor of either a pre-existing issuer or related entity; or

(iii) A State or local government, any political subdivision thereof, or any instrumentality of such government or political subdivision is a sponsor of the organization. The organization receives 40 percent or more of its total funding (excluding any loans received from the CO–OP Program) from a State or local government, any political subdivision thereof, or any instrumentality of such a government or political subdivision.

(2) The exclusions in paragraphs (b)(1)(i) and (b)(1)(ii) of this section do not exclude from eligibility an applicant that:

(i) Has as a sponsor a nonprofit, not-for-profit, public benefit, or similarly organized entity that is also a sponsor for a pre-existing issuer but is not an issuer, a foundation established by a pre-existing issuer, a holding company that controls a pre-existing issuer, or a trade association comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, provided that the pre-existing issuer sponsored by the nonprofit organization does not share any of its board or the same chief executive with the applicant; or

(ii) Has purchased assets from a preexisting issuer provided that it is an arm's-length transaction where each party acts independently and has no other relationship with the other party.

(3) The exclusion of any instrumentality of a State or local government in paragraph (b)(1)(iii) of this section does not exclude from eligibility or sponsorship an organization that:

(i) Is not a government organization under State law;

(ii) Has no employee of a State or local government serving in his or her official capacity as a senior executive (for example, President, Chief Executive Officer, or Chief Financial Officer) for the organization; and

(iii) Has a board of directors on which fewer than half of its directors are employees of a State or local government serving in their official capacities.

§ 156.515 CO–OP standards.

(a) *General.* A CO–OP must satisfy the standards in this section in addition to all other statutory, regulatory, or other requirements.

(b) *Governance requirements.* A CO–OP must meet the following governance requirements:

(1) *Member control.* A CO–OP must implement policies and procedures to foster and ensure member control of the organization. Accordingly, a CO–OP must meet the following requirements:

(i) The CO–OP must be governed by an operational board with all of its directors elected by a majority vote of a quorum of the CO–OP's members that are age 18 or older;

(ii) All members age 18 or older must be eligible to vote for each director on the organization's operational board;

(iii) Each member age 18 or older of the organization must have one vote in the election of each director of the organization's operational board;

(iv) The first elected directors of the organization's operational board must be elected no later than one year after the effective date on which the organization provides coverage to its first member; the entire operational board must be elected no later than two years after the same date;

(v) Elections of the directors on the organization's operational board must be contested so that the total number of candidates for vacant positions on the operational board exceeds the number of vacant positions, except in cases where a seat is vacated mid-term due to death, resignation, or removal; and

(vi) The majority of the voting directors on the operational board must be members of the organization.

(2) *Standards for board of directors.* The operational board for a CO–OP must meet the following standards:

(i) Each director must meet ethical, conflict-of-interest, and disclosure standards including that each director act in the sole interest of the CO–OP and, as appropriate, the health and wellbeing of its local geographic community;

(ii) Each director has one vote unless he or she is a non-voting director;

(iii) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, and unions);

(iv) Positions on the operational board that are designated for individuals with specialized expertise, experience, or affiliation cannot constitute a majority of the operational board even if the individuals in those positions are members of the CO–OP. This provision does not prevent any individual from seeking election to the operational board based on being a member of the CO–OP; and

(v) *Limitation on government and issuer participation.* No representative of any Federal, State or local government (or of any political subdivision or instrumentality thereof) and no representative of any organization described in § 156.510(b)(1)(i) may serve on the CO–OP's formation board or operational board.

(3) *Ethics and conflict of interest protections.* The CO–OP must have governing documents that incorporate ethics, conflict of interest, and disclosure standards. The standards must protect against insurance industry involvement and interference. In addition, the standards must ensure that each director acts in the sole interest of the CO–OP, its members, and its local geographic community as appropriate, avoids self dealing, and acts prudently and consistently with the terms of the CO–OP's governance documents and applicable State and Federal law. At a minimum, these standards must include:

(i) A mechanism to identify potential ethical or other conflicts of interest;

(ii) A duty on the CO–OP's executive officers and directors to disclose all potential conflicts of interest;

(iii) A process to determine the extent to which a conflict exists;

(iv) A process to address any conflict of interest; and

(v) A process to be followed in the event a director or executive officer of the CO–OP violates these standards.

(4) *Consumer focus.* The CO–OP must operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members.

(c) *Standards for health plan issuance.* A CO–OP must meet several standards for the issuance of health plans in the individual and small group market.

(1) At least two-thirds of the policies or contracts for health insurance coverage issued by a CO–OP in each State in which it is licensed must be CO–OP qualified health plans offered in the individual and small group markets.

(2) Loan recipients must offer a CO–OP qualified health plan at the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in every individual market Exchange that serves the geographic regions in which the organization is licensed and intends to provide health

care coverage. If offering at least one plan in the small group market, loan recipients must offer a CO–OP qualified health plan at both the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in each SHOP that serves the geographic regions in which the organization offers coverage in the small group market.

(3) Within the earlier of thirty-six months following the initial drawdown of the Start-up Loan or one year following the initial drawdown of the Solvency Loan, loan recipients must be licensed in a State and offer at least one CO–OP qualified health plan at the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in the individual market Exchanges and if the loan recipient offers coverage in the small group market, at the silver and gold benefit levels, defined in section 1302(d) of the Affordable Care Act, in the SHOPs. Loan recipients may only begin offering plans and accepting enrollment in the Exchanges for new CO–OP qualified health plans during the open enrollment period for each applicable Exchange.

(d) *Requirement to become a CO–OP.* Loan recipients must meet the standards of § 156.515 no later than five years following initial drawdown of the Start-up Loan or three years following the initial drawdown of a Solvency Loan.

§ 156.520 Loan terms.

(a) *Overview of Loans.* Applicants may apply for the following loans under this section: Start-up Loans and Solvency Loans.

(1) *Use of loans.* All loans awarded under this subpart must be used in a manner that is consistent with the FOA, the loan agreement, and all other statutory, regulatory, or other requirements.

(2) *Solvency loans.* Solvency Loans awarded under this section will be structured in a manner that ensures that the loan amount is recognized by State insurance regulators as contributing to the State-determined reserve requirements or other solvency requirements (rather than debt) consistent with the insurance regulations for the States in which the loan recipient will offer a CO–OP qualified health plan.

(b) *Repayment period.* The loan recipient must make loan payments consistent with the approved repayment schedule in the loan agreement until the loan is paid in full consistent with State reserve requirements, solvency regulations, and requisite surplus note arrangements. Subject to their ability to meet State reserve requirements, solvency regulations, or requisite surplus note arrangements, the loan recipient must repay its loans and, if applicable, penalties within the repayment periods in paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(1) The contractual repayment period for Start-up Loans and any applicable penalty pursuant to paragraph (c)(3) of this section is 5 years following each drawdown of loan funds consistent with the terms of the loan agreement.

(2) The contractual repayment period for Solvency Loans and any applicable penalty pursuant to paragraph (c)(3) of this section is 15 years following each drawdown of loan funds consistent with the terms of the loan agreement.

(3) Changes to the loan terms, including the repayment periods, may be executed if CMS determines that the loan recipient is unable to repay the loans as a result of State reserve requirements, solvency regulations, or requisite surplus note arrangements or without compromising coverage stability, member control, quality of care, or market stability. In the case of a loan modification or workout, the repayment period for loans awarded under this subpart is the repayment period established in the loan modification or workout. The revised terms must meet all other regulatory, statutory, and other requirements.

(c) *Interest rates.* Loan recipients will be charged interest for the loans awarded under this subpart. Interest will be accrued starting from the date of drawdown on the loan amounts that have been drawn down and not yet repaid by the loan recipient. The interest rate will be determined based on the date of award.

(1) *Start-up Loans.* Consistent with the terms of the loan agreement, the interest rate for Start-up Loans is equal to the greater of the average interest rate on marketable Treasury securities of similar maturity minus one percentage point or zero percent. If the loan recipient's loan agreement is terminated by CMS, the loan recipient will be charged the interest and penalty described in paragraph (c)(3) of this section.

(2) *Solvency Loans.* Consistent with the terms of the loan agreement, the interest rate for Solvency Loans is equal to the greater of the average interest rate on marketable Treasury securities of similar maturity minus two percentage points or zero percent. If a loan recipient's loan agreement is terminated by CMS, the loan recipient will be charged the interest and penalty described in paragraph (c)(3) of this section.

(3) *Penalty payment.* If CMS terminates a loan recipient's loan agreement because the loan recipient is not in compliance with program rules or the terms of its loan agreement, or CMS has reason to believe that the organization engages in, or has engaged in, criminal or fraudulent activities or activities that cause material harm to the organization's members or the government, the loan recipient must repay 110 percent of the aggregate amount of loans received under this subpart. In addition, the loan recipient must pay interest on the aggregate amount of loans received for the period the loans were outstanding equal to the average interest rate on marketable Treasury securities of similar maturity.

(d) *Failure to pay.* Loan recipients that fail to make loan payments consistent with the repayment schedule or loan modification or workout approved by CMS will be subject to any and all remedies available to CMS under law to collect the debt.

(e) *Deeming of CO–OP qualified health plans.* Health plans offered by a loan recipient may be deemed certified as a CO–OP qualified health plan to participate in the Exchanges for two years and may be recertified every two years for up to ten years following the life of any loan awarded to the loan recipient under this subpart, consistent with section 1301(a)(2) of the Affordable Care Act.

(1) An Exchange must recognize a health plan offered by a loan recipient as an eligible participant of the Exchange if it is deemed certified by CMS or an entity designated by CMS.

(2) To be deemed as certified to participate in the Exchanges, the plan must comply with the standards for CO–OP qualified health plans set forth pursuant to section 1311(c) of the Affordable Care Act, all State-specific standards established by an Exchange for qualified health plans operating in that Exchange, except for those State-specific standards that operate to exclude loan recipients due to being new issuers or based on other characteristics that are inherent in the design of a CO–OP, and the standards of the CO–OP program as set forth in this subpart.

(3) A loan recipient seeking to have a plan deemed as certified to participate in the Exchanges must provide evidence to CMS or an entity designated by CMS that the plan complies with the standards for CO–OP qualified health plans set forth pursuant to section 1311(c) of the Affordable Care Act, all State-specific standards established by an Exchange for qualified health plans operating in that Exchange, except for those State-specific standards that operate to exclude loan recipients due

to being new issuers or based on other characteristics that are inherent in the design of a CO–OP, and the standards of the CO–OP program as set forth in this subpart.

(4) If a plan offered by a loan recipient is deemed to be certified to participate in the Exchanges or loses its deemed status and is no longer certified to participate in the Exchanges, CMS or an entity designated by CMS will provide notice to the Exchanges in which the loan recipient offers CO–OP qualified health plans.

(f) *Conversions.* The loan recipient shall not convert or sell to a for-profit or non-consumer operated entity at any time after receiving a loan under this subpart. The loan recipient shall not undertake any transaction that would result in the CO–OP implementing a governance structure that does not meet the standards in this subpart.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 25, 2011.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 29, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–31864 Filed 12–8–11; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 07–250; FCC 08–68]

Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (FCC) announces the effectiveness of hearing aid compatibility requirements that have been approved by the Office of Management and Budget (OMB).

DATES: 47 CFR 20.19(h) and (i), published May 7, 2008 at 73 FR 25566, are effective December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Contact Michael C. Smith, Federal Communications Commission, at (202) 418–0584 or via the Internet at *MichaelC.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: On July 2, 2008, the Commission received approval from OMB for a revision to public information collection 3060–0999, which relates to new and modified information collection requirements under §§ 20.19(h) and 20.19(i) of the Commission's hearing aid compatibility rules. The revision was necessitated by the adoption of reporting requirements applicable to manufacturers and service providers, as well as requirements that manufacturers and service providers post certain information on their Web sites regarding the hearing aid-compatible handsets they offer. As the Commission previously announced the OMB approval on July 21, 2008, 73 FR 42344, the above-referenced rule sections are effective.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–31988 Filed 12–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110908575–1687–03]

RIN 0648–BB27

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2012 Specifications and Management Measures and Secretarial Amendment 1

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

ACTION: Final rule.

SUMMARY: This final rule establishes the 2012 harvest specifications and management measures for certain groundfish species taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This action includes regulations to implement Secretarial Amendment 1 to the PCGFMP. Secretarial Amendment 1 contains the rebuilding plans for overfished species and new reference points for assessed flatfish species.

DATES: This rule is effective January 1, 2012.

ADDRESSES: Information relevant to this final rule, which includes a final environmental impact statement (FEIS), a regulatory impact review (RIR), and a final regulatory flexibility analysis (FRFA) is 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. Copies of additional reports referred to in this document may also be obtained from the Pacific Fishery Management Council.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, phone: (206) 526–4646, fax: (206) 526–6736, or email: *sarah.williams@noaa.gov*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the **Federal Register** Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm* and at the Council's Web site at *http://www.pcouncil.org.*

Summary of Provisions in This Final Rule

NMFS published a proposed rule on September 27, 2011 (76 FR 59634) and a Notice of Availability of Secretarial Amendment 1 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) on September 9, 2011 (76 FR 55865). The comment periods on both the proposed rule and FMP amendment closed on November 8, 2011. NMFS has approved Secretarial Amendment 1. This final rule implements the provisions from the September 27, 2011, proposed rule, except for the proposed regulatory change to add a geographical split for lingcod at 42° N. latitude. As a consequence, this final rule makes no changes to area-specific management of lingcod, and lingcod continue to be managed as a coastwide stock in 2012.

A discussion of the comments and NMFS's responses can be found in the Changes from the Proposed Rule and Comments and Responses section of this final rule. See the preamble to the proposed rule for additional background information on the fishery and on this final rule. The specifics associated with the development and decision making processes for the rebuilding plans in

Secretarial Amendment 1 can be found in the proposed rule (75 FR 67810, November 3, 2010) and final rule (75 FR 27508, May 11, 2011) for the 2011–2012 harvest specifications and management measures.

Background

Every other year, the Council recommends biennial harvest levels for Pacific Coast groundfish, and management measures for commercial and recreational fisheries that are designed to achieve those harvest levels. For the 2011–2012 biennium, the Council recommended Amendment 16–5 to the PCGFMP and proposed specifications and management measures. Amendment 16–5 included one new and seven revised rebuilding plans, and new reference points for assessed flatfish species. A Draft Environmental Impact Statement (DEIS) was published in August 2010 that analyzed the effects of Amendment 16–5 and the 2011–2012 groundfish harvest specifications and management measures. NMFS reviewed the DEIS and the comments and concluded that the analysis did not clearly explain the alternatives in such a way that NMFS could choose among them. Therefore, NMFS disapproved the Amendment on December 27, 2010. A Final Environmental Impact Statement (FEIS), which analyzed the effects of Amendment 16–5 and the 2011–2012 groundfish harvest specifications and management measures, was drafted by NMFS and a Record of Decision was signed on April 26, 2011.

Because management measures were needed for the 2011 fishery, NMFS published a final rule (75 FR 27508, May 11, 2011) establishing harvest specifications and management measures for most species. Pursuant to NFMS' emergency authority under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.,* NMFS implemented the specifications based on a slightly modified version of Amendment 16–5. Accordingly, the provisions can be effective for a maximum of 366 days. For more detail, see the ''Comments and Responses'' section of the May 11, 2011, final rule. (76 FR 27509). The provisions implemented pursuant to emergency authority for 2011 included the rebuilding plans and corresponding harvest levels, new proxy reference points for assessed flatfish species, and the Overfishing Limits (OFLs), Acceptable Biological Catches (ABCs), and Annual Catch Limits (ACLs) for assessed flatfish based on the new reference points.

Regulations Implemented Through Secretarial Authority and Secretarial FMP Amendment 1

Under MSA section 304(a) (16 U.S.C. 1854(c)), when the Secretary of Commerce (the Secretary) disapproves of a Council's FMP amendment, the Council may resubmit a revised amendment. If the Council does not submit a revised amendment, the Secretary, acting through NMFS, is authorized to prepare an amendment, 16 U.S.C. 1854(c)(1).

Because NMFS disapproved the Council's FMP amendment, the issue was brought before the Council for reconsideration and further action. In June 2011, the Council decided not to resubmit a revised amendment. NMFS therefore drafted Secretarial Amendment 1 to the FMP pursuant to section 304(c) of the MSA. The notice of availability for the amendment published on September 9, 2011 (75 FR 55865) and the comment period closed on November 8, 2011.

Secretarial Amendment 1 is a revised version of Amendment 16–5. It contains rebuilding plans that differ from those in the Council's Amendment 16–5 for three species. As with rebuilding plans approved and implemented for 2011, NMFS has determined that these plans are consistent with the statutory provisions of section 304(e) of the MSA. While a Secretarial Amendment is rare, the substance of this Amendment is routine and it implements provisions through notice and comment rulemaking that were previously created by emergency action. As stated above, this final rule updates the regulations at 50 CFR part 660 to establish new and revised rebuilding plans, establish the 2012 harvest specifications consistent with those rebuilding plans and new flatfish proxies, and calculate the resulting shorebased trawl allocations.

Secretarial Amendment 1 also makes some non-substantive structural changes to the PCGFMP by moving the descriptions of rebuilding plans and associated text to an appendix. These changes make it possible to update the rebuilding plans in the appendix without requiring an FMP amendment. The FMP still requires these changes to undergo notice and comment rule making. Moving the rebuilding plans helps ensure that they are easily accessible to the Council, agency, and members of the public. Currently, the PCGFMP allows the updating of rebuilding parameters, such as the target year to rebuild, through regulatory amendments rather than FMP amendments. However, the exact provisions of the rebuilding plans are frequently difficult to locate because they are imbedded in the rule's text and in the main body of the FMP. By moving text to an appendix, Secretarial Amendment 1 does not change any substantive rebuilding policies or procedures described in the PCGFMP. Rather, it enhances the public's access to current rebuilding plans; if a rebuilding parameter or other element of a rebuilding plan changes through the biennial harvest specifications and management process, the appendix would be updated after the final rule is in place without a separate FMP amendment.

Regulations Implemented Through Routine Rulemaking

In addition to the regulations implementing Secretarial Amendment 1, this final rule includes one regulatory change. This rule corrects the 2012 limited entry fixed gear sablefish tier limits. On May 18, 2011, NMFS was notified by the Executive Director of the Council that there was a mistake in the calculation of the 2011 and 2012 sablefish cumulative limits during the development of the 2011–2012 biennial specifications and management measures. The Executive Director requested that NMFS correct the sablefish cumulative limits for the limited entry fixed gear primary fishery as quickly as possible, because the 2011 primary fishery season opened on April 1, and some vessels were actively fishing on their cumulative limits. A previous rule (76 FR 34910, June 15, 2011) corrected the limits for 2011, but no correction was made for 2012. These limits were incorrect in the May 11, 2011, final rule, and therefore this rule corrects these limits for 2012.

The limits proposed in this rule are consistent with the analysis in the FEIS on the 2011–2012 Harvest Specifications and Management Measures and the intent of the previously published regulations. The tier limits corrected through this rule are the result of a minor calculation change and do not reflect a policy or management shift in regards to season structure, opening or closing dates of the fishery or any other management measure.

Comments and Responses

NMFS published an NOA for Secretarial Amendment 1 on September 9, 2011, (76 FR 55865) and a proposed rule on September 27, 2011 (76 FR 59634). Both comment periods closed on November 8, 2011. NMFS received 4 comments on the proposed rule and FMP amendment. The Department of the Interior submitted a letter stating

that they reviewed the FMP amendment and had no comments, no other comments were received on the FMP amendment. The remaining comments were all on the proposed rule and were all in response to the proposed implementation of a geographical split for lingcod at 42° N. latitude. The Council submitted a letter stating that the effects of this change on the trawl rationalization program would result in negative consequences (that are summarized below), and therefore this regulation change should not be made for the 2012 fishery but should be further explored through the 2013–2014 harvest specifications and management measures process. The two other letters were submitted by fishing industry representatives and individual fishermen. The two letters from the industry also stated that the full consequences of this regulation change had not been fully understood by the industry during the development of the trawl rationalization program. Because the substantive comments were very similar, the main points are summarized here.

Comments:

- The location of the 42° N. latitude line runs directly through fishing grounds, causing fishermen to use a greater amount of fuel and removing the flexibility to avoid adverse weather since they would be restricted to one area per trip.
- This change in regulation is occurring without knowledge of the fishing fleet and without discussion by the Council and its advisory bodies.
- Splitting quota share (QS) north and south of a new line will result in the same amount of quota being allocated to each quota share holder; however, the vessel accumulation limits are not going to change so quota share holders will not be able to trade quota north and south of the line, limiting their flexibility in how they manage their Quota Pound (QP).

Response: As noted above, NMFS is not implementing the lingcod geographic split, and is referring the issue back to the Council for further consideration. The Council has already added this issue for consideration in the 2013–2014 specifications.

As background, NMFS notes that the requirement for IFQ species matching the species groupings and area subdivisions specified in the ABC tables was implemented through Amendment 20 to the FMP. Amendment 20 was implemented through an extensive and intensive review and regulatory deeming process. The deeming process, a requirement of section 303(c) of the MSA, consisted of a thorough review by the Council and its advisory bodies of the FMP amendment and the regulations implementing the amendment. Further, the Executive Director of the Council submitted a letter to NMFS stating that the regulations and FMP amendment were necessary and appropriate to achieve the goals of the FMP.

The geographic split for the lingcod stock was in front of the Council at its March, April, June, and September 2010 meetings in draft FMP language and draft regulations under the trawl rationalization program agenda items. It was also reviewed by the Council's Regulatory Deeming Workgroup at their February, May, and June 2010 meetings. This requirement was available for public comment through the NOA for Amendment 20 and 21 (75 FR 26702, May 12, 2010), and two rulemakings (75 FR 32994, June 10, 2010 and 75 FR 53380, August 31, 2010). In addition, the Council considered the provision to split lingcod north and south of 42° N. latitude in the ABC tables at its April and June 2010 meetings under the harvest specifications agenda item. The GMT report at the September 2010 meeting under the trawl rationalization program agenda item recommended splitting lingcod north and south of 42° N. latitude for IFQ management to reflect action taken in the 2011–2012 harvest specifications.

For these reasons, NMFS disagrees with the comment that the public was not aware of the requirement for IFQ species to reflect the species groupings and area subdivisions from the harvest specifications (*i.e.,* ABC tables), including the requirement for reallocation of IFQ species when there is an area subdivision through the harvest specifications, such as the case with lingcod being split north and south of 42° N. latitude in the 2011 and 2012 ABC tables.

However, NMFS agrees that it is appropriate to remove the proposed geographical split from the final rule. Given that this change was not implemented in 2011 because of the delay in the specifications and because the initial issuance process for the trawl rationalization program was implemented earlier in the year, we believe issuing QP and QS in 2012 in the same way as 2011 will not disrupt the fishery. Further, given that QS trading doesn't start until 2013, NMFS believes not implementing this change will allow fishers more flexibility for 2012.

Changes From the Proposed Rule

Because of the issues raised by the commenters and in consideration of the fact that the suggestions for alternative approaches presented by the commenters have not been analyzed nor have they gone through public review or rule making, NMFS is withdrawing proposed changes to divide harvest specifications for lingcod at 42° N. latitude. This final rule makes no changes to area-specific management of lingcod, and lingcod will continue to be managed as a coastwide stock in 2012 and beyond. Therefore, this final rule does not revise any of the following regulations that were included in the proposed rule: the lingcod allocation for the Pacific coast treaty Indian fisheries at § 660.50(f)(3), Subpart C, which was proposed to apply only for the area north of 42° N. lat.; the at-sea whiting fishery annual set-aside for lingcod in Table 2d to Part 660, Subpart C, which was proposed to apply the set-aside to only the whiting fishery north of 42° N. lat.; the list of IFQ species at § 660.140(c)(1), which proposed to split lingcod from a coastwide IFQ species to two IFQ species, lingcod north of 42° N. lat. and lingcod south of 42° N. lat.; the list of IFQ management areas at § 660.140(c)(2), Subpart D, which proposed to add a new management area between 42° N. lat. and 40°10′ N. lat. due to the split of lingcod IFQ at 42° N. lat.; lingcod accumulation limits for the shorebased IFQ program at § 660.140 (d)(4)(i)(C), which proposed to split lingcod from a coastwide accumulation limit to two area-specific accumulation limits for lingcod; and lingcod quota pound vessel limits for the shorebased IFQ program at § 660.140 (e)(4)(i), which proposed to split lingcod from a coastwide quota pound vessel limit to two area-specific quota pound vessel limits for lingcod. In addition, the shorebased trawl allocations at § 660.140(d)(1)(ii)(D), Subpart D, no longer split lingcod at 42° N. lat. and instead present lingcod in terms of a coastwide value.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Secretarial Amendment 1, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a DEIS and FEIS for the 2011–2012 groundfish harvest specifications and management measures, which this action implements in part. The DEIS includes a RIR and an IRFA; the FEIS includes a FRFA. The Environmental Protection Agency

published a notice of availability for the final EIS associated with this action on March 11, 2011 (76 FR 13401). A record of decision was signed on April 26, 2011. A copy of the DEIS and/or FEIS is available online at *http://www.pcouncil.org/.*

NMFS also prepared a FRFA for this action to assess its impact on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), summarizes the significant issues raised by the public comments in response to the IRFA, responds to those comments, and summarizes of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows:

On May 11, 2011 NMFS published a final rule establishing the harvest specifications and management measures for most species off the U.S. West Coast for the years 2011 and 2012. When a rule impacts small entities, the Regulatory Flexibility Act requires that the agency issuing the rule assess that impact as well as alternatives to the rule. The FEIS and RIR/IRFA associated with the May 2011 rule analyze a range of alternatives that were considered by the Council and NMFS, including the effects of setting allowable harvest levels necessary to rebuild the seven groundfish species that were previously declared overfished. An eighth species, petrale sole, was declared overfished in 2010 and this action includes a new rebuilding plan for this species along with the ACLs and management measures consistent with the adopted rebuilding plan. Associated rebuilding analyses for all eight species estimate the time to rebuild under various levels of harvest.

NMFS considered various alternatives to the proposed action including a No Action alternative. The No Action alternative would maintain the status quo in the fishery prior to NMFS' implementing the emergency rules. NMFS also considered three other alternatives that presented ''low,'' ''intermediate,'' and ''high'' options for overfished species ACLs. The Council's preferred alternative, Alternative 3, was also considered. The Council-preferred alternative was a mixture of ''high'' and ''intermediate'' alternatives. From the Council preferred alternative, NMFS crafted its preferred alternative by reducing the ACL values for two overfished species.

The Council initially considered a wider range of alternatives, but ultimately rejected from further analysis alternatives allowing harvest levels higher than what is generally consistent with current policies for rebuilding overfished stocks and a ''no fishing'' scenario (F=0). Section 2.4 of the FEIS describes six integrated alternatives including No Action, the Council's FPA, NMFS' preferred alternative, and three other alternatives (including the Council's Preliminary Preferred Alternative, which is similar to the Council's FPA). NMFS finds that the F=0 and Alternatives 1A, 1B, and 2, while resulting in shorter rebuilding times for most of the overfished species, lead to projected major decreases in commercial revenues and recreational activity. Allowing too many communities to suffer commercial or recreational losses greater than 10 percent fails to take into account the needs of fishing communities, as NMFS is required to do under the MSA. Alternative 3, the Council FPA, and NMFS' preferred alternative all reduce the impacts to communities to less than 10 percent, but they differ in their impacts on rebuilding times. Alternative 3 reduces rebuilding times from status quo for many of the overfished species, but does not reduce the rebuilding time for yelloweye rockfish, and results in only minor reductions for cowcod and darkblotched and rockfish. The Council's FPA improves upon Alternative 3 by reducing the rebuilding time for darkblotched rockfish by two years while maintaining Alternative 3's small positive increases in commercial revenues and recreational activity. The NMFS preferred alternative improves over the Council FPA by further reducing the rebuilding times of cowcod and yelloweye by three years and ten years, respectively.

Comparing the action alternatives with the No Action alternative allows an evaluation of the economic implications to groundfish sectors, ports, and fishing communities. Alternative 2011–2012 groundfish management measures are designed to provide opportunities to harvest healthy target species within the constraints of alternative ACLs for overfished species.

The integrated alternatives allow estimation of target species catch under the suite of ACLs for overfished species, both to demonstrate if target species ACLs are projected to be exceeded, and to estimate related socioeconomic impacts. The Council reviewed these analyses and read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, and the general public before deciding the Council's FPA in June 2010. The Council's final preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species decided by the Council at their April and June 2010 meetings. NMFS reviewed these analyses, read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, the general public, and considered legal obligations to comply with a court order (*NRDC* v. *Locke*) before deciding NMFS' preferred alternative in February 2011. The NMFS preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species that were part of the NMFS preferred alternative.

NMFS' preferred alternative represents efforts to address the directions provided by the Ninth Circuit Court of Appeals. These directions emphasize the need to rebuild stocks in as short a time as possible, while taking into account: (1) The status and biology of the stocks; (2) the needs of fishing communities; and (3) interactions of depleted stocks within the marine ecosystem. By taking into account the ''needs of fishing communities,'' NMFS simultaneously takes into account the ''needs of small businesses,'' as fishing communities rely on small businesses as a source of economic activity and income.

After adjusting each alternative to have the same level of whiting harvest, there are no differences in ex-vessel revenue or recreational trip projections between the Council's FPA and the NMFS preferred alternative. For both 2011 and 2012, the combined total annual ex-vessel revenue associated with the NMFS preferred alternative, including at-sea whiting, is expected to be about $90 million, compared with the No-Action level of $82 million. (Note that ex-vessel revenue is just one indicator of the commercial value of the fishery. For example, ex-vessel revenues understate the wholesale, export, and retail revenues earned from the fishery. Data on these other indicators is either incomplete or unavailable.)

This rule will regulate small businesses that harvest groundfish. According to the Small Business Administration, a small commercial fish harvesting business is one that has annual receipts under $4 million, and a small charter boat business is one that has annual receipts under $7 million. This rule will affect about 2,600 small entities, which are generally vessels that either target groundfish or harvest groundfish as bycatch and that participate in the fishery. These vessels are associated with the limited entry fixed gear fishery, the open access fishery, the charter boat fleet, the tribal fleet or the trawl fleet. To determine the

number of small entities potentially affected by this rule, NMFS reviewed analyses of fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and Tribal fleets, and industry responses to a survey on vessel ownership. The IRFA estimates that implementation of NMFS preferred alternative will affect about 2,600 small entities. These small entities are those that are directly regulated by this rule that is being promulgated to support implementation of NMFS preferred alternative. These entities are associated with those vessels that either target groundfish or harvest groundfish as bycatch. Consequently, these are the vessels, other than catcher-processors, that participate in the limited entry portion of the fishery, the open access fishery, the charter boat fleet, and the tribal fleets. Catcher/processors also operate in the Alaska pollock fishery, and all are associated with larger companies such as Trident and American Seafoods. Therefore, it is assumed that all catcher/processors are ''large'' entities.

Best estimates of the limited entry groundfish fleet are taken from the NMFS Limited Entry Permits Office. As of June 2010, there are 399 limited entry permits including 177 endorsed for trawl (172 trawl only, 4 trawl and longline, and 1 trawl and trap-pot); 199 endorsed for longline (191 longline only, 4 longline and trap-pot, and 4 trawl and longline); 32 endorsed for trap-pot (27 trap-pot only, 4 longline and trap-pot, and 1 trawl and trap-pot). Of the longline and trap-pot permits, 164 are sablefish endorsed. Of these endorsements 130 are ''stacked'' (*e.g.* more than one permit registered to a single vessel) on 50 vessels. Ten of the limited entry trawl endorsed permits are used or owned by catcher/processor companies associated with the whiting fishery. The remaining 389 entities are assumed to be small businesses based on a review of sector revenues and average revenues per entity. The open access or nearshore fleet, depending on the year and level of participation, is estimated to be about 1,300 to 1,600 vessels. Again, these are assumed to be ''small entities.'' The tribal fleet includes about 53 vessels, and the charter boat fleet includes 525 vessels that are also assumed to be ''small entities.''

The effect of this rule on small entities will be increased ex-vessel revenues. As mentioned above, for both 2011 and 2012, the combined total annual ex-vessel revenue associated with the NMFS preferred alternative, including at-sea whiting, is expected to be about $90 million, compared with the No-Action level of $82 million.

NMFS received 4 letters of comment on this rule. None of these letters addressed the IRFA. There are no additional projected reporting, record-keeping, and other compliance requirements of this rule not already envisioned within the scope of current requirements. References to collections-of-information made in this action are intended to properly cite those collections in Federal regulations, and not to alter their effect in any way. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated consultation on the fishery to address newly listed species including Pacific eulachon and green sturgeon, and other non-salmonid listed species (marine mammals, sea birds, and turtles). NMFS will be completing a consultation on listed marine species specifically for this 2012 action by the end of January 2012, and expects that consultation on seabirds will be completed prior to late summer of 2012. Although not anticipated, in the event the consultations identify either reasonable and prudent alternatives to address jeopardy concerns or reasonable and prudent measures to minimize incidental take, NMFS would exercise necessary authorities in coordination to the extent possible with the Pacific Fishery Management Council to put such additional alternatives or measures in place for the 2012 fishery.

After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. Further, NMFS has concluded that take of any marine species that will be covered by the opinion to be issued in early 2012 is very unlikely to occur prior to completion of that opinion, and that take of listed seabirds is unlikely to occur in 2012. NMFS expects to complete the process leading to any necessary authorization of incidental taking of ESA-listed marine mammals under section 101(a)(5)(E) of the Marine Mammal Protection Act concurrent with the 2012 biological opinion.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or

regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.''

NMFS finds good cause to partially waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective on January 1, 2012, because the delay is contrary to the public interest. As discussed above, this rule implements harvest specifications and management measures for 2012. The 2012 groundfish harvest specifications and management measures are intended to rebuild overfished stocks as quickly as possible, taking into account the appropriate factors, as required by the MSA and are based on the best available fishery information, scientific information, and stock assessments. If this final rule is not effective by January 1, 2012, specifications and management measures for 2012 would not be consistent with the MSA or based on the best available information. Further, QP issuance is based on the year specific harvest specifications which are contained in this rule, and must be distributed to participants in the trawl fishery prior to the start of the fishing year, which is January 1, 2012. If the rule is not effective on January 1, 2012, fishery participants will be afforded QP based on the incorrect harvest specifications. Depending on the species this would mean QP would be issued either over or under the correct 2012 specifications. Because NMFS does not have a mechanism to take QP back if it was issued over the correct 2012 specifications this could mean QP issuance would be delayed until the 2012 specifications were in place. This would cause some fishermen to wait to fish, resulting in lost profits, yet this delay will provide no concomitant benefit for the harvested species. Because the 30-day period of delay before this rule becomes effective will have negative consequences for the affected fishery, it is contrary to the public interest, and NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective January 1, 2012.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: December 7, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is 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.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Revise § 660.40 to read as follows:

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial ACLs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a ''Spawning Potential Ratio'' or ''SPR'' harvest rate.

(a) *Bocaccio.* Bocaccio south of 40°10′ N. latitude was declared overfished in 1999. The target year for rebuilding the bocaccio stock south of 40°10′ N. latitude to B_{MSY} is 2022. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* Canary rockfish was declared overfished in 2000. The target year for rebuilding the canary rockfish stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* Cowcod was declared overfished in 2000. The target year for rebuilding the cowcod stock south of 40°10′ N. latitude to B_{MSY} is 2068. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.7 percent.

(d) *Darkblotched rockfish.* Darkblotched rockfish was declared overfished in 2000. The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2025. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 64.9 percent.

(e) *Pacific Ocean Perch (POP).* POP was declared overfished in 1999. The target year for rebuilding the POP stock to B_{MSY} is 2020. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Petrale Sole.* Petrale sole was declared overfished in 2010. The target year for rebuilding the petrale sole stock to B_{MSY} is 2016. The harvest control rule is the 25–5 default adjustment, which corresponds to an annual SPR harvest rate of 32.4 percent in 2012.

(g) *Widow rockfish.* Widow rockfish was declared overfished in 2001. The target year for rebuilding the widow rockfish stock to B_{MSY} is 2010. The harvest control rule is a constant catch of 600 mt, which corresponds to an annual SPR harvest rate of 91.3 percent in 2012.

(h) *Yelloweye rockfish.* Yelloweye rockfish was declared overfished in 2002. The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2074. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 76.0 percent.

■ 3. Tables 2a and 2b, to Part 660, Subpart C are revised to read as follows:

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Table 2a. To Part 660, Subpart C - 2012, and beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	ACT	Fishery HG
ROUNDFISH:						
Lingcod	N of 42° N. lat. b/	2,251	2,151	2,151		1,880
	S of 42° N. lat. c/	2,597	2,164	2,164		2,157
Pacific Cod d/	Coastwide	3,200	2,222	1,600		1,200
Pacific Whiting e/	Coastwide	e/	e/	e/		e/
Sablefish	N of 36° N. lat. f/	8,623	8,242	5,347	See Table 2c	
	S of 36° N. lat. g/			1,258		1,224
Cabezon	46°16' to 42° N. lat. h/	50	48	48		48
	S of 42° N. lat. i/	176	168	168		168
FLATFISH:						
Dover sole j/	Coastwide	44,826	42,843	25,000		23,410
English sole k/	Coastwide	10,620	10,150	10,150		10,050
Petrale sole l/	Coastwide	1,279	1,222	1,160		1094.6
Arrowtooth flounder m/	Coastwide	14,460	12,049	12,049		9,971
Starry Flounder n/	Coastwide	1,813	1,511	1,360		1,353
Other flatfish o/	Coastwide	10,146	7,044	4,884		4,686
ROCKFISH:						
Pacific Ocean Perch p/	N of 40°10' N. lat.	1,007	962	183	157	144.1
Shortbelly q/	Coastwide	6,950	5,789	50		49
Widow r/	Coastwide	4,923	4,705	600		539.1
Canary s/	Coastwide	622	594	107		87
Chilipepper t/	S of 40°10' N. lat.	1,872	1,789	1,789		1,774
Bocaccio u/	S of 40°10' N. lat.	732	700	274		260.6
Splitnose v/	S of 40°10' N. lat.	1,610	1,538	1,538		1,531
Yellowtail w/	N of 40°10' N. lat.	4,573	4,371	4,371		3,872
Shortspine thornyhead x/	N of 34°27' N. lat.	2,358	2,254	1,556		1,511
	S of 34°27' N. lat.			401		359
Longspine thornyhead y/	N of 34°27' N. lat.	3,483	2,902	2,064		2,020
	S of 34°27' N. lat.			366		363
Cowcod z/	S of 40°10' N. lat.	13	10	3		2.7
Darkblotched aa/	Coastwide	497	475	296		277.3
Yelloweye bb/	Coastwide	48	46	17		11.1
California Scorpionfish cc/	S. of 34°27' N. lat.	132	126	126		124
Black	N of 46°16' N. lat. dd/	435	415	415		401
	S of 46°16' N. lat. ee/	1,169	1,117	1,000		1,000
Minor Rockfish North ff/	Coastwide	3,820	3,414	2,227		2,116
Nearshore	N of 40°10' N. lat.	116	99	99		99
Shelf		2,197	1,948	968		925
Slope		1,507	1,367	1,160		1,092
Minor Rockfish South gg/	Coastwide	4,291	3,712	2,341		2,290
Nearshore	S of 40°10' N. lat.	1,145	990	990		990
Shelf		2,243	1,890	714		701
Slope		903	832	626		599
SHARKS/SKATES/RATFISH/MORID						
Longnose Skate hh/	Coastwide	3,006	2,873	1,349		1,220
Other fish ii/	Coastwide	11,150	7,742	5,575		5,575

a/ ACLs and HGs are specified as total catch values. Fishery harvest guideline (HG) means the harvest guideline or quota after subtracting from the ACL of ACT any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,251 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,151 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 1,880 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,597 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,164 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,157 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. A range of ACLs were considered in the EIS (96,968 mt-290,903 mt). A new stock assessment will be prepared prior to final adoption of the Pacific whiting specifications.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,623 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,242 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 40-10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003-2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,347 mt and is reduced by 535 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.) The 535 mt tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

g/ Sablefish South. That portion of the coastwide ACL (32 percent) apportioned to the area south of 36° N. lat. is 2,516 mt. An additional 50 percent reduction for uncertainty was made, resulting in an ACL of 1,258 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,224 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 50 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 48 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 48 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California) - A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 176 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 168 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 168 mt.

j/ Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,826 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,843 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/ English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 10,620 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 10,150 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 10,050 mt.

l/ Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,279 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 1,222 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 1,160 mt ACL is represents an SPR harvest rate of 32.4 percent. A set-aside of 65 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 1,094.6 mt.

m/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 14,460 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 12,049 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 9,971 mt.

n/ Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2012, the coastwide OFL of 1,813 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,511 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,360 mt, is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt) and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,353 mt.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,007 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 962 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 183 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 12.9 mt is deducted from the ACT for the Tribal fishery (10.9 mt), the incidental open access fishery (0.1 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144.1 mt.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2012 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt is deducted from the ACL for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 4,923 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,705 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. A constant catch of 600 mt, which corresponds to an SPR harvest rate of 91.3 percent in 2012, will be used to rebuild consistent with the rebuilding plan and a target year to rebuild of 2010. A set-aside of 60.9 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch (11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/ Canary rockfish. A canary rockfish stock assessment update was completed in 2009, based on the full assessment in 2007, and the stock was estimated to

be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 622 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 594 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 107 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt), resulting in a fishery HG of 87 mt. Recreational HGs are being specified as follows: Washington recreational, 2 mt; Oregon recreational 7 mt; and California recreational 14.5 mt.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 1,872 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,789 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,774 mt.

u/ Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.). Bocaccio rockfish are managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 732 mt is based on the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 700 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 274 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 260.6 mt.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and in the south (south of 40°10' N. lat.), with species-specific harvest specifications. The 1,610 mt OFL south of 40°10 N. lat. is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,538 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,531 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,573 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,371 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 499 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,872 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,358 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,254 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,556 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt), resulting in a fishery HG of 1,511 mt for the area north of 34°27′ N. lat. For that portion of the stock south of north of 34°27′ N. lat. the ACL is 401 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27′ N. lat reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 359 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,957 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,483 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,902 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,064 mt, and is 79 percent of the coastwide OFL for the biomass in that area. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt), resulting in a fishery HG of 2,020 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 366 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt), resulting in a fishery HG of 363 mt. The sum of the northern and southern area ACLs (2,430 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent bounded between 4 and 21 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with a target year to rebuild of 2068 and an SPR rate of 82.7 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 2.7 mt.

aa/ Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 497 mt and is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 475 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 296 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A

set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5) and research catch (2.1 mt), resulting in a fishery HG of 277.3 mt.

bb/ Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 17 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76 percent. A set-aside of 5.9 mt is deducted from the ACL for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/ California Scorpionfish south was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 132 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 126 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 124 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared in 2007 for black rockfish north of 45°56'N. lat.(Cape Falcon, Oregon). The biomass in this area was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16' N. lat. (the Washington/Oregon border) is 435 mt, which is 97 percent of the OFL from the assessed area. The ABC of 415 mt for the area north of 46°16' N. lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 401 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56' N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56' N. lat. is added to the OFL from the assessed area south of 45°56'. The resulting OFL for the area south of 46°16' N. lat. is 1,169 mt. The ABC of 1,117 mt for the south is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\%}$. The black rockfish ACL in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 3,820 mt is the sum of OFLs for nearshore (116 mt), shelf (2,197 mt) and slope (1,507 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks

(splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,414 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt - Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt), resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt - Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,291 mt is the sum of OFLs for nearshore (1,145 mt), shelf (2,243 mt) and slope (903 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of Point Conception, blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,712 mt. The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 990 mt. The set-asides for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-asides for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment update was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,006 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,873 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004-2006 catch mortality (landings and discard mortality). The set-asides for longnose skate is 129 mt for the tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equal to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

Table 2b. To Part 660, Subpart C - 2012, and beyond, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
Lingcod					
N of 42° N. lat.	1,880	45%	846	55%	1,034
S of 42° N. lat.	2,157	45%	971	55%	1,186
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	See Table 2a	100%	See Table 2a	0%	0
Sablefish					
N of 36° N. lat.	See Table 2c of this subpart				
S of 36° N. lat.	1,224	42%	514	58%	710
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	10,050	95%	9,548	5%	503
Petrale sole a/	1,094.6		1,060		35
Arrowtooth flounder	9,971	95%	9,472	5%	499
Starry Flounder	1,353	50%	677	50%	677
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch	144.1	95%	137	5%	7
Widow e/	539.1	91%	491	9%	49
Canary a/ c/	87		34.8		29.8
Chilipepper - S of 40°10 N. Lat.	1,774	75%	1,331	25%	443
Bocaccio - S of 40°10 N. Lat. a/	260.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,531	95%	1,454	5%	77
Yellowtail - N of 40°10 N. Lat.	3,872	88%	3,407	12%	465
Shortspine thornyhead					
N of 34°27' N. lat.	1,511	95%	1,435	5%	76
S of 34°27' N. lat.	359		50		309
Longspine thornyhead					
N of 34°27' N. lat.	2,020	95%	1,919	5%	101
Cowcod - S of 40°10 N. Lat. a/	2.7		1.8		0.9
Darkblotched d/	277.3	95%	263	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.20%	557	39.80%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

a/ Allocations were decided through the biennial specification process.

b/ The POP trawl allocation is further divided with 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery.

c/ The canary rockfish trawl allocation is further divided with 6.2 mt for the shorebased IFQ fishery, 3.6 mt for the mothership fishery, and 5.0 mt for the catcher/processor fishery.

d/ The darkblotched rockfish trawl allocation is further divided with 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery.

e/ The widow rockfish trawl allocation is further divided with 107.1mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery.

* * * * *

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■ 4. In § 660.140 revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the 2012 trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ Species	Management area	Shorebased trawl allocation (mt)
Lingcod		1810.65
Pacific cod		1,135.00
Pacific Whiting		TBD
Sablefish	North lat. of 36° N	2,467.00
Sablefish	South lat. of 36° N	514.08
Dover sole		22,234.50
English sole		9,542.50
Petrale sole		1,054.60
Arrowtooth flounder		9,462.45
Starry flounder		671.50
Other flatfish		4,197.40
Pacific Ocean perch	North lat. of 40°10′ N	119.50
Widow rockfish		342.62
Canary rockfish		26.20
Chilipepper rockfish	South lat. of 40°10′ N	1,331.25
Bocaccio rockfish	South lat. of 40°10′ N	60.00
Splitnose rockfish	South lat. of 40°10′ N	1,454.45
Yellowtail rockfish	North lat. of 40°10′ N	3,107.36
Shortspine thornyhead	North lat. of 34°27′ N	1,415.45
Shortspine thornyhead	South lat. of 34°27′ N	50.00
Longspine thornyhead	North lat. of 34°27′ N	1,914.00
Cowcod	South lat. of 40°10′ N	1.80
Darkblotched rockfish		248.94
Yelloweye rockfish		0.60
Minor shelf rockfish complex	North lat. of 40°10′ N	522.00
Minor shelf rockfish complex	South lat. of 40°10′ N	86.00
Minor slope rockfish complex	North lat. of 40°10′ N	829.52
Minor slope rockfish complex	South lat. of 40°10′ N	377.37

* * * * *

■ 5. In § 660.231 paragraph (b)(3)(i) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) *Cumulative limits.* (i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2011, the following annual limits are in effect: Tier 1 at 47,697 lb (21,635 kg), Tier 2 at 21,680 lb (9,834 kg), and Tier 3 at 12,389 lb (5,620 kg). For 2012 and beyond, the following annual limits are in effect: Tier 1 at 46,238 lb (21,017 kg), Tier 2 at 21,017 lb (9553 kg), and Tier 3 at 12,010 lb (5,459 kg).

* * * * *

[FR Doc. 2011–31975 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 239

Tuesday, December 13, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 70, and 72

RIN 3150–AI55

[NRC–2011–0286; NRC–2008–0030]

Decommissioning Planning During Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG) DG–4014, ''Decommissioning Planning During Operations.'' This guide describes a method that the NRC staff considers acceptable for use in complying with the NRC's Decommissioning Planning Rule.

DATES: Submit comments by February 10, 2012. 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–2011–0286 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. 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–2011–0286. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: 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.

FOR FURTHER INFORMATION CONTACT: James C. Shepherd, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 415–6712 or email *James.Shepherd@nrc.gov*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

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 can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, 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 email to *pdr.resource@nrc.gov.* DG–4014 is available electronically under ADAMS Accession Number ML111590642. The regulatory analysis is available electronically under ADAMS Accession Number ML111590649.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0286.

Further Information

The NRC is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide entitled, ''Decommissioning Planning During Operations,'' is temporarily identified by its task number, DG–4014, which should be mentioned in all related correspondence. DG–4014 is a proposed Regulatory Guide to support implementation of the Decommissioning Planning Rule (ADAMS Accession Number ML103510117).

This guide describes a method that the NRC staff considers acceptable for use in complying with the NRC's Decommissioning Planning Rule (DPR), which will become effective on December 17, 2012 (76 FR 35511; June 17, 2011). That rule will amend portions of 10 CFR parts 20, 30, 40, 50, 70, and 72, relative to decommissioning planning. The DPR will affect a wide range of facilities and its purpose is to reduce the likelihood that any current operating facility will become a legacy site, that is, one without the financial means to close permanently.

Backfitting and Issue Finality

The statement of considerations for the DPR discussed that rule's compliance with applicable backfitting provisions (76 FR 35511, at 35562–63). This regulatory guide presents the NRC staff's first guidance addressing compliance with § 20.1501(a) and (b)

and the newly-added paragraph (c) of § 20.1406. The first issuance of guidance on a newly-changed or newly-added rule provision does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly-changed or newly-added rule provisions must logically apply to this guidance. Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of ''changed'' or ''new'' guidance within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed or newly-added provisions of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-changed provisions of § 20.1501 and newly-added paragraph (c) of § 20.1406.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of this regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Dated at Rockville, Maryland, this 2nd day of December 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–31905 Filed 12–12–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901–AB18

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA). The proposed rule would require permitting entities to inform DOE of requests for authorizations required under Federal law for Qualifying Projects as defined in the rule, as well as establish a process whereby applicants for Federal authorizations for interstate electric transmission facilities that are not Qualifying Projects can request DOE assistance in the Federal authorization process. Also, the proposed rule provides for the selection of a Federal Lead Agency responsible for compiling a single environmental review document, and a consolidated administrative record, for Qualifying Projects. In addition, the proposed rule provides for the establishment of intermediate and final deadlines for the review of Federal authorization decisions, as well as establishing a date certain after which all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within one year, or as soon thereafter as practicable in compliance with Federal law.

DATES: Public comment on this proposed rule will be accepted until January 27, 2012.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Proposed 216(h) Regulations,'' by any of the following methods:

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

Email: Brian.Mills@hq.doe.gov. Include ''Proposed 216(h) Regulations'' in the subject line of the message.

Mail: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586–8267, email *Brian.Mills@hq.doe.gov*, or Lot Cooke, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–76, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586–0503, email *Lot.Cooke@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Statutory Authority and Rulemaking History
- B. Interpretation of Key Terms

II. Discussion of Proposed Rule
- A. Purpose
- B. Applicability
- C. Definitions
- D. Pre-Application Procedures
- E. Notification of Requests for Federal Authorizations for Qualifying Projects and Requests for DOE Assistance in the Federal Authorization Process
- F. Selection of Lead Agency, and Coordination of Permitting and Related Environmental Reviews
- G. Lead Agency Responsibilities
- H. Cooperating Agencies Responsibilities
- I. DOE Responsibilities
- J. Prompt and Binding Intermediate Milestones and Ultimate Deadlines
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III. Regulatory Review

IV. Approval of the Office of the Secretary

I. Background

A. Statutory Authority and Rulemaking History

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct05) added a new section 216 to the FPA (16 U.S.C. 791–828c) which deals with the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), which is titled ''Coordination of Federal Authorizations for Transmission Facilities,'' provides for DOE to coordinate all applicable Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews.

Section 216(h) of the FPA provides for the coordination of Federal transmission siting determinations for entities seeking permits, special use authorizations, certifications, opinions, or other approvals required under Federal law to site electric transmission facilities. This coordination avoids duplicative review processes by various Federal agencies. In addition, section 216(h) also provides that Indian tribes, multi-State entities, and State agencies that have their own separate permitting and environmental reviews can

participate in the coordinated Federal review process if they so choose.

On October 23, 2009, nine Federal agencies with permitting or other Federal authorization responsibility for the siting of electric transmission facilities entered into a ''Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land'' (2009 MOU).[1] The signatories to the 2009 MOU were DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation. The purpose of the 2009 MOU is to establish a framework for early cooperation and participation among the signatories that will: (1) Expedite the siting and construction of qualified electric transmission infrastructure in the United States; (2) improve coordination among Federal authorization applicants, Federal agencies, and states and tribes involved in the siting and permitting process; and (3) improve uniformity, consistency, and transparency by setting forth the roles and responsibilities of Federal agencies in the siting and construction of qualifying projects.

On September 19, 2008, DOE published an interim final rule establishing procedures under which entities may request that DOE coordinate Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews pursuant to FPA section 216(h) (73 FR 54456). The interim final rule became effective on October 20, 2008, and the regulations can be found at 10 CFR 900.1–900.6. Also on September 19, 2008, DOE published a notice of proposed rulemaking (NOPR) which proposed amendments to the interim final rule (73 FR 54461). This proposed rule would amend the interim final rule and replaces the 2008 NOPR. These proposed regulations, subject to revisions based on comments received in response to this NOPR, and in conjunction with the 2009 MOU, would govern DOE's coordination of electric transmission facilities permitting requests under section 216(h) of the FPA.

Comments were filed in response to the 2008 interim final rule and 2008 NOPR.[2] In Section II of today's NOPR, DOE addresses the comments submitted in response to both the interim final rule and the 2008 NOPR. All references to comments in this NOPR are to comments filed in response to the 2008 interim final rule and 2008 NOPR.

B. Interpretation of Key Terms

Under FPA section 216(h)(2), DOE is required to ''act as the lead agency for purposes of *coordinating* all applicable Federal authorizations and related environmental reviews'' (emphasis added). DOE interprets the term ''lead agency'' as used in FPA section 216(h)(2) as requiring DOE to coordinate the necessary environmental reviews conducted by other Federal agencies and to ensure that one Federal agency is responsible for preparing a uniform environmental review document. Therefore, DOE would coordinate the selection of a Lead Agency. The selection would be based on land management interests or the recommendations of other participating agencies. The Lead Agency would prepare the environmental review under the National Environmental Policy Act (NEPA). Consistent with the 2009 MOU and in accordance with NEPA regulations issued by the Council on Environmental Quality at 40 CFR part 1500 *et seq.,* this proposal would ensure that the agency with the most relevant subject matter expertise conducts the required environmental reviews. In those circumstances where DOE has a permitting role (*e.g.,* international transmission lines, transmission lines built by the Power Marketing Administrations (PMAs)), DOE may be the Lead Agency for preparing the NEPA compliance document and other environmental, cultural, and historic preservation reviews. For all other types of transmission projects in which DOE has no permitting role, however, DOE will work with the permitting entities responsible for issuing Federal authorizations in coordinating the selection of the appropriate permitting entity to be the Lead Agency for preparing NEPA compliance documents in accordance with the 2009 MOU, 40 CFR part 1500 *et seq.,* and these proposed regulations.

DOE believes that its coordination responsibilities set forth in section 216(h) are intended to give an applicant seeking one or more Federal authorizations for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in an efficient and coordinated manner. The NOPR also provides a discretionary process for applicants seeking only one authorization to ask for DOE assistance. In the 2008 interim final rule, DOE determined that its coordination of Federal authorizations would be most beneficial as a request driven process. In a request driven process, DOE would provide coordination only in circumstances where an applicant for Federal authorizations determined that it would be beneficial for DOE to perform that role.

The parties to the 2009 MOU determined, however, that there should be a mechanism for Federal coordination, and the selection of a Lead Agency for all Qualifying Projects, without the need for an applicant to request coordination. This would place the responsibility to undertake the coordination process on the Federal authorizing agencies and ensure that coordination takes place as intended by the statute. The 2009 MOU defines Qualifying Projects as ''high voltage transmission line projects (generally 230 kV or above), and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one Participating Agency.'' This proposed rule would codify the 2009 MOU coordination process for Qualifying Projects, and, in addition, provide for the discretionary coordination of Federal authorizations for projects other than Qualifying Projects.

DOE, in coordination with other participating agencies, has established a transmission tracking system Web site: *http://www.doe-etrans.us.* The Web site includes Qualifying Projects, as well as projects that are not Qualifying Projects, under the MOU or these proposed regulations. For example, the Web site lists the application of Garkane Energy to the Forest Service for authorization to construct a 138 kV line. All other projects currently listed on the Web site are Qualifying Projects.

II. Discussion of Proposed Rule

A. Purpose

Section 900.1 states the purpose of the regulations, which is to provide a

[1] The MOU is available at *http://www.oe.energy.gov/668.htm.* The 2009 MOU superseded an August 8, 2006 MOU pertaining to FPA section 216(h) coordination and signed by the same Federal agencies.

[2] Comments on the interim final rule were filed by the Allegheny Energy Companies (Allegheny), the Public Utility Commission of the State of California, the American Transmission Company LLC, the utility companies of the American Electric Power System Southern California Edison Company, and the Western Business Roundtable. Edison Electric Institute filed consolidated comments on the interim final rule and the NOPR, and Allegheny filed separate comments on the NOPR.

process for the timely coordination of Federal authorizations for proposed transmission facilities pursuant to FPA section 216(h).

B. Applicability

Section 900.2 of the proposed rule explains when the provisions of Part 900 would apply to the coordination of Federal authorizations. The provisions of Part 900 would apply to Qualifying Projects, and would also apply to Other Projects at the discretion of the Director of Permitting and Siting within DOE's Office of Electricity Delivery and Energy Reliability. Both types of projects must be for transmission facilities that are used for the transmission of electric energy in interstate commerce, but Qualifying Projects are generally 230 kV or above and cross jurisdictions administered by more than one Participating Agency.

Further, there would be no coordination of Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)). Section 900.2 also provides that section 216(h) does not apply when an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or a pre-filing procedure has been initiated, under section 216(b) of the FPA (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC [3] and, in Order No. 689, FERC adopted regulations setting forth the procedures it will follow in such circumstances. Furthermore, the MOU does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, or facilities constructed by PMAs.[4]

Comments

Edison Electric Institute (EEI) requested that ''DOE delete this limitation (to transmission in interstate commerce), or at a minimum * * * indicate that this will not be a substantial hurdle to DOE exercising lead-agency authority.'' The Public Utilities Commission of the State of California (CPUC) and the Western Business Roundtable (Roundtable) also expressed concerns with this limitation.

DOE Response

This limitation on the applicability of the regulations is consistent with the intent of section 216 of the FPA, which is titled ''Siting of Interstate Electric Transmission Facilities,'' and is consistent with the definition of transmission facilities used by FERC in Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA).[5] This limitation, however, does not restrict the Federal authorization coordination process only to electric transmission facilities that cross state lines. The facility need only be for the transmission and sale at wholesale of electricity in interstate commerce. This distinction is consistent with the general division of Federal and State authority found in the FPA, with Federal authority over interstate transmission and wholesale sales and State authority over distribution.

Comments

EEI expressed concern with DOE's determination that the rule is not applicable if a pre-filing procedure pursuant to FERC Order No. 689 has been initiated. EEI pointed out that DOE's delegation of its FPA 216(h) coordination authority to FERC applies only after an application for siting an electric transmission facility has been filed with FERC, not when the FERC pre-filing process starts. Also, EEI stated that in a situation where the Federal authorization coordinating process has begun prior to an application for siting before FERC, DOE needs to ensure a smooth transition of lead agency authority to FERC. In comments on the interim final rule, the CPUC commented that it did not oppose this determination because FERC has set forth the procedure that it will follow in such circumstances.

DOE Response

Under FERC Order No. 689, a major portion of the environmental review will be started and undertaken during FERC's pre-filing process. In addition, FERC intends that permitting entities be included in this process. Therefore, it would be duplicative for DOE to simultaneously engage in an FPA 216(h) coordination process for the same electric transmission facilities.

C. Definitions

Section 900.3 would provide definitions applicable to these regulations.

D. Pre-Application Procedures

Section 900.4(a) would implement section 216(h)(4)(C) of the FPA. Section 900.4(b) would codify procedures provided for in the 2009 MOU. It would require permitting entities contacted by prospective applicants for Federal authorization to site electric transmission facilities to notify participating agencies of Qualifying Projects and facilitate a pre-application meeting for prospective applicants and relevant Federal and state agencies and Tribes to communicate key issues of concern, explain applicable processes, outline data requirements and applicant submissions necessary to complete the required Federal agency reviews in a timely manner, and to establish schedules. The section 900.4(a) pre-application mechanism is required by statute and involves a submission of a request by a prospective applicant, while section 900.4(b) codifies a responsibility undertaken by the Participating Agencies in the 2009 MOU.

Comments

Regarding the pre-application mechanism provided for in section 900.4 of the 2008 interim final rule, Allegheny Energy Companies (Allegheny) commented that:

First, the request for information must originate from an applicant or prospective applicant and be directed to a ''permitting entity; with notice to DOE of the request. Second, requests are required to ''specify in sufficient detail the information sought from the permitting entity and shall contain sufficient information for the permitting entity to provide the requested information.'' Third, the permitting agency has 60 days from receipt of the information request to provide, ''to the extent permissible under existing law,'' information concerning the request to the applicant or prospective applicant, and DOE. Notably, DOE's pre-application mechanism does not include any explicit mention of the two specific categories of information noted in FPA, section 216(h)—key issues of concern and the

[3] Department of Energy Delegation Order No. 00–004–00A, section 1.22, issued May 16. 2006.

[4] DOE does not consider applications to the PMAs for transmission interconnections to be Federal authorization request within the meaning of 216(h). In those circumstances the PMAs are not functioning as Federal agencies considering requests for permits, special use authorizations, certifications, opinions, or other approvals, but are acting in their capacity as transmitting utilities. Moreover, section 216(h) specifically provides that nothing in it affects any requirements of U.S. environmental laws, and this exemption does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

[5] Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234.

likelihood of approval for a potential facility. Rather, the proposed pre-application section merely makes a passing reference to requests for information pursuant to section 216(h)(4)(C). (Footnotes omitted.)

Allegheny contended that ''as drafted, proposed section 900.4 frustrates the clear purpose of FPA, section 216(h)(4),'' and provided suggested substitute language for that provision of the regulations. Allegheny also suggested adding language to the effect that ''agencies must ensure that they do not make any pre-decisional commitments regarding their future consideration of a permit application or authorization request.''

DOE Response

DOE does not believe that section 900.4, as drafted in the 2008 interim final rule, would frustrate the purpose of FPA section 216(h)(4). FPA section 216(h)(4) directs DOE to provide ''an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved * * *.'' Section 900.4(a) of this NOPR would provide such a mechanism. To address Allegheny's comment, however, the proposed rule includes the statutory specifications that a permitting or potential permitting entity should provide information concerning the likelihood of approval for a potential facility and key issues of concern to the agency and public, while stating that the provision of such information does not constitute a commitment by the permitting entity to approve or disapprove the Federal authorization request.

DOE retained the language requiring persons requesting information from a Federal agency pursuant to FPA section 216(h)(4)(C) to supply sufficient details to allow the agency to provide the information requested. A permitting entity cannot provide answers to the questions posed in FPA section 216(h)(4) without knowing the nature and the scope of the facilities to which the information request pertains. DOE will work with persons seeking information under section 900.4(a) and permitting entities to ensure the pre-application mechanism functions properly.

In addition, DOE retained the ''to the extent permissible under existing law'' language. We also included language in section 900.4(a)(4) specifying that information given to an applicant shall not constitute a commitment by the permitting entity to approve or disapprove any Federal authorization request.

E. Notification of Requests for Federal Authorizations and Requests for DOE Assistance in the Federal Authorization Process

Section 900.5 of the proposed rule would require a permitting entity contacted regarding, or in receipt of, an application for a Federal authorization for a Qualifying Project to inform the DOE's Director of Permitting and Siting in the Office of Electricity Delivery and Energy Reliability (Director) within ten working days of being contacted or of receipt of an application. In addition, persons seeking Federal authorizations for projects that are not Qualifying Projects can file written requests to DOE for assistance in the Federal authorization process.

Comments

Based on the 2008 NOPR, Allegheny recommended that the rule be changed to require permitting entities to notify DOE within one week of receiving the application for a Federal authorization if the project is: (1) Equal or greater than 230 kV; (2) reasonably likely to require an EIS; or (3) reasonably likely to require more than one Federal authorization. Allegheny's recommendation was based on language in the superseded 2006 MOU. EEI urged ''DOE to require notification from a federal authorizer any time an application for a permit is filed, not just for those projects that will require an EIS.''

DOE Response

In response to Allegheny's comment, the proposal that DOE be notified within 10 days of all proposals for qualifying projects is consistent with the 2009 MOU, and DOE does not believe that the additional few days would make a significant difference in the review process for an application. In response to EEI's comments, DOE notes that Federal authorizing agencies informed DOE that there are thousands of Federal authorization requests each year. For example, the Army Corps of Engineers authorizes over 60,000 projects under section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act annually. Thus, requiring by rule that Federal authorizing agencies inform DOE of every request for a Federal authorization would be overly burdensome. Moreover, persons proposing to construct an electric transmission facility that is not a Qualifying Project can utilize the procedure in section 900.5(b) of the NOPR to request DOE assistance in the Federal authorization process.

F. Selection of Lead Agency and Coordination of Permitting and Related Environmental Reviews

Section 900.6(a) provides, consistent with the process agreed to in the 2009 MOU, that DOE will coordinate the selection of a Lead Agency responsible for compiling a single environmental review document and consolidated administrative record for Qualifying Projects. For Qualifying Projects that cross DOI administered lands (including trust or restricted Indian lands) or USDA administered lands, the DOI and USDA would consult and jointly determine: (1) Whether a sufficient land management interest exists to support their assumption of the Lead Agency role and (2) if so, which of the two agencies should assume that role. The DOI and USDA would notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days, such determination is deemed accepted. When the Lead Agency is not established as described above, the relevant participating agencies will consult and jointly determine a lead agency within 20 days after determining that a proposal is a Qualifying Project. The agencies will notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies those participating agencies of its objection within two business days, such determination is deemed accepted.

In addition, section 900.6(b) provides that for projects that are not Qualifying Projects (defined in section 900.3 as Other Projects), an applicant can request the Director to assist it in the Federal authorization process, and the Director may do so at the Director's discretion. If DOE decides to provide authorization assistance, DOE will work with the Federal authorizer(s) to determine a Lead Agency.

Finally, section 900.6(c) states that non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under this section, including becoming cooperating agencies.

Comments

In the preamble to the 2008 interim final rule, DOE stated that in its view section 216(h) is intended to give an applicant seeking more than one Federal authorization for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in

an efficient and coordinated manner. This view is consistent with the definition of a Qualifying Project contained in this NOPR. EEI and Roundtable urged DOE to reconsider this language. Roundtable stated: ''Applicants should not be precluded from having DOE serve as lead agency merely because only one federal permitting entity is involved.''

DOE Response

FPA section 216(h)(2) states that DOE ''shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility.'' DOE believes that its coordination role is best served for projects where more than one permitting entity is involved. Hence, it defined Qualifying Project as a project where the transmission line crosses jurisdictions administered by more than one participating agency. However, the definition of Other Projects in this NOPR provides an opportunity for an applicant to request DOE coordination for a project that only involves a single permitting entity.

Comments

Several commenters questioned DOE's determination that the term ''lead agency,'' as used in FPA section 216(h) makes the Department responsible for being the lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under NEPA. EEI contented that ''the Department's statement in the preamble to the interim rule that the term 'lead agency' in section 216(h) means it is 'lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under the National Environmental Policy Act,' is an incorrect interpretation of what the statute requires,'' and that ''the designation of the Department as the 'lead agency' clearly indicates that the Department's role under section 216(h) encompasses preparation of an environmental review document for the purposes of NEPA compliance.'' SCE stated that ''DOE was expressly charged by Congress with acting as the lead agency under the National Environmental Protection (sic) Act (''NEPA'') for conducting all of the necessary reviews required for Federal authorizations associated with the construction of transmission project on Federal lands.'' AEP commented:

> DOE interprets the requirement to prepare a consolidated environmental review document as merely requiring it to assemble the work of individual agencies and maintain the information available to be used—a clearing house function. AEP urges the DOE to establish a single environmental review document for electric transmission siting. Establishment of such a document for electric transmission siting will simplify the application process and eliminate the need to submit duplicate information to multiple state and Federal agencies.

In addition, AEP stated:

> In order for the single environmental review document to be effective at accelerating the approval process and eliminating duplication, it would also be helpful for DOE to create a comprehensive schedule for participating agencies. To accomplish this, the DOE should clearly define the roles that various entities will play within the approval process. This approval process could identify opportunities to expedite the process, such as opportunities to conduct joint public comment periods and public hearings when multiple agencies must consider the same or similar issues.

On the other hand, CPUC supported the rule's provision that DOE and the permitting entities responsible for issuing Federal authorizations will jointly decide the appropriate lead agency for NEPA purposes, but asked clarification of when DOE itself would be the lead agency.

DOE Response

Section 216(h)(2) requires DOE to act as the lead agency for the purposes of coordinating all applicable Federal authorizations and related environmental reviews of a facility. The phrase ''for the purposes of coordination'' of environmental reviews limits DOE's responsibility to coordination and does not require DOE to compile the environmental review document. It would be inefficient for DOE, rather than the agency with the most significant land management interests related to a Qualifying Project and with the most relevant subject matter expertise, to compile the document, particularly in those cases where DOE has no permitting role.

Consistent with the 2009 MOU, the proposed rule modifies the 2008 interim final rule to clarify the process by which DOE will coordinate the selection of the lead agency for compiling a single environmental review document and a consolidated administrative record for qualifying projects.

With respect to CPUC's request for clarification, DOE anticipates it will be the Lead Agency when an application for a Federal authorization has been submitted to DOE. DOE is responsible for authorizing exports of electricity under FPA section 202(e) (16 U.S.C. 824a(e)), and issuing Presidential permits for the construction, operation, maintenance and connection of electric transmission facilities at the international border pursuant to Executive Order (EO) 10485, as amended by EO 12038. Generally, when DOE is considering such Presidential permit applications it is the NEPA lead agency and anticipates that it will continue to be the Lead Agency under those circumstances. Similarly, when applications are filed with one of the PMAs, the PMA is expected to be the NEPA lead agency.

When DOE is not a permitting entity, however, the 2009 MOU provides a mechanism for DOE to coordinate the selection of a Lead Agency for qualifying projects. The selection will reflect the agency with the most significant land management interests related to a Qualifying Project, or the agency recommended by other participating agencies impacted by the project. This agency would be the Lead Agency for preparing NEPA compliance documents and other analyses required to comply with all environmental and cultural statutes and regulations under Federal law. This approach is consistent with FPA section 216(h)(2), as explained above. Consistent with section 216(h)(5)(A), however, DOE clarifies that its role as coordinator for the Federal authorization process will be much broader and more involved than simply acting as a clearing house and repository for environmental compliance information. DOE will establish a central source of information about section 216(h) activities and provide for public access to the information available from participating and cooperating agencies, as well as a schedule for each qualifying project. The Web site will be accessible through *http://www.oe.energy.gov/Fed_transmission.htm.* DOE also intends to be actively engaged in the coordination of Federal authorizations, including the establishment of timeframes for the submission of information, the scheduling of environmental scoping meetings, and appropriate milestones and deadlines.

G. Lead Agency Responsibilities

Section 900.7 delineates the responsibilities of the lead agency under the rule. These tasks include: Establishing and implementing preapplication consultation procedures, consulting with cooperating agencies, establishing a schedule, preparing a unified environmental review document, maintaining a consolidated administrative record, and other responsibilities enumerated in the rule.

In addition, section 900.7(i) provides that, to the extent practicable and consistent with Federal law, the Lead Agency may establish a procedure to

consolidate costs recoverable from the applicant to reimburse Federal agencies for costs incurred, issue bills for collection, and disburse funds to the appropriate Federal agencies.

H. Cooperating Agencies Responsibilities

Section 900.8 delineates the responsibilities of cooperating agencies. DOE notes that section 900.8(g) provides that Cooperating Agencies may enter into an interagency agreement with the Lead Agency to allow for the recovery of appropriate costs, and that the Cooperating Agencies would be responsible for providing the Lead Agency an accounting of billable costs as a result of the application and permitting process. These last two sections were not included in the MOU but will facilitate the Federal authorization decisionmaking process.

I. DOE Responsibilities

Section 900.9 provides DOE responsibilities under this part, including coordinating the selection of a Lead Agency, providing assistance to the Lead Agency and developing the public Web site.

J. Prompt and Binding Intermediate and Ultimate Deadlines

Consistent with FPA section 216(h)(4)(A), section 900.10 provides for the lead agency, in consultation with DOE, the project applicant, other affected parties, and cooperating agencies to establish an efficient project schedule, including intermediate and ultimate deadlines for the review of Federal authorization applications and decisions relating to proposed electric transmission facilities.

K. Deadlines for Final Decisions on Federal Authorization Requests

Consistent with FPA section 216(h)(4)(B), section 900.11 requires that all Federal permit decisions be completed in accordance with the following time-lines (unless another provision of Federal law does not permit a final decision within those timelines): (1) When a categorical exclusion or an environmental assessment (EA) and Finding of No Significant Impact (FONSI) is determined to be the appropriate level of review under NEPA, within one year of the categorical exclusion determination or publication of a FONSI; or (2) when an environmental impact statement (EIS) is required, one year and 30 days after the close of the public comment period for a Draft EIS.

The 2009 MOU sets the deadline in those instances within one year of the acceptance of a completed application. While the 2009 MOU provision may seem to establish a shorter deadline then this NOPR, the deadline is imprecise because the MOU contains no definition of a ''completed application.'' The language starting the one year deadline on the date of the NEPA determination is used in this proposed rule to establish a deadline that is easily determinable. DOE remains committed to working with the applicant and the lead and cooperating agencies to expedite the decision process, including final deadlines.

Comments

EEI and Roundtable objected to the one-year deadline for the completion of all Federal authorizations contained in the 2008 NOPR, which was substantially the same as proposed in this rule. EEI stated that ''none of these proposed triggers for the one-year period to begin find any support in the text of the statute, and none is lawful.'' Roundtable stated:

> Under EPAct05, there is a one-year window for states to complete their decisions prior to an applicant approaching FERC for a construction permit and a one-year window for Federal agencies to complete their decisions once an application has been submitted with necessary data. These provisions parallel one another, supporting the view that Congress intended a concurrent approach to federal and state decision-making.

DOE Response

Section 216(h)(4)(B) of the FPA provides that the Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary of Energy considers necessary, all permit decisions and related environmental reviews under Federal laws will be completed within one year or as soon thereafter as possible in compliance with Federal law. Roundtable compared this one year deadline to the one-year window for states to complete their decisions prior to an applicant applying to FERC for a construction permit under FPA section 216(b). DOE disagrees with Roundtable's comparison because FPA section 216(h)(4)(B) requires submission of an application ''with such data as the Secretary considers necessary.'' A permitting entity needs to have a completed, or substantially completed, environmental review before it can make a Federal authorization determination. Therefore, DOE has determined generally that permitting entities will have such data as the Secretary considers necessary one year after: (1) A determination by the permitting entity has been made that the Federal authorization is subject to a categorical exclusion, or an EA has been published which resulted in a FONSI; or (2) 30 days after the close of the comment period on the permitting entity's draft EIS. In addition, this determination is consistent with FERC Order No. 689, which contemplates a pre-filing period of a year, during which FERC will start its scoping and environmental review, before an application is filed and the FPA section 216(h)(4)(B) one year deadline begins to run.[6] Moreover, these proposed section 900.11 deadlines trigger the FPA section 216(h)(6) Presidential appeal process, so it is important that the deadlines are clear and determinable by both applicants and permitting entities.

Comments

EEI asked that DOE ''clarify that the one-year deadline applies not only to the record of decision but also to the issuance of the construction permit that allows dirt to be turned.''

DOE Response

In response to the clarification requested by EEI, section 900.11 states that the one-year deadline applies to all Federal authorizations or permits needed.

Comment

EEI and Roundtable raised concerns about the ability of a permitting entity to extend the one-year deadline if a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request within one year under section 900.9 of the 2008 NOPR. EEI stated that ''this would allow a permitting agency to override the statutory one-year deadline with a cryptic one-sentence reference to NEPA or some other statute, without offering any explanation as to why an extension of the deadline is legally necessary.'' Allegheny expressed similar concerns over parallel language in section 900.8 of the 2008 NOPR.

DOE Response

Pursuant to the proposed rule, a permitting entity requesting extension of the one year deadline must inform the lead agency, cooperating agencies, the applicant, DOE and any other interested parties of the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year of the deadline, an explanation of how the provision is applicable to the

[6] Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234, at para. 47.

permitting entity's Federal authorization determination and why the provision prevents the decision from being made within that time frame, and the date when the final decision on the authorization request can be issued in compliance with Federal law.

III. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these regulations fall into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EA nor an EIS is required. Documentation of the use of this categorical exclusion has been completed and is available for review on DOE's Web site *http://www.oe.energy.gov/1260.htm.*

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule establishes procedures for DOE coordination of Federal authorizations for the siting of interstate electric transmission facilities. As a result, the rule directly impacts only Federal agencies and not any small entities. In those cases where an applicant requests DOE assistance for a project that is not a qualifying project, DOE expects that the provisions of this proposed rule, if adopted, would not affect the substantive interests of such applicants, including any applicants that are small entities. DOE expects that actions taken under these proposed provisions to coordinate and speed the issuance of decisions on requests for Federal authorizations would lessen the burden of applying for a Federal authorization on applicants, and that any applicant requesting DOE assistance has made the calculation that such a request was in the best interests of the applicant. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for requesting information during the pre-application process is estimated to average 30 minutes per response. Public reporting burden for requesting DOE assistance in the Federal authorization process is estimated to average one hour per response. Both of these burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Brian Mills at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, Tribal or local governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private sector, so these requirements do not apply.

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 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. No further action is required by the executive order.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today does not have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule has also not been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs. Therefore, the requirement to prepare a Statement of Energy Effects does not apply.

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

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

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

Issued in Washington, DC on December 2, 2011.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

For the reasons set forth in the preamble, the Department of Energy is proposing to amend chapter II of title 10 of the Code of Federal Regulations by revising part 900 to read as set forth below:

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.
900.1 Purpose.
900.2 Applicability.
900.3 Definitions.
900.4 Pre-application procedures.
900.5 Notification of requests for Federal authorizations for Qualifying Project and requests for DOE assistance in the Federal authorization process.
900.6 Selection of lead agency and coordination of permitting and related environmental reviews.
900.7 Lead agency responsibilities.
900.8 Cooperating agencies' responsibilities.
900.9 DOE responsibilities.
900.10 Prompt and binding intermediate milestones and ultimate deadlines under the Federal Power Act.
900.11 Deadlines for all permit decisions and related environmental reviews pursuant to the Federal Power Act.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose.

This part provides a process for the timely coordination of Federal authorization requests for proposed transmission facilities pursuant to section 216(h) of the FPA (16 U.S.C. 824p(h)). These regulations provide a framework for cooperation and for the compilation of uniform environmental review document in order to coordinate all permitting and environmental reviews required under Federal law to site qualified electric transmission facilities. They also provide an opportunity for non-Federal entities to coordinate their own separate non-Federal permitting and environmental reviews with that of the Federal permitting entities.

§ 900.2 Applicability.

(a) The regulations under this part apply to Qualifying Projects for which Federal authorizations are required to site transmission line projects that are generally 230,000 volts (230 kV) and above and their attendant facilities, or regionally or nationally significant transmission line and their attendant facilities. Such transmission line projects must require more than one Federal authorization, and all or part of a proposed transmission line must cross jurisdictions administered by more than one participating agency. Such transmission line projects must also be used for the transmission of electric energy in interstate commerce for sale at wholesale. The provisions of Part 900 would also apply to Other Projects at the discretion of the Director. Other Projects must also be transmission facilities that are used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, be regionally of nationally significant, or cross jurisdictions administered by more than one Participating Agency.

(b) This part does not apply to Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas interconnection.

(c) This part does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, or the facilities constructed by Federal Power Marketing Administrations. However, section 216(h) does not affect any requirements of U.S. environmental laws, and this exemption does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

(d) This part does not apply to Federal authorizations in regard to transmission facilities where an application has been submitted to the Federal Energy Regulatory Commission (FERC) for issuance of a permit for construction or modification of transmission facilities under 18 CFR 50.6 or where pre-filing procedures have been initiated with FERC under 18 CFR 50.5.

(e) DOE, in exercising its responsibilities under this part, will consult regularly with FERC, electric reliability organizations, and transmission organizations approved by FERC.

§ 900.3 Definitions.

As used in this part:

Applicant means a person or entity who is seeking Federal authorization to construct electric transmission facilities.

Consolidated administrative record means the information assembled and maintained by the lead agency and utilized by the cooperating agencies/permitting entities as the basis for their Federal authorization decisions along with the final decision made by each permitting entity.

Cooperating agencies are those agencies that have jurisdiction by law regarding a proposed project, or that otherwise have special expertise with respect to environmental and other issues pertinent to Federal agency reviews. States, tribes and local governments with relevant expertise or authority, or that are potentially affected by or interested in a project, can also be cooperating agencies.

Director means the Director of Permitting and Siting within DOE's Office of Electricity Delivery and Energy Reliability.

DOE means the United States Department of Energy.

Federal authorization means any authorization required under Federal law to site a transmission facility, including permits, special use authorizations, certifications, opinions, or other approvals. This term includes authorizations issued by Federal and non-Federal entities that are responsible for issuing authorizations under Federal law for a transmission facility.

FPA means the Federal Power Act (16 U.S.C. 791–828c).

Indian tribe has the same meaning as provided in 25 U.S.C. 450b(e).

Lead Agency means the Federal agency, selected as provided for in these rules, to coordinate Federal authorizations and related Federal agency reviews pursuant to this part.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Non-Federal entities mean local government agencies with relevant expertise or authority that are potentially affected by or are responsible for conducting any separate permitting and environmental reviews of the proposed facilities.

Other projects mean transmission facilities that are not qualifying projects. Other projects must be used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, be regionally or nationally significant, or cross jurisdictions administered by more than one Participating Agency.

Participating agency means a signatory of the MOU executed on October 23, 2009. The participating agencies are DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, FERC, the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation.

Permitting entity means any Federal or non-Federal entity that is responsible for making a determination on issuing an authorization required to site an electric transmission line.

Qualifying Projects are high voltage transmission line projects (generally 230 kV or above) and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one participating agency and is used for the transmission of electric energy in interstate commerce for sale at wholesale. This definition is consistent with FERC Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA) and may include intrastate facilities.

Single environmental review document means the material that the cooperating agencies develop—with the lead agency being primarily responsible—to fulfill Federal obligations for preparing NEPA compliance documents and all other analyses required to comply with all environmental, tribal consultation, cultural and historic preservation statutes and regulations under Federal law. This information shall be available to the applicant, all cooperating agencies, DOE, and all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews.

§ 900.4 Pre-application procedures.

(a) Pre-application mechanism:

(1) An applicant, or prospective applicant, for a Federal authorization may request information from a permitting or potential permitting entity concerning the likelihood of approval for a potential facility and key issues of concern to the agency and public. The applicant or prospective applicant requesting information from a permitting or potential permitting entity shall notify the Director of the request to the entity.

(2) Any request for information filed under this section shall specify the information sought from the permitting entity in sufficient detail for the permitting entity to provide the requested information.

(3) Within 60 days of receipt of such a request for information, a permitting entity shall provide, to the extent permissible under existing law, information addressing the request to the applicant, or prospective applicant, and the Director.

(4) The provision of such information does not constitute a commitment by the permitting entity to approve or disapprove any Federal authorization request.

(b) Additional pre-application procedures:

Permitting entities contacted by prospective applicants for Federal authorization to site electric transmission facilities will notify participating agencies of Qualifying Projects and facilitate a pre-application meeting for prospective applicants and relevant Federal and state agencies and Tribes to communicate key issues of concern, explain applicable processes, outline data requirements and applicant submissions necessary to complete the required Federal agency reviews in a timely manner, and to establish schedules.

§ 900.5 Notification of requests for Federal authorizations for Qualifying Project and requests for DOE assistance in the Federal authorization process.

(a) *Qualifying Projects.* When one or more permitting entities determine that a project may be a Qualifying Project, those entities will, within 10 days, notify DOE of that determination. The notification is to be made to the Director, Permitting and Siting, ATTN: Transmission Coordination, U.S. Department of Energy, OE–20, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue SW., Washington, DC 20585 or electronically to *transmissioncoordination@hq.doe.gov.*

(b) *Other Projects.* Persons seeking DOE assistance in the Federal authorization process for Other Projects shall file a request for coordination with the Director. The request shall contain:

(1) The legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the State laws under which the requester is

organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(2) A concise general description of the proposed transmission facility sufficient to explain its scope and purpose;

(3) A list of all permitting entities from which Federal authorizations pertaining to the proposed transmission facility are needed, including the docket numbers of pending applications with permitting entities;

(4) A list of non-Federal entities (*i.e.,* state government agencies) that have their own separate non-Federal permitting and environmental reviews pertaining to the proposed transmission facility, including the docket numbers of relevant applications.

(c) *Written request.* The written request for coordination may be filed by mail or hand delivery with the Director at 1000 Independence Avenue SW., Washington, DC 20585, or electronically in MS Word or PDF formats at *Brian.Mills@hq.doe.gov.* Electronic filing is DOE's preferred method. If filing by hand or mail, DOE requests that an electronic copy be filed as well.

§ 900.6 Selection of lead agency and coordination of permitting and related environmental reviews.

(a) *Qualifying Projects.* (1) As provided in paragraphs (a)(2) and (3) of this section, DOE will coordinate the selection of a Lead Agency responsible for compiling a unified environmental review document and consolidated administrative record for qualifying projects. The selection will recognize the agency with the most significant land management interests related to the qualifying project or the agency recommended by other cooperating agencies to be the lead agency. Determination of the lead agency for preparing NEPA documents shall be in compliance with regulations issued by the Council on Environmental Quality at 40 CFR part 1500 *et seq.*

(2) For Qualifying Projects that cross DOI-administered lands (including trust or restricted Indian lands) or USDA-administered lands, DOI and USDA will consult and jointly determine within 20 days after determining that a proposal is a Qualifying Project:

(i) Whether a sufficient land management interest exists to support their assumption of the lead agency role; and

(ii) If so, which of the two agencies should assume that role. DOI and USDA will notify DOE of their determination in writing or electronically within 10 days of making the determination. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days of the DOI/USDA notification, such determination is deemed accepted and final.

(3) When the Lead Agency is not established pursuant to paragraph (a)(2) of this section, the cooperating agencies will consult and jointly determine a Lead Agency within 20 days after determining that a proposal is a Qualifying Project. No determination of an agency as a Lead Agency under this rule shall be made absent that agency's consent. The agencies will notify DOE of their determination in writing or electronically within 10 days of making the determination. Unless DOE in writing or electronically notifies those cooperating agencies of its objection within two business days of the cooperating agencies notification, such determination is deemed accepted and final.

(b) *Other Projects.* For Other Projects, pursuant to § 900.5(b), an applicant can file a request for coordination with the Director for assistance in the Federal authorization process, and the Director may provide assistance at the Director's discretion. If DOE decides to provide authorization assistance, DOE will work with the permitting entity to determine a Lead Agency.

(c) Non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under this section, including becoming cooperating agencies.

§ 900.7 Lead agency responsibilities.

(a) The Lead Agency will consult fully with the cooperating agencies throughout the Federal authorization review process to improve coordination, identify and obtain relevant data in a timely manner, set schedules, and identify and expeditiously resolve issues or concerns.

(b) The Lead Agency will consult with DOE, the qualifying project applicant, other affected parties, and cooperating agencies to establish an efficient project schedule, including intermediate milestones and ultimate deadlines for the review of Federal authorization applications and decisions relating to proposed electric transmission facilities.

(c) The Lead Agency will prepare a unified environmental review document for the Qualifying Project, incorporating, to the maximum extent practicable, a single environmental record on which all entities with authority to issue authorizations for a given project can base their decisions.

(d) The Lead Agency will maintain a consolidated administrative record of the information assembled and utilized by the cooperating agencies as the basis for their decisions.

(e) The Lead Agency will, to the extent practicable and consistent with Federal law, ensure that all project data are submitted and maintained in electronic geospatial formats or other generally-accessible electronic forms (*e.g.,* geographic information system data including metadata descriptions meeting Federal Geographic Data Committee standards); compile and make available the information assembled and utilized by the cooperating agencies; and, as appropriate, provide public access to the data by maintaining on the agency Web site information and links to the information available from all cooperating agencies.

(f) The Lead Agency will establish any procedures necessary for it to coordinate the requirements of this part with other Federal and non-Federal entities.

(g) The Lead Agency will produce regular input to and updates of a DOE-maintained electronic project tracking system. The information provided by the lead agency will, as appropriate, be made available to the public as provided in § 900.9(e).

(h) The Lead Agency will inform cooperating agencies regarding new information and necessary changes related to the project.

(i) To the extent practicable and consistent with Federal law, the Lead Agency may establish a procedure to consolidate costs recoverable from the applicant to reimburse Federal agencies for costs incurred, issue bills for collection, and disburse funds to the appropriate Federal agencies.

§ 900.8 Cooperating agencies' responsibilities.

(a) Cooperating agencies will submit reviews in accordance with the timeline established by the Lead Agency after consultation with cooperating agencies.

(b) Cooperating agencies will provide personnel and/or expertise to the Lead Agency as agreed to by the cooperating agencies.

(c) Cooperating agencies will be responsible for the provision of any information necessary to complete application reviews and decisions in accordance with deadlines established by the Lead Agency after consultation with cooperating agencies.

(d) Each cooperating agency will assign a lead point of contact for coordination and consultation with the

Lead Agency during the pendency of Federal authorization requests.

(e) Each cooperating agency will share information and data with each other and, to the maximum extent practicable, submit information in a common standard for electronic recordkeeping and analysis.

(f) Cooperating agencies will ensure that any issues or problems relating to a Federal authorization request or process are brought to the immediate attention of the lead agency and DOE, and will participate fully in seeking and implementing resolutions to the issues or problems.

(g) Cooperating Agencies may enter into an interagency agreement with the Lead Agency to allow for the recovery of appropriate costs. The Cooperating Agencies would be responsible for providing the Lead Agency an accounting of billable costs as a result of the application and permitting process.

§ 900.9 DOE responsibilities.

(a) DOE will lead the overall coordination of activities related to implementation of section 216(h) of the FPA and pursuant to this part.

(b) DOE will coordinate the selection of the Lead Agency as specified in this part.

(c) DOE will provide expertise to assist the Lead Agency as required and ensure adherence to applicable schedules.

(d) DOE will provide assistance to the Lead Agency in establishing the schedule and will approve any deviation in the established project schedule.

(e) DOE will develop a public Web site to serve as a central source of information about section 216(h) of the FPA in general and links to the information available from participating and cooperating agencies, as well as schedule information about the specific transmission projects. The Web site can be accessed via *www.oe.energy.gov/fed_transmission.htm*.

§ 900.10 Prompt and binding intermediate milestones and ultimate deadlines under the Federal Power Act.

Pursuant to section 216(h)(4)(A) of the Federal Power Act:

(a) Permitting entities will work diligently to comply with the agreed-upon timeline, to the extent consistent with applicable law. To ensure adherence to applicable schedules, DOE will provide assistance to the lead agency in establishing the schedule and will approve any deviation in the established project schedule.

(b) No later than 30 days prior to any intermediate or ultimate deadline established under this part, any permitting entity subject to a deadline shall inform the lead agency, DOE, and the applicant if the deadline will not, or is not likely to, be met.

(c) The Lead Agency, in consultation with DOE and the permitting entity, may, for good cause shown, extend an interim or ultimate deadline.

§ 900.11 Deadlines for all permit decisions and related environmental reviews pursuant to the Federal Power Act.

Pursuant to section 216(h)(4)(B) of the Federal Power Act:

(a) All permit decisions and related environmental reviews under all applicable Federal laws shall be completed in accordance with the following timelines, except as provided in § 900.11(b):

(1) When a categorical exclusion under NEPA is invoked, or an environmental assessment (EA) finding of no significant impact (FONSI) is determined to be the appropriate level of review under NEPA, within one year of the categorical exclusion determination or the publication of a FONSI ; or

(2) When an environmental impact statement (EIS) is required pursuant to NEPA, one year and 30 days after the close of the public comment period for a Draft EIS.

(b) If a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request under the schedule established in paragraph (a) of this section, the permitting entity shall inform the lead agency, DOE, cooperating agencies, the applicant, and other interested parties, cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued under the schedule established in paragraph (a) of this section, and provide a date when the final decision on the authorization request can be issued in compliance with Federal law.

[FR Doc. 2011–31759 Filed 12–12–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AD89

Mutual Insurance Holding Company Treated as Insurance Company

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule (''Proposed Rule''), with request for comments, that provides for the treatment of a mutual insurance holding company as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), 12 U.S.C. 5383(e). The Proposed Rule clarifies that the liquidation and rehabilitation of a covered financial company that is a mutual insurance holding company will be conducted in the same manner as an insurance company. The Proposed Rule is intended to harmonize the treatment of mutual insurance holding companies under Section 203(e) of the Dodd-Frank Act with the treatment of such companies under state insolvency regimes.

DATES: Written comments on the Rule must be received by the FDIC no later than February 13, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for Submitting comments on the Agency Web Site.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–AD89'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–I002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATON CONTACT: R. Penfield Starke, Acting Assistant General Counsel, Legal Division, (703) 562–2422; Mark A. Thompson, Counsel (703) 562–2529.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Dodd-Frank Act provides for the appointment of the FDIC as receiver of a nonviable financial company that poses significant risk to the financial stability of the United States (a ''covered financial company''), outlines the process for the orderly liquidation of a covered financial company following the FDIC's appointment as receiver and provides for additional implementation of the orderly liquidation authority by rulemaking. The Proposed Rule is being promulgated pursuant to Section 209 [1] of the Dodd-Frank Act, which authorizes the FDIC, in consultation with the FSOC, to prescribe such rules and regulations as the FDIC considers necessary or appropriate to implement Title II. Section 209 of the Dodd-Frank Act further provides that, to the extent possible, the FDIC should seek to harmonize rules and regulations promulgated under Section 209 with the insolvency laws that would otherwise apply to a covered financial company.

On July 15, 2011, the FDIC published in the **Federal Register** a final rule regarding certain orderly liquidation authority provisions under Title II of the Dodd-Frank Act.[2] In response to the notice of proposed rulemaking [3] and interim final [4] rule that preceded the issuance of the final rule, commenters from the insurance industry urged the greatest possible deference to state regulators and to state laws, rules and regulations governing insurance companies and, in particular, state laws governing the liquidation and rehabilitation of insurance companies. Commenters urged the FDIC to treat mutual insurance holding companies as insurance companies for purposes of Title II of the Dodd-Frank Act.[5]

In light of the comments received and pursuant to the authority granted to it by Section 209 of the Dodd-Frank Act, the FDIC is issuing the Proposed Rule, with a request for comments.

[1] 12 U.S.C. 5389.

[2] 76 FR 41626 (July 15, 2011).

[3] Notice of Proposed Rulemaking, 75 FR 64173 (October 19, 2010).

[4] Interim Final Rule, 76 FR 4207 (January 25, 2011).

[5] Letter dated January 18, 2011, to Robert E. Feldman, Executive Secretary, FDIC from National Association of Insurance Commissioners, *http://www.fdic.gov/regulations/laws/federal/2010/10Addcomment.PDF;* Letter dated March 28, 2011, to Robert E. Feldman, Executive Secretary, FDIC from Mutual Insurance Holding Company Coalition, *http://www.fdic.gov/regulations/laws/federal/2011/11c04Orderly.PDF.*

History of Mutual Insurance Holding Company

The mutual insurance industry traces its roots back to England, where, in 1696, the first mutual fire insurer was established. The first American mutual insurance company, the Philadelphia Contributionship for the Insurance of Houses from Loss by Fire, was founded in 1752.[6]

Mutual insurance companies are owned by their policyholders, not by stockholders. Policyholders are entitled to vote for members of the company's board of directors and may receive special dividends in the form of capital distributions or reductions of policy premiums.

The mutual insurance holding company structure was first created in Iowa in 1995.[7] A mutual insurance holding company is created through the restructuring of a mutual insurance company into two entities, a mutual insurance holding company and a stock insurance company that is converted from the original mutual insurance company.

In a variation of this restructuring, a third entity may be formed, an intermediate insurance stock holding company. In this three-entity structure, initially the mutual insurance holding company owns 100% of the intermediate insurance stock holding company, and the intermediate insurance stock holding company owns 100% of the stock of the converted mutual insurance company. The purpose of the restructuring is to preserve the benefits of a mutual form of organization while allowing the converted mutual insurance company access to capital markets either through sale of its stock or, in a three-entity structure, the sale of the stock of the intermediate insurance stock holding company.

A mutual insurance holding company is owned by the policyholders of the converted mutual insurance company who have rights similar to those they had as policyholders of the mutual insurance company before conversion. Policyholders of the converted mutual insurance company are entitled to vote for members of the mutual insurance holding company's board of directors, and may receive special dividends in the form of capital distributions or reductions of policy premiums.

A majority of the states have adopted statutes providing for the formation of mutual insurance holding companies. Those statutes generally (a) Provide for the regulation of a mutual insurance holding company at the holding company level by the insurance commissioner of the domiciliary state; (b) require that the mutual insurance holding company maintain voting control over the converted mutual insurance company; and (c) specifically subject a mutual insurance holding company to liquidation or rehabilitation under the state regime if the converted mutual insurance company is placed in liquidation or rehabilitation. In addition, either by statute, rule or regulation, in the liquidation of a converted mutual insurance company, the assets of the mutual insurance holding company generally are included in the estate of the converted mutual insurance company being liquidated.[8]

[6] The Philadelphia Contributionship, History, *http://www.contributionship.com/history/index.html.*

[7] Iowa Code Ann. (West) § 521A.14.

Treatment of an Insurance Company Under Section 203(e) of the Dodd-Frank Act

In providing for the orderly liquidation of a covered financial company under Title II of the Dodd-Frank Act, Congress recognized that insurance companies historically had been liquidated and rehabilitated pursuant to a state insolvency framework. As a result, Congress provided that ''if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is [an insurance company], shall be conducted as provided under applicable State law.'' [9]

The term ''insurance company'' is defined in Section 201(a)(13) of the Dodd-Frank Act to mean ''any entity that is—(A) Engaged in the business of insurance; (B) subject to regulation by a State insurance regulator; and (C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.'' [10] The identical definition is found in Section 380.1 of Title 12 of the Code of Federal Regulations. Concerns have been raised with respect to the application of this definition to mutual insurance holding companies because, under applicable state laws, a mutual insurance holding company generally is prohibited from engaging in the business of insurance, that is, a mutual insurance holding company may not sell policies of

[8] *E.g.,* Iowa Code Ann. (West) 521A.14(4), 215 Ill. Comp. Stat. Ann. (West) 5/59.2(1)(f)(v), and Neb. Rev. Stat. § 44–6125(6)(g).

[9] 12 U.S.C. 5383(e)(1).

[10] 12 U.S.C. 5381(a)(13).

insurance. Thus, a mutual insurance holding company arguably does not fit squarely within a literal reading of the statutory definition of insurance company under the Dodd-Frank Act.

Given the process by which a mutual insurance holding company is formed from a converted mutual insurance company, the continuing interest of the policyholders of the converted mutual insurance company in both the converted mutual insurance company, as its customers, and the mutual insurance holding company, as equity holders, the extensive regulation of the mutual insurance holding company by the insurance commissioner of its domiciliary state, and the inclusion of the mutual insurance holding company and its assets in the liquidation of the converted mutual insurance company, it is consistent with the intent of the Dodd-Frank Act to treat a mutual insurance holding company, under certain circumstances, as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Act.[11]

II. The Proposed Rule

The Proposed Rule would modify part 380 of title 12 of the Code of Federal Regulations, and would provide generally that a mutual insurance holding company that meets the requirements of the Proposed Rule will be treated as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Act.

The Proposed Rule would add three definitions to Section 380.1 of title 12 of the Code of Federal Regulations: intermediate insurance stock holding company; mutual insurance company; and mutual insurance holding company.

The Proposed Rule would add Section 380.11 to provide that a mutual insurance holding company shall be treated as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Act, 12 U.S.C. 5383(e); provided that: (a) It is subject to the insurance laws of the state of its domicile, including specifically and without limitation, a statutory regime for the rehabilitation or liquidation of insurance companies that are in default or in danger of default; (b) it is not subject to bankruptcy proceedings under Title 11 of the United States Code; (c) its largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) is an insurance company or an intermediate insurance stock holding company; and (d) its investments are limited to the securities of an intermediate insurance stock holding company, the securities of the converted mutual insurance company and other assets and securities of the type authorized for holding and investment by an insurance company domiciled in its state of incorporation.

The first proviso requires that the mutual insurance holding company be subject to the insurance laws of the state of its domicile, including specifically and without limitation, a statutory regime for the rehabilitation or liquidation of insurance companies that are in default or in danger of default, and is included in the Proposed Rule to be consistent with two of the three prongs of the definition of ''insurance company'' set forth in Section 201(a)(13) of the Dodd-Frank Act. The reference to companies that are ''in default or in danger of default'' ensures that the state resolution process will be applicable in a time and manner comparable to the Title II orderly liquidation process, which applies to financial companies that are in default or in danger of default under Section 203(b)(1) of the Dodd-Frank Act.

The second proviso requires that it is not subject to bankruptcy proceedings under title 11 of the United States Code and is included to emphasize that the mutual insurance holding company must not only be subject to the applicable state insurance law but must also be resolved under the applicable state insurance law. Thus, the Proposed Rule would ensure that there is no ambiguity or conflict with respect to the determination of which insolvency regime is applicable to a mutual insurance holding company.

The third proviso, which requires that the mutual insurance holding company's largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) is an insurance company or an intermediate insurance stock holding company, is included to ensure that, if a mutual insurance holding company covered by the Proposed Rule is placed in orderly liquidation under title II of the Dodd-Frank Act, the Director of the Federal Insurance Office would participate in making the recommendation to take such action in accordance with the provisions of Section 203(a)(1)(C) of the Dodd-Frank Act. In addition, this requirement is intended to emphasize that an insurance company subsidiary of the mutual insurance holding company must be its most significant subsidiary by asset size.

The final proviso, which requires the mutual insurance holding company to limit its investments to the securities of the intermediate insurance stock holding company, the securities of the converted mutual insurance company and other assets and securities of the type authorized for holding and investment by an insurance company domiciled in its state of incorporation, is intended to ensure that the mutual insurance holding company is operating as a pure holding company and is not itself actively engaged in operating non-insurance businesses.[12]

III. Request for Comments

The FDIC seeks comments on all aspects of the Proposed Rule. Comments will be considered by the FDIC and appropriate revisions will be made to the Proposed Rule, if necessary, before a final rule is issued. Comments are specifically requested on the following:

1. What terms defined by the Proposed Rule require further clarification and how should they be defined?
2. Are there other terms used in the Proposed Rule that should be defined?
3. Are the conditions placed on a mutual insurance holding company in order to be treated as an insurance company appropriate? Are the conditions consistent with the goal of conforming to state regimes governing the resolution of converted mutual insurance companies and their related mutual insurance holding companies?
4. Are there any situations in which an intermediate insurance stock holding company should be treated as an insurance company under the Proposed Rule?
5. Are there other provisions of the Dodd-Frank Act and the existing regulations other than Section 203(e) of the Dodd-Frank Act in which the definition of insurance company should expressly include mutual insurance holding companies?
6. Is the approach taken in the Proposed Rule too broad, i.e., does it affect covered financial companies that would not appropriately be treated as insurance companies consistent with the intent of the Dodd-Frank Act?
7. In addition to total assets, should the rule define the largest United States subsidiary as measured by total exposures to gross or net loss? Should there be any other measures?
8. Should the treatment of a mutual insurance holding company as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Act be limited to companies that are materially, substantially or predominantly engaged in the business of

[11] There is support in the legislative history of the Dodd-Frank Act for interpreting the term ''insurance company'' under Section 201(a)(13) to include a mutual insurance holding company. *See* statement of Rep. Barney Frank, 111 Cong. Rec. H5216 (daily ed. June 30, 2010) and statement of Sen. Christopher Dodd, 111 Cong. Rec. S5903 (daily ed. July 15, 2010).

[12] The investments of the intermediate insurance stock holding company, however, are not restricted in this manner because, under the Proposed Rule, the intermediate insurance stock holding company is not treated as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Act.

insurance? If so, on what basis should that determination be made: an asset test, an income or revenue test, a test relating to risk exposures, or some other measure?

IV. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (''PRA''), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Proposed Rule would not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information will be submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* (RFA) requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[13] Pursuant to Section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[14]

The Proposed Rule will clarify rules and procedures for the liquidation of a nonviable systemically important financial company, which will provide internal guidance to FDIC personnel performing the liquidation of such a company and will address any uncertainty in the financial system as to how the orderly liquidation of such a company would operate. As such, the Proposed Rule will not have a significant economic impact on small entities.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Proposed Rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Proposed Rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 380

Holding companies, Insurance companies, Mutual insurance holding companies.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 380 of title 12 of the Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

1. The authority citation for part 380 is revised to read as follows:

Authority: 12 U.S.C. 5383(e); 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D).

2. The heading for subpart A is revised to read as follows:

Subpart A—General and Miscellaneous Provisions

Sec.
380.1 Definitions.
380.2 [Reserved]
380.3 Treatment of personal service agreements.
380.4 [Reserved]
380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.
380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.
380.7 Recoupment of compensation from senior executives and directors.
380.8 [Reserved]
380.9 Treatment of fraudulent and preferential transfers.
380.10 Calculation of maximum obligation limitation.
380.11 Treatment of mutual insurance holding companies.
380.12–380.19 [Reserved]

3. Revise § 380.1 to read as follows:

§ 380.1 Definitions.

For purposes of this part, the following terms are defined as follows:

* * * * *

Insurance Company. * * *

Intermediate insurance stock holding company. For purposes of this subpart, the term ''intermediate insurance stock holding company'' means a corporation that (1) Is a subsidiary of a mutual insurance holding company, (2) holds all of the issued and outstanding voting stock of the converted mutual insurance company created at the time of formation of the mutual insurance holding company, and (3) holds, as its largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter), an insurance company.

Mutual insurance company. The term ''mutual insurance company'' means a domestic insurance company organized under the laws of a State that provides for the formation of such an entity as a non-stock mutual association in which equity and voting rights are vested in the policyholders.

Mutual insurance holding company. The term ''mutual insurance holding company'' means a corporation that (1) Is lawfully organized under state law authorizing its formation in connection with the reorganization of a mutual insurance company that converts the mutual insurance company to a stock insurance company, and (2) holds either (i) At least 51% of the issued and outstanding voting stock of the intermediate insurance stock holding company, if any, or (ii) if there is no intermediate insurance stock holding company, at least 51% of the issued and outstanding voting stock of the converted mutual insurance company.

* * * * *

4. Revise § 380.11 to read as follows:

§ 380.11 Treatment of Mutual Insurance Holding Companies.

A mutual insurance holding company shall be treated as an insurance company for the purpose of section 203(e) of the Dodd-Frank Act, 12 U.S.C. 5383(e); provided that—

(a) The company is subject to the insurance laws of the state of its domicile, including, specifically and without limitation, a statutory regime for the rehabilitation or liquidation of insurance companies that are in default or in danger of default;

(b) the company is not subject to bankruptcy proceedings under Title 11 of the United States Code;

(c) the largest United States subsidiary of the company (as measured by total assets as of the end of the previous calendar quarter) is an insurance company or an intermediate insurance stock holding company; and

(d) the assets and investments of the company are limited to the securities of an intermediate insurance stock holding company, the securities of the converted mutual insurance company and other

[13] See 5 U.S.C. 603, 604 and 605.

[14] 13 CFR 121.201.

assets and securities of the type authorized for holding and investment by an insurance company domiciled in its state of incorporation.

Dated at Washington, DC, this 7th day of December, 2011.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–31885 Filed 12–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0330; Directorate Identifier 2008–NE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to Turbomeca S.A. Arrius 2F turboshaft engines with P3 air pipe (first section) part number (P/N) 0 319 71 918 0, installed. The existing AD currently requires inspections of the P3 air pipe (first section) and right-hand (RH) rear half-wall for proper clearance, and readjustment of the pipe if necessary. Since we issued that AD, Turbomeca S.A. has redesigned the RH rear half-wall to ensure sufficient clearance between the P3 air pipe (first section) and RH rear half-wall. This proposed AD would require the same inspections for installed engines, eliminate readjusting of the P3 air pipe (first section), require replacement of the RH rear half-wall under certain conditions, and adding an optional terminating action. We are proposing this AD to prevent an uncommanded power loss to flight idle, which could result in an emergency autorotation landing or accident.

DATES: We must receive comments on this proposed AD by February 13, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex 570 042; fax 33 (0)5 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7758; fax: (781) 238–7199; email: *mark.riley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0330; Directorate Identifier 2008–NE–43–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 30, 2009, we issued AD 2009–14–11, Amendment 39–15961 (74 FR 34221, July 15, 2009), for Turbomeca S.A. Arrius 2F turboshaft engines with P3 air pipe (first section), P/N 0 319 71 918 0, installed. That AD requires inspections of the P3 air pipe (first section) and RH rear half-wall for sufficient clearance. That AD resulted from Turbomeca S.A. concluding that the tolerance of assembly established during the system design, could result in some rubbing between parts. Rubs between the pipe and the RH rear half-wall may lead to premature wearing and finally rupture of the P3 air pipe (first section). The loss of P3 air pressure would then force the fuel control system to idle, which could have a detrimental effect in critical phases of flight. We issued that AD to prevent an uncommanded power loss, which could result in an emergency autorotation landing or accident.

Actions Since Existing AD Was Issued

Since we issued AD 2009–14–11 (74 FR 34221, July 15, 2009), Turbomeca determined that the clearance between the P3 air pipe (first section) and the RH rear half-wall might change during installation of the engine on the helicopter. Also since we issued that AD, Turbomeca introduced a new redesigned RH rear half-wall that ensures clearance with the P3 air pipe (first section). Also since we issued that AD, the European Aviation Safety Agency (EASA) superseded AD 2008–0134R1, dated February 17, 2009, EASA's new AD, AD 2011–0182, dated September 22, 2011, required the same corrective actions as this proposed AD.

Relevant Service Information

We reviewed Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 319 75 4810, Version B, dated January 25, 2011. The MSB describes procedures for inspecting the clearance between the P3 air pipe (first section) and the RH rear half-wall. The MSB also requires replacing the RH rear half-wall with a redesigned RH rear half-wall, P/N 0319 99 008 0 for engines with no clearance between the P3 air pipe (first section) and the RH rear half-wall. Also, installation of the redesigned RH rear half-wall on any engine is terminating action to the inspections. EASA classified the MSB as mandatory and issued AD 2011–0182, dated September 22, 2011.

FAA's Determination

We are proposing this AD supersedure, because we evaluated all the relevant information and

determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require inspections of the clearance between the P3 air pipe (first section) and RH rear half-wall for installed engines with RH rear half-wall, P/N 0319 99 824 0. This proposed AD would also eliminate readjustment of the P3 air pipe (first section), and define installation of the redesigned RH rear half-wall as optional terminating action to the inspections.

Costs of Compliance

We estimate that this proposed AD would affect about 120 Arrius 2F turboshaft engines installed on helicopters of U.S. registry. We also estimate that it would take about 2 work-hours per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,565 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $328,200. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–14–11, Amendment 39–15961 (74 FR 34221), and adding the following new AD:

Turbomeca S.A.: Docket No. FAA–2009–0330; Directorate Identifier 2008–NE–43–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 13, 2012.

(b) Affected ADs

This AD supersedes AD 2009–14–11, Amendment 39–15961 (74 FR 34221, July 15, 2009).

(c) Applicability

This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines with right-hand (RH) rear half-wall, part number (P/N) 0319 99 824 0, installed.

(d) Unsafe Condition

The P3 air pipe (first section) and the RH rear half-wall could rub each other. Rubbing between the pipe and the RH rear half-wall may lead to rupture of the P3 air pipe (first section), which could cause an uncommanded power loss to flight idle. We are issuing this AD to prevent an uncommanded power loss to flight idle, which could result in an emergency autorotation landing or accident.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) For installed engines, within 100 engine hours (EH) after the effective date of this AD:

(i) Inspect the clearance between the P3 air pipe (first section) and the RH rear half-wall for sufficient clearance (0.5 mm or more).

(ii) Use paragraph 2.B.(1) of Turbomeca Mandatory Service Bulletin (MSB) No. 319 75 4810, Version B, dated January 25, 2011 to do the inspection.

(2) Thereafter, repeat the inspections in paragraphs (e)(1)(i) through (e)(1)(ii) of this AD as follows:

(i) At every installation of a RH rear half-wall P/N 0 319 99 824 0 on an installed engine, and

(ii) After every installation or reinstallation of an engine with a RH rear half-wall P/N 0 319 99 824 0 installed.

(3) If the P3 air pipe (first section) or the RH rear half-wall P/N 0 319 99 824 0 is found damaged, then before further flight, replace the damaged part(s) with parts eligible for installation.

(4) If the P3 air pipe (first section) and the RH rear half-wall P/N 0 319 99 824 0 are found contacting each other but are not damaged, replace the RH rear half-wall with a RH rear half-wall eligible for installation.

(5) If both the P3 air pipe (first section) and the RH rear half-wall are found not damaged during the inspections specified in paragraph (e)(1) or (e)(2) of this AD, and the clearance between them is less than 0.5 mm, but they are not contacting each other, then repeat the inspection in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD within every 100 EH.

(6) Installation of RH rear half-wall, P/N 0 319 99 008 0, is terminating action to the inspections required by paragraph (e) of this AD.

(7) Once a RH rear half-wall, P/N 0 319 99 008 0, is installed on an engine, do not install a RH rear half-wall, P/N 0 319 99 824 0, on that engine.

(f) Definition

For the purpose of this AD, parts eligible for installation is defined as:

(1) An undamaged P3 air pipe (first section).

(2) An undamaged RH rear half-wall P/N 0 319 99 824 0.

(3) A new design RH rear half-wall P/N 0 319 99 008 0.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve alternative methods of compliance for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7758; fax: (781) 238–7199; email: *mark.riley@faa.gov*.

(2) European Aviation Safety Agency AD 2011–0182, dated September 22, 2011, pertains to the subject of this AD.

(3) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone 33 (0)5 59 74 40 00; telex 570 042; fax 33 (0)5 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Issued in Burlington, Massachusetts, on December 5, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31798 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1126; Airspace Docket No. 11–ACE–22]

Proposed Amendment of Class E Airspace; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Omaha, NE. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Eppley Airfield. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before January 27, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1126/Airspace Docket No. 11–ACE–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1126/Airspace Docket No. 11–ACE–22.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Eppley Airfield, Omaha, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Eppley Airfield, Omaha, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE NE E5 Omaha, NE [Amended]

Omaha, Eppley Airfield, NE
(Lat. 41°18′11″ N., long. 95°53′39″ W.)
Omaha, Offutt AFB, NE
(Lat. 41°07′10″ N., long. 95°54′31″ W.)
Council Bluffs, Council Bluffs Municipal Airport, IA
(Lat. 41°15′36″ N., long. 95°45′31″ W.)
Blair, Blair Municipal Airport, NE
(Lat. 41°24′53″ N., long. 96°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eppley Airfield and within 1 mile each side of the 000° bearing from Eppley Airfield extending from the 6.9-mile radius to 8.5 miles north of the airport, and within 3 miles each side of the Eppley Airfield Runway 14R ILS Localizer course extending from the 6.9-mile radius to 12 miles northwest of the airport, and within a 7-mile radius of Offutt AFB, and within 4.3 miles each side of the Offutt AFB ILS Runway 30 localizer course extending from the 7-mile radius to 7.4 miles southeast of Offutt AFB, and within a 6.4-mile radius of the Council Bluffs Municipal Airport, and within a 6.4-mile radius of Blair Municipal Airport, and within 2 miles each side of the 317° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 11.6 miles, and within 2 miles each side of the 137° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 12.2 miles.

Issued in Fort Worth, TX on November 23, 2011.

Richard J. Kervin,

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

[FR Doc. 2011–31844 Filed 12–12–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1126; Airspace Docket No. 11–ACE–22]

Proposed Amendment of Class E Airspace; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Omaha, NE. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Eppley Airfield. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before January 27, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1126/Airspace Docket No. 11–ACE–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-(800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1126/Airspace Docket No. 11–ACE–22.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Eppley Airfield, Omaha, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Eppley Airfield, Omaha, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE NE E5 Omaha, NE [Amended]

Omaha, Eppley Airfield, NE
(lat. 41°18′11″ N., long. 95°53′39″ W.)
Omaha, Offutt AFB, NE
(lat. 41°07′10″ N., long. 95°54′31″ W.)
Council Bluffs, Council Bluffs Municipal Airport, IA
(lat. 41°15′36″ N., long. 95°45′31″ W.)
Blair, Blair Municipal Airport, NE
(lat. 41°24′53″ N., long. 96°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eppley Airfield and within 1 mile each side of the 000° bearing from Eppley Airfield extending from the 6.9-mile radius to 8.5 miles north of the airport, and within 3 miles each side of the Eppley Airfield Runway 14R ILS Localizer course extending from the 6.9-mile radius to 12 miles northwest of the airport, and within a 7-mile radius of Offutt AFB, and within 4.3 miles each side of the Offutt AFB ILS Runway 30 localizer course extending from the 7-mile radius to 7.4 miles southeast of Offutt AFB, and within a 6.4-mile radius of the Council Bluffs Municipal Airport, and within a 6.4-mile radius of Blair Municipal Airport, and within 2 miles each side of the 317° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 11.6 miles, and within 2 miles each side of the 137° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 12.2 miles.

Issued in Fort Worth, TX, on November 23, 2011.

Richard J. Kervin,

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

[FR Doc. 2011–31843 Filed 12–12–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1105; Airspace Docket No. 11–AGL–20]

Proposed Amendment of Class E Airspace; Decatur, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Decatur, IL. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Decatur Airport. The geographic coordinates of the airport also would be adjusted. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before January 27, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1105/Airspace Docket No. 11–AGL–20, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1105/Airspace Docket No. 11–AGL–20.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through

the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Decatur Airport, Decatur, IL. Geographic coordinates also would be updated to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Decatur Airport, Decatur, IL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL IL E5 Decatur, IL [Amended]

Decatur Airport, IL
(Lat. 39°50′04″ N., long. 88°51′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Decatur Airport, and within 2 miles each side of the 299° bearing from the airport extending from the 6.9-mile radius to 11 miles northwest of the airport.

Issued in Fort Worth, TX on November 23, 2011.

Richard J. Kervin, Jr.,

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

[FR Doc. 2011–31845 Filed 12–12–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0726; Airspace Docket No. 11–AEA–18]

Proposed Establishment of Class E Airspace; Piseco, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Piseco, NY, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Piseco Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 27, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–0726; Airspace Docket No. 11–AEA–18, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental,

and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0726; Airspace Docket No. 11–ASO–18) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0726; Airspace Docket No. 11–ASO–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Piseco, NY, providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Piseco Airport. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Piseco Airport, Piseco, NY.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

AEA NY E5 Piseco, NY [New]

Piseco Airport, NY
(Lat. 43°27′20″ N., long. 74°30′50″ W.)

That airspace extending upward from 700 feet above the surface within a 12.3-mile radius of Piseco Airport.

Issued in College Park, Georgia, on November 29, 2011.

Mark D. Ward,

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

[FR Doc. 2011–31857 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135 and 142

[Docket No. FAA–2011–1359]

Advisory Circular for Stall and Stick Pusher Training

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability of proposed Advisory Circular for Stall and Stick Pusher Training, request for comment.

SUMMARY: This notice announces the availability of a proposed Advisory Circular, regarding stall and stick pusher training for transport category airplanes for comment. This Advisory Circular provides guidance to training providers on stall event and stick pusher demonstration training, including recommendations and best practices for academic training, job performance training, and instructor training.

DATES: Written comments must be received on or before January 12, 2012.

ADDRESSES: Send comments identified by docket number FAA–2011–1359 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations 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.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations 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: Robert Burke, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8262; facsimile: (202) 267–5229; email: *robert.burke@faa.gov.*

Background

The primary goal of this proposed advisory circular is to provide training, testing, and checking recommendations designed to maximize the likelihood that pilots will respond correctly and consistently to unexpected stall warnings, aerodynamic stalls, and/or stick pusher activations. Additionally, the advisory circular provides guidance for operators and training centers in the development of stall and stick pusher event training to include stall prevention, recognition of an approach-to-stall or actual stall, familiarity with stick pusher systems, and the correct procedure to recover from those conditions. Core principals of this Advisory Circular include:

• Emphasis of ''reduce angle of attack'' response as the primary response for stall events.

• Clarification of the evaluation criteria for a recovery from a stall or approach.

• Scenario-based training that includes realistic events that could be encountered in operational conditions, including stalls encountered with the autopilot engaged.

• Clarification of training to a full stall, to ensure that pilots execute the stall recovery at the first indication of a stall.

• Stick Pusher demonstration training.

The information within this proposed advisory circular was developed based on a review of recommended practices developed by major aircraft manufacturers, labor organizations, air carriers, training organizations, simulator manufacturers, and industry representative organizations. The FAA recognizes that the content of this draft AC explains in further detail concepts proposed in the supplemental notice of proposed rulemaking (SNPRM), entitled Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers, FAA Docket FAA–2008–0677, and corresponding flightcrew member training AC, regarding stall and stick pusher training. Following review of the comments regarding the stall and stick pusher training proposed in the SNPRM, this advisory circular may require additional revision. The FAA will review both the comments received in response to this advisory circular and the SNPRM, and revise the documents accordingly to ensure consistency and standardization.

The agency will consider all comments received by January 12, 2012. Comments received after that date may be considered if consideration will not delay agency action on the review. A copy of the advisory circular is available for review in the assigned docket for the advisory circular at *http://www.regulations.gov.*

Issued in Washington, DC, on December 5, 2011.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2011–31971 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 183

[Docket No. FAA–2011–1149]

Clarification of Policy Regarding Designated Aircraft Dispatcher Examiners; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availablity; reopening of comment period.

SUMMARY: This action reopens the comment period for guidance material that was published for comment in the **Federal Register** on November 8, 2011. In that document, the FAA clarifies guidance to employees on the responsibilities, qualifications, and oversight of designated aircraft dispatcher examiners. The comment period closed on December 8, 2011. This reopening is a result of a request for extension of the comment period.

DATES: The comment period for the guidance material closed on December 8, 2011. The comment period is reopened and extended until February 8, 2012.

ADDRESSES: You may send comments identified by docket number FAA–2011–1149 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations 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.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including

any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations 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: Theodora Kessaris, Technical Programs Branch, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166; facsimile: (202) 267–5229; email: *Theodora.Kessaris@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this proposal and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On November 8, 2011, the FAA published Clarification of Policy Regarding Designated Aircraft Dispatcher Examiners (76 FR 69171, 69172). The comment period closed on December 8, 2011.

In a letter dated November 18, 2011, Sheffield School of Aeronautics requested a five month extension of the comment period to allow the part 65 dispatcher certification course operators, which often are small businesses with limited resources, sufficient time to review and comment on the guidance material. While the FAA concurs with the petitioners' requests for an extension of the comment period, it does not support a five month extension as requested by the petitioner. The FAA finds that providing an additional 60 days is sufficient to provide meaningful comment.

The FAA does not anticipate any further extension of the comment period for this guidance material.

Extension of Comment Period

In accordance with 14 CFR 11.47(c), the FAA has reviewed the request for extension of the comment period to the proposed guidance material. The petitioner has shown a substantive interest in the guidance material and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period is reopened and extended until February 8, 2012.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in the development of this guidance material by submitting written comments, data, or views. The most helpful comments reference a specific portion of the guidance, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives. The FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this guidance material in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Guidance Material

An electronic copy of the guidance material documents may be obtained from the Internet by—

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

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket for this guidance material.

Issued in Washington, DC, on December 6, 2011.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2011–31976 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

New Markets Tax Credit Non-Real Estate Investments; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking providing guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a) of the Internal Revenue Code (Code).

DATES: The public hearing, originally scheduled for December 19, 2011 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and

Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Wednesday, September 7, 2011 (76 FR 55322), announced that a public hearing was scheduled for December 19, 2011, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 67 of the Code.

The public comment period for the proposed rulemaking expired on December 6, 2011. Outlines of topics to be discussed at the hearing were due on December 7, 2011. The notice of propose rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Thursday, December 8, 2011, no one has requested to speak. Therefore, the public hearing scheduled for December 19, 2011 is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–31855 Filed 12–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AN40

Servicemembers' Group Life Insurance and Veterans' Group Life Insurance—Slayer's Rule Exclusion

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (''VA'') proposes to amend its regulations governing Servicemembers' Group Life Insurance (''SGLI'') and Veterans' Group Life Insurance (''VGLI'') to prohibit payment of insurance proceeds payable because of the death of a person whose life was insured under SGLI or VGLI (''decedent'') or payment of a SGLI Traumatic Injury Protection (''TSGLI'') benefit to a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent (''slayer''); a member of the slayer's family who is not related to the decedent by blood, legal adoption, or marriage; and a member of the slayer's family who is related to the decedent by blood, legal adoption, or marriage and who is convicted of a crime involving the intentional killing of the decedent or found in a civil proceeding to have been involved in the intentional killing of the decedent.

DATES: Comments must be received by VA on or before *February 13, 2012.*

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN40—Servicemembers' Group Life Insurance and Veterans' Group Life Insurance—Slayer's Rule Exclusion.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842–2000, ext. 2905. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA proposes to amend 38 CFR 9.5 to prohibit payment of the proceeds of SGLI or VGLI or a TSGLI benefit to: (1) A person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent; (2) a member of the slayer's family who is not related to the decedent by blood, legal adoption, or marriage; and (3) a member of the slayer's family who is related to the decedent by blood, legal adoption, or marriage and is convicted of a crime involving the intentional killing of the decedent or determined in a civil proceeding to have been involved in the intentional killing of the decedent.

A Servicemember insured under SGLI or a Veteran insured under VGLI has the right to designate the beneficiary or beneficiaries of the policy. *See* 38 U.S.C. 1970(a). Although proceeds of SGLI in force on an insurable dependent of a Servicemember on the date of the dependent's death are paid to the Servicemember, if the Servicemember dies before payment can be made, the proceeds are payable to the person or persons entitled to receive the proceeds of the insurance on the Servicemember's life. 38 U.S.C. 1970(i). If a Servicemember or Veteran does not designate a beneficiary, no designated beneficiary survives the decedent, or payments are to be made by law, SGLI and VGLI proceeds are paid in the following order: (1) To the decedent's surviving spouse; (2) to the decedent's children and their descendants in equal shares; (3) to the decedent's parents in equal shares or to the survivor of them; (4) to the duly appointed executor or administrator of the decedent's estate; or (5) to other next of kin of the decedent. 38 U.S.C. 1970(a). Proceeds of TSGLI are also paid in accordance with this order of precedence if an insured Servicemember entitled to a TSGLI payment dies before payment is made. 38 U.S.C. 1980A(g)(2).

The statutes governing SGLI, VGLI, and TSGLI are silent with regard to whether a beneficiary who killed the decedent or a family member of such a beneficiary may receive the proceeds of SGLI or VGLI or the TSGLI payment. The Federal common-law slayer's rule is a public policy that generally precludes killers from benefitting from their victims' deaths. Courts have applied the slayer's rule in resolving disputes over entitlement to SGLI proceeds. *See Prudential Ins. Co. of Am.* v. *Athmer,* 178 F.3d 473, 476 (7th Cir. 1999) (slayer's rule ''is undoubtedly an implicit provision of the Servicemen's Group Life Insurance Act of 1965'') (that Act created what is now known as SGLI); *Prudential Ins. Co. of Am.* v. *Tolbert,* 320 F. Supp. 2d 1378, 1380–81 (S.D. Ga. 2004). VA proposes to fill the gap in the statutes governing SGLI, VGLI, and TSGLI by adding paragraph (e) to 38 CFR 9.5 to codify the applicability of the slayer's rule to these VA insurance programs. *See* 38 CFR 3.11 (barring person who ''has intentionally and wrongfully caused the death of another person'' from entitlement to VA pension, compensation, or dependency and indemnity compensation by reason of such death); *Lofton* v. *West,* 198 F.3d 846, 850 (Fed. Cir. 1999) (finding § 3.11 to be ''an entirely reasonable gap-filling measure''). New paragraphs (e)(1) and (e)(2)(i) would bar a person who is convicted of intentionally killing a decedent or determined in a civil proceeding to have intentionally killed the decedent entitlement to the SGLI or

VGLI proceeds or a TSGLI payment. Rather than deal with different types of unlawful homicide and the unavoidable variance among different jurisdictions, we have chosen to generally designate the unlawful homicide that triggers the slayer's rule as ''intentionally killing'' the decedent. *Jones* v. *Prudential Life Ins. Co.,* 814 F. Supp. 500, 501 (W.D. Va. 1993) (' 'The true test [of whether the slayer's rule applies] is whether the beneficiary intentionally took the life of the insured.' ') (quoting *Jackson* v. *Prudential Ins. Co. of Am.,* 254 A.2d 141, 147 (N.J. 1969)).

Some jurisdictions also disqualify members of a slayer's family, other than individuals also related to the victim, from receiving the proceeds of an insurance policy. This is known as the extended slayer's rule and has been applied to SGLI by a Federal court. *Tolbert,* 320 F. Supp. 2d at 1380, 1381–82. VA proposes to incorporate the extended slayer's rule in new § 9.5(e)(1) and (2)(ii) and (iii) ''to prevent killers from receiving even the 'indirect benefits' of their wrongdoing'' by receiving or inheriting, through relatives, the financial benefits of the killing. *Id.* at 1381 (quoting *Beck* v. *Downey,* 198 F.2d 626, 628 (9th Cir. 1952)); *Athmer,* 178 F.3d at 476–77. Section 9.5(e)(2)(ii) would bar a slayer's family member who is not related to the decedent by blood, legal adoption, or marriage from receiving SGLI or VGLI proceeds. *Id.* at 1381. Section 9.5(e)(2)(iii) would bar a slayer's family member who is related to the decedent by blood, legal adoption, or marriage from receiving SGLI or VGLI proceeds or TSGLI payment if the family member is convicted of a crime involving the intentional killing of the decedent or is determined in a civil proceeding to have been involved in the intentional killing of the decedent. A new § 9.1(l) would define ''member of the family'' for purposes of § 9.5(e)(2)(ii) and (iii) to mean an individual with any of the following relationships to a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent: (1) Spouse; (2) biological, adopted, or step child; (3) biological, adoptive, or step parent; (4) biological, adopted, or step sibling; (5) biological, adoptive, or step grandparent or grandchild; or (6) domestic partner.

Section 9.5(e)(3) would bar entitlement to SGLI or VGLI proceeds or a TSGLI payment to a person described in paragraph (2) or a member of that person's family described in paragraph (2) even though the criminal conviction or civil determination is pending appeal. *See Webb* v. *Voirol,* 773 F.2d 208, 211 (8th Cir. 1985); *United Investors Life Ins. Co.* v. *Severson,* 151 P.3d 824, 829–30 (Idaho 2007).

Section 9.5(e)(4)(i) would provide that, if a person is disqualified from receipt of SGLI or VGLI proceeds or a TSGLI payment under § 9.5(e)(1) and (2), the insurance proceeds or TSGLI payment would be paid in the following order of precedence: (1) To the next eligible beneficiary as designated by the servicemember or former servicemember; (2) to the decedent's surviving spouse; (3) to the decedent's child or children, in equal shares, and descendants of deceased children by representation; (4) to the decedent's parents, in equal shares, or to the survivor of them; (5) to the duly appointed executor or administrator of the decedent's estate; or (6) to the decedent's next of kin as determined by the Insurer under the laws of the decedent's domicile at the time of the decedent's death. Under § 9.5(e)(4)(ii), payment to any person under paragraphs (e)(4)(i) would bar recovery by any other person.

VA proposes that this rule would be applicable to any claim for SGLI or VGLI proceeds, including a claim for a payment under § 9.20, Traumatic injury protection, filed before the effective date of the rule that has not been paid as of the effective date of this rule and to any claim filed on or after the effective date of the rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and Tribal governments or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John

R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 14, 2011, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: December 8, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

2. Amend § 9.1 by adding a new paragraph (l) to read as follows:

§ 9.1 Definitions.

* * * * *

(l) The term *member of the family* as used in § 9.5(e)(2) means an individual with any of the following relationships to a person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent:

(1) Spouse;

(2) Biological, adopted, or step child;

(3) Biological, adoptive, or step parent;

(4) Biological, adopted, or step sibling;

(5) Biological, adoptive, or step grandparent or grandchild; or

(6) Domestic partner.

3. Amend § 9.5 by adding paragraph (e) to read as follows:

§ 9.5 Payment of proceeds.

* * * * *

(e)(1) The proceeds payable because of the death of an individual insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance (''decedent'') shall not be payable to any person described in paragraph (e)(2) of this section. A Servicemembers' Group Life Insurance Traumatic Injury Protection benefit payable under § 9.20(j)(3) shall not be payable to any person described in paragraph (e)(2) of this section.

(2) The persons described in this paragraph are:

(i) A person who is convicted of intentionally killing the decedent or determined in a civil proceeding to have intentionally killed the decedent;

(ii) A member of the family of a person described in paragraph (e)(2)(i) of this section who is not related to the decedent by blood, legal adoption, or marriage; and

(iii) A member of the family of a person described in paragraph (e)(2)(i) of this section who is related to the decedent by blood, legal adoption, or marriage and who is convicted of a crime involving the intentional killing of the decedent or determined in a civil proceeding to have been involved in the intentional killing the decedent.

(3) The Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraph (e)(1) of this section to any person described in paragraph(e)(2) of this section is not payable to such persons even though the criminal conviction or civil determination is pending appeal.

(4)(i) Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraphs (e)(1) and (e)(2) of this section shall be payable to the first person or persons listed in paragraphs (e)(4)(i)(A) through (F) of this section who are surviving on the date of the decedent's death in the following order of precedence:

(A) To the next eligible beneficiary designated by the decedent in a writing received by the appropriate office of the applicable uniformed service before the decedent's death in the uniformed services in the case of Servicemembers' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit, or in a writing received by the administrative office defined in § 9.1(b) of this part before the decedent's death in the case of Veterans' Group Life Insurance proceeds;

(B) To the decedent's surviving spouse;

(C) To the decedent's child or children, in equal shares, and descendants of deceased children by representation;

(D) To the decedent's parents, in equal shares, or to the survivor of them;

(E) To the duly appointed executor or administrator of the decedent's estate;

(F) To other next of kin of the decedent as determined by the insurer (defined in § 9.1(c) of this part) under the laws of domicile of the decedent at the time of the decedent's death.

(ii) Payment of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit to any person under paragraph (e)(4)(i) of this section shall bar recovery of those proceeds or that benefit by any other person.

* * * * *

[FR Doc. 2011–31870 Filed 12–12–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0013; FRL–9503–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hiteman Leather Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: EPA, Region 2, is issuing a Notice of Intent to Delete the Hiteman Leather Superfund Site (Site), located in West Winfield, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA, other than monitoring and maintenance and five-year reviews, have been completed. However, the deletion does not preclude future action under Superfund.

DATES: Comments must be received by January 12, 2012.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0013, by one of the following methods:

Web site: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Email: mongelli.thomas@epa.gov.

Fax: To the attention of Thomas Mongelli at (212) 637–3966.

Mail: To the attention of Thomas Mongelli, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.

Hand Delivery: Superfund Records Center, 290 Broadway, 18th Floor, New

York, NY 10007–1866 (telephone: (212) 637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0013: EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or via email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via email, your email address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD-ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the Docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *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 can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* (212) 637–4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m. and

West Winfield Library, Bisby Hall, 179 South Street, West Winfield, NY 13491, *Phone:* (315) 822–6394, *Hours:* Monday, Tuesday, Thursday, and Friday from 12:30–5:30 p.m., Wednesday from 10 a.m.–12 p.m. and 6–8 p.m., and Saturdays from 10 a.m.–12 p.m. (Sept.–May).

FOR FURTHER INFORMATION CONTACT: Thomas Mongelli, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866; telephone at (212) 637–4256; fax at (212) 637–3966; or email at *mongelli.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, EPA is publishing a direct final Notice of Deletion of the Site without prior Notice of Intent to Delete because EPA views this as a noncontroversial revision and anticipate no adverse comment. EPA has explained its reasons for this deletion in the preamble to the direct final Notice of Deletion. If EPA receives no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, EPA will proceed with the deletion without further notice on this Notice of Intent to Delete. If EPA receives adverse comment(s), EPA will withdraw the direct final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion, which is located in the ''Rules'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: November 22, 2011.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2011–31914 Filed 12–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

[Docket No. FMCSA–2011–0259]

RIN 2126–AB38

Amendment to Agency Rules of Practice

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings in three respects. First, the Agency proposes to clarify that paying the full proposed civil penalty in an enforcement proceeding, either in response to a Notice of Claim (NOC) or later in the proceeding, would not allow respondents to unilaterally avoid an admission of liability for the violations charged. Second, FMCSA proposes to establish procedures for issuing out-of-service orders to motor carriers, intermodal equipment providers, brokers, and freight forwarders it determines are reincarnations of other entities with a history of failing to comply with statutory or regulatory requirements. These procedures would provide for administrative review before the out-of-service order takes effect. Finally, the Agency proposes procedures for consolidating Agency records of reincarnated companies with their predecessor entities.

DATES: Comments must be received on or before January 12, 2012.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2011–0259 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Sabrina Redd, Office of Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–6424 or via email at *Sabrina.redd@dot.gov.* Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2011–0259), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop-down menu, select ''Proposed Rules,'' insert ''FMCSA 2011–0259'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comment by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit your comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right-hand side of the screen. Then in the ''Keyword'' box, insert ''FMCSA–2011–0259'' and click ''Search.'' Next, click the ''open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's (DOT's) Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

II. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931 (1966)). Section 6(e)(6)(C) of the DOT Act transferred to DOT the authority of the Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of motor carrier employees, the safety of operations, and the equipment of motor carriers in interstate commerce. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543), now appears in chapter 315 of title 49 of the U.S. Code. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in chapter 5 of title 49 of the U.S. Code. The Secretary of DOT delegated oversight of these provisions to the Federal Highway Administration (FHWA), the predecessor agency to FMCSA.

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Federal Motor Carrier Commercial Regulations (FMCCRs) and provide both civil and criminal penalties for violations. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803), codified at 49 U.S.C. chapters 135–149. In practice, when circumstances dictate that an enforcement action be instituted, FMCSA typically seeks civil penalties. The Rules of Practice apply to the administrative adjudication of civil penalties assessed for violations of the FMCSRs, the HMRs, and the FMCCRs.

III. Background

A. Section 386.18

On May 18, 2005, FMCSA published a comprehensive revision of its Rules of Practice, which are contained in 49 CFR part 386 (70 FR 28467). The revision was intended to increase the efficiency of Agency administrative enforcement procedures, enhance due process, improve public understanding of the Agency's procedures, and accommodate recent programmatic changes.

Under § 386.11(c) of the Rules of Practice, civil penalty enforcement proceedings are initiated through

service of an NOC, which is usually issued by the FMCSA Division Administrator for the State in which the respondent maintains its principal place of business. The NOC, which is usually based on a compliance review or other type of investigation or enforcement intervention, sets forth the provisions of law allegedly violated by the respondent and underlying facts pertinent to the alleged violations; proposes a civil penalty; and provides information regarding the time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim. Prior to 2005, the Rules of Practice were silent on whether payment of the proposed civil penalty in response to the NOC or at a subsequent stage of the proceeding constituted an admission of the violations alleged in the NOC.

The 2005 revision of the Rules of Practice added a new § 386.18 titled ''Payment of the claim.'' This section provides:

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

(b) If respondent elects to pay the full amount as its response to the Notice of Claim, payment must be served upon the Field Administrator at the Service Center designated in the Notice of Claim within 30 days following service of the Notice of Claim. No written reply is necessary if respondent elects the payment option during the 30-day reply period. Failure to serve full payment within 30 days of service of the Notice of Claim when this option has been chosen may constitute a default and may result in the Notice of Claim, including the civil penalty assessed by the Notice of Claim, becoming the Final Agency Order in the proceeding pursuant to § 386.14(c).

(c) Unless objected to in writing, submitted at the time of payment, payment of the full amount in response to the Notice of Claim constitutes an admission by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim, and will result in the Notice of Claim becoming the Final Agency Order.

In a number of enforcement proceedings, respondents have paid the full amount of the claim with written objection, either in their reply to the NOC or at a later stage of the proceeding. In such cases, the respondents argued that payment with written objection terminates the proceeding without an admission of liability. The FMCSA Field Administrators, who are responsible for prosecuting enforcement proceedings before the Agency, contended that respondents could not unilaterally terminate an enforcement proceeding without an admission of liability by making full payment.

In a case decided on November 3, 2010, *In the Matter of Homax Oil Sales, Inc.,* Docket No. FMCSA–2006–26000, Order Denying Petition for Reconsideration (*Homax*), FMCSA's Assistant Administrator reasoned that allowing respondents to unilaterally terminate proceedings by paying the proposed penalty in full and lodging an objection under § 386.18(c) would be contrary to the Agency's enforcement policy and section 222 of the Motor Carrier Safety Improvement Act, which requires that the Agency assess the maximum statutory penalty for each violation of law by any person ''who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or related violation of critical or acute regulations issued to carry out such a law.'' The Assistant Administrator concluded that if a carrier is allowed to unilaterally terminate an enforcement proceeding without an admission, the case cannot count as prior history for future civil penalty calculations under 49 U.S.C. 521(b)(2)(D), which requires the Agency to consider a respondent's history of prior offenses in addition to several other factors, as well as under section 222 of MCSIA. Allowing unilateral termination of a proceeding by a respondent without an admission would permit carriers with abundant financial resources to repeatedly violate the Agency's regulations without running the risk of facing escalating civil penalties despite a history of noncompliance with the regulations. The Assistant Administrator acknowledged that the regulatory text of § 386.18(c) is less than clear regarding the consequences of full payment with written objection and recommended that the meaning of this paragraph be clarified through rulemaking.

As was noted in *Homax,* in an April 1996 Notice of Proposed Rulemaking (NPRM), FHWA proposed the following language with respect to the full payment issue:

363.105(c): Unless otherwise provided in writing by mutual consent of the parties, payment and/or compliance with the order constitutes an admission of all facts alleged in the notice of violation [called a notice of claim under the current Rules of Practice] and a waiver of the respondent's opportunity to contest the claim, and results in the notice of violation becoming the final agency order. (61 FR 18865, Apr. 29, 1996)

FHWA's reasoning for this language was that ''future agency enforcement actions may be based on, and certain consequences may flow from, prior and continued violations of the safety regulations.'' (61 FR 18875–76, Apr. 29, 1996).

FMCSA revised this proposal, renumbered as § 386.18(c), in an October 2004 Supplemental Notice of Proposed Rulemaking (SNPRM) (69 FR 61628, Oct. 20, 2004) to read as follows:

(c) Unless objected to in writing, payment of the full amount in its reply constitutes an admission by the respondent of all facts alleged in the notice of claim. Payment waives respondent's opportunity to further contest the claim, and will result in the notice of claim becoming the final agency order.

This proposed change was intended to make ''it clear that, unless the parties otherwise agree in writing, respondent's payment of the full claim amount as its reply to the notice of claim constitutes an admission.'' (69 FR 61622).

The final rule published on May 18, 2005 (70 FR 28467), adopted this provision with little change. In the 2010 *Homax* Order, the Assistant Administrator concluded that, notwithstanding the removal of the language requiring mutual consent of the parties from the regulatory text, the Agency intended to adopt the mutual consent requirement originally proposed in 1996.

In a subsequent case, *In the Matter of Associated Pipe Contractors, Inc.,* Docket No. FMCSA–2008–0159, Order Terminating Proceeding and Closing Docket, January 10, 2011, the Agency addressed the implications of full payment of the proposed civil penalty at any time before issuance of a Final Agency Order, in accordance with § 386.18(a). In *Associated Pipe Contractors,* the carrier paid the full penalty with written objection several months after contesting the NOC and requesting administrative adjudication. Section 386.18(a), which applies to this situation rather than Section 386.18(c), is silent regarding whether a carrier can unilaterally terminate an enforcement proceeding without an admission of liability under these circumstances. The Agency concluded that the same concerns expressed in the *Homax* decision apply to such a payment and that § 386.18(a) should be clarified to be consistent with that decision.

B. Section 386.73

FMCSA has determined that a number of motor carriers have submitted new applications for registration, often under a new name, in order to continue operating after having been placed out of service for safety-related reasons; to avoid paying civil penalties; to

circumvent denial of operating authority based on a determination that they are not fit, willing, or able to comply with the applicable statutes or regulations; or to otherwise avoid a negative compliance history. Other motor carriers attempt to avoid enforcement or negative compliance history by creating or using an affiliated company under common operational control. They then shift customers, vehicles, drivers, and other operational activities to that affiliated company when FMCSA places one of the commonly controlled companies out-of-service. The practice of ''reincarnating'' as a new carrier or operating affiliated companies to circumvent Agency enforcement actions and avoid a negative compliance history or enforcement action creates an unacceptable risk of harm to the public because it results in the continued operation of at-risk carriers and thwarts FMCSA's ability to carry out its safety mission.

The danger posed by ''reincarnation'' became evident following a fatal bus crash in Sherman, Texas in 2008. Investigation revealed that the carrier involved did not have operating authority from FMCSA, but had an application for authority pending with the Agency. FMCSA determined that the carrier was a reincarnation of another bus company that had recently been placed out of service. Following the Sherman, Texas bus crash, FMCSA began a vetting process that involves a comprehensive review of applications for passenger-carrier operating authority to determine whether the applicants are reincarnations or affiliates of other motor carriers with negative compliance histories or are otherwise not fit, willing, and able to comply with the applicable regulations. Although the vetting program is a significant improvement to the operating authority review process, it is not a complete solution to the reincarnation problem. Accordingly, FMCSA proposes new procedures to prohibit reincarnated or affiliated carriers from successfully evading accountability for their compliance history.

FMCSA is empowered to suspend, amend, or revoke a motor carrier's registration for willful failure to comply with applicable safety regulations, an FMCSA order, or a condition of its registration pursuant to 49 U.S.C. 13905. Motor carriers that obtain registration by creating a new company or an affiliate company with a new registration for the purpose of avoiding FMCSA orders, regulations, or enforcement action procure the registration by fraud—by knowingly misrepresenting and/or withholding material information. FMCSA has authority to sanction these motor carriers, which have already demonstrated an unwillingness or inability to comply with applicable safety regulations, by suspending, amending, or revoking their registration and/or by imposing applicable civil penalties.

While the FMCSA has existing authority to address the practice of reincarnation or affiliation to avoid compliance, the FMCSRs do not include an efficient procedure to sanction and deter the conduct. The FMCSRs also do not contain a procedure by which FMCSA can consolidate motor carrier compliance records once FMCSA determines that a motor carrier has reincarnated or is operating affiliated companies for the purpose of avoiding enforcement action or a negative compliance history. Further, the FMCSRs do not include a procedure by which motor carriers can expeditiously contest FMCSA's determination that a motor carrier is a reincarnation or affiliate of another motor carrier.

IV. Discussion of Proposed Rule

A. Section 386.18

FMCSA proposes to amend 49 CFR 386.18(a) and (c) to clarify that payment of the full amount of the proposed civil penalty constitutes an admission of all facts alleged in the NOC, unless otherwise agreed by both the respondent and FMCSA. The mutual consent provision will give FMCSA Field Administrators the discretion to permit payment without an admission of liability in appropriate cases, such as first-time inadvertent minor violations where the respondent demonstrates a sincere intent to comply in the future. Payment without written objection will continue to be considered as an admission of liability. If payment is tendered with a written objection, it will still be treated as an admission of liability unless the Field Administrator responsible for prosecuting the case agrees in writing that payment will not be treated as an admission. Respondents, therefore, should contact the appropriate FMCSA Service Center to seek the necessary written consent if they are considering paying the penalty with written objection.

B. Section 386.73

FMCSA proposes to revise its Rules of Practice to address operational reincarnation or affiliation by adding a new § 386.73. This new section would establish flexible, efficient procedures to address entities that attempt to reincarnate or operate affiliated entities for the purpose of evading FMCSA Orders, avoiding statutory and regulatory compliance, or concealing a history of non-compliance. The proposed procedures would more fully implement the Agency's current authority to prohibit unsafe entities from operating while, at the same time, providing due process for companies that seek to challenge a finding that they are a reincarnated or affiliated company.

The purpose of this proposed new section is to provide a mechanism to prevent motor carriers, intermodal equipment providers, brokers, and freight forwarders, from creating new or multiple business identities to avoid statutory or regulatory requirements, FMCSA Orders and enforcement actions, or a negative compliance history. The rule would authorize FMCSA to issue out-of-service orders to motor carriers, intermodal equipment providers, brokers, and freight forwarders determined to be reincarnated or operating as affiliates to avoid enforcement action or negative compliance and it would provide a mechanism for administrative review of such orders. The rule would also establish procedures to consolidate the compliance records of motor carriers, intermodal equipment providers, brokers, and freight forwarders determined to be reincarnated or affiliated entities.

V. Regulatory Analyses

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

FMCSA has determined that this proposed rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures. The estimated cost of the proposed rule is not expected to exceed the $100 million annual threshold for economic significance, therefore, any costs associated with the rule are expected to be minimal. Moreover, the Agency does not expect the proposed rule to generate substantial Congressional or public interest. The proposed rule would not impose new requirements upon carriers and thus should result in minimal to no economic burdens. The revisions clarify existing rules and implement procedures that would not require a change in the business practices of already compliant carriers.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal

agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.[1] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Payment of claims and admissions of liability reflect current FMCSA policy, as discussed in the background section, and therefore this rule would not disproportionately impact small entities. Even before the current policy was enunciated through administrative adjudication, this portion of the rule did not have a significant impact. From 2008 through 2011, the Agency adjudicated only six cases in which the respondent motor carrier paid a civil penalty with written objection, which indicates the minimal impact the rule would have.

FMCSA estimates that fewer than 50 carriers annually would be affected by the proposed rule as it pertains to reincarnated or affiliated carriers. Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Sabrina Redd, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. FMCSA will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Agency.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1 (888) 734–3247).

Unfunded Mandates Reform Act

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this proposal would not have substantial direct effects on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

Indian Tribal Governments

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that there is no new information collection requirement associated with this proposed rule.

National Environmental Policy Act

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraphs (6)(u)(1), (6)(u)(2), and (6)(y)(7). The Categorical Exclusion (CE) in paragraph (6)(u)(1) addresses rules concerning compliance with regulations; the CE in paragraph (6)(u)(2) addresses regulations assessing civil penalties; and the CE in paragraph (6)(y)(7) addresses rules for record keeping. The various proposals in this rule are covered by one or a combination of these three CEs. Therefore, this proposed action does not have any effect on the quality of the environment. The Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously,

[1] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, we do not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

E.O. 12988 (Civil Justice Reform)

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

E.O. 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. This rule does not propose to adopt any technical standards.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety penalties.

In consideration of the forgoing, FMCSA is proposed to amend 49 CFR part 386 as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation for part 386 will continue to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.45 and 1.73.

2. Amend § 386.18 by revising paragraphs (a) and (c) to read as follows:

§ 386.18 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order and will constitute an admission of liability by the respondent of all facts alleged in the Notice of Claim, unless the parties agree in writing that payment shall not be treated as an admission. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges, in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

* * * * *

(c) Unless otherwise agreed in writing by the parties, payment of the full amount in response to the Notice of Claim constitutes an admission of liability by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim and will result in the Notice of Claim becoming the Final Agency Order.

3. Add § 386.73 to read as follows:

§ 386.73 Operations Out-of-Service and Record Consolidation Proceedings (Reincarnated Carriers).

(a) *Out of Service Order.* An FMCSA Field Administrator or the Director of FMCSA's Office of Enforcement and Compliance (Director) may issue an out-of-service order to prohibit a motor carrier, intermodal equipment provider, broker, or freight forwarder from conducting operations subject to FMCSA jurisdiction upon a determination by the Field Administrator or Director that the motor carrier, intermodal equipment provider, broker, or freight forwarder or an officer, employee, agent, or authorized representative of such an entity, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

(1) Avoid complying with an FMCSA Order;

(2) Avoid complying with a statutory or regulatory requirement;

(3) Avoid paying a civil penalty;

(4) Avoid responding to an enforcement action; or

(5) Avoid being linked with a negative compliance history.

(b) *Record Consolidation Order.* In addition to, or in lieu of, an out-of-service order issued under this section, the Field Administrator or Director may issue an order consolidating the records maintained by FMCSA concerning the current motor carrier, intermodal equipment provider, broker, and freight forwarder, or an affiliated motor carrier, intermodal equipment provider, broker, or freight forwarder and its previous incarnation, for all purposes, upon a determination that the motor carrier, intermodal equipment provider, broker, and freight forwarder or officer, employee, agent, or authorized representative of the same, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

(1) Avoid complying with an FMCSA Order;

(2) Avoid complying with a statutory or regulatory requirement;

(3) Avoid paying a civil penalty;

(4) Avoid responding to an enforcement action; or

(5) Avoid being linked with a negative compliance history.

(c) *Standard.* The Field Administrator or Director may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is reincarnated if there is substantial continuity between the entities such that one is merely a continuation of the other. The Field Administrator or Director may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is an affiliate if the business operations are under common ownership and/or common control. In making this determination, the Field Administrator or Director may consider, among other things, the following factors:

(1) Whether the new or affiliated entity was created for the purpose of evading statutory or regulatory requirements, an FMCSA order, enforcement action, or negative compliance history; in weighing this factor, the Field Administrator or Director may consider the stated business purpose for the creation of the new or affiliated entity.

(2) Consideration exchanged for assets purchased or transferred;

(3) Dates of company creation and dissolution or cessation of operations;

(4) Commonality of ownership between the current and former company or between current companies;

(5) Commonality of officers and management personnel;

(6) Identity of physical or mailing addresses, telephone, fax numbers, or email addresses;

(7) Identity of motor vehicle equipment;

(8) Continuity of liability insurance policies or commonality of coverage under such policies;

(9) Commonality of drivers and other employees;

(10) Continuation of carrier facilities and other physical assets;

(11) Continuity or commonality of nature and scope of operations, including customers for whom transportation is provided;

(12) Advertising, corporate name, or other acts through which the company holds itself out to the public; and

(13) History of safety violations and pending orders or enforcement actions of the Secretary.

(d) Evaluating Factors. The Field Administrator or Director may examine, among other things, the company management structures, financial records, corporate filing records, asset purchase or transfer and title history, employee records, insurance records, and any information related to the general operations of the entities involved.

(e) *Effective Dates.* An order issued under this section becomes the Final Agency Order and is effective on the 21st day after it is served unless a request for administrative review is served and filed as set forth in paragraph (f) of this section. Any motor carrier, intermodal equipment provider, broker, or freight forwarder that fails to comply with any prohibition or requirement set forth in an order issued under this section is subject to the applicable penalty provisions for each instance of noncompliance.

(f) *Commencement of Proceedings.* The Field Administrator or Director may commence proceedings under this section by issuing an order that:

(1) Provides notice of the factual and legal basis of the order;

(2) In the case of an out-of-service order, identifies the operations prohibited by the order;

(3) In the case of an order that consolidates records maintained by FMCSA, identifies the previous entity and current or affiliated motor carriers, intermodal equipment providers, brokers, or freight forwarders whose records will be consolidated;

(4) Provides notice that the order is effective upon the 21st day after service;

(5) Provides notice of the right to petition for administrative review of the order and that a timely petition will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(6) Provides notice that failure to timely request administrative review of the order constitutes waiver of the right to contest the order and will result in the order becoming a Final Agency Order 21 days after it is served.

(g) *Administrative Review.* A motor carrier, intermodal equipment provider, broker, or freight forwarder issued an order under this section may petition for administrative review of the order. A petition for administrative review is limited to contesting factual or procedural errors in the issuance of the order under review and may not be submitted to demonstrate corrective action. A petition for administrative review that does not identify factual or procedural errors in the issuance of the order under review will be dismissed. Petitioners seeking to demonstrate corrective action may do so by submitting a Petition for Rescission under paragraph (h) of this section.

(1) A petition for administrative review must be in writing and served on the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Attention: Adjudications Counsel or by electronic mail to *FMCSA.Adjudication@dot.gov.* A copy of the petition for administrative review must also be served on the Field Administrator or Director who issued the order at the physical address or electronic mail account identified in the order.

(2) A petition for administrative review must be served within 15 days of the date the Field Administrator or Director served the order issued under this section. Failure to timely request administrative review waives the right to administrative review and constitutes an admission to the facts alleged in the order.

(3) A petition for administrative review must include:

(i) A copy of the order in dispute; and

(ii) A statement of all factual and procedural issues in dispute.

(4) If a petition for administrative review is timely served and filed, the petitioner may supplement the petition by serving documentary evidence and/or written argument that supports its position regarding the procedural or factual issues in dispute no later than 30 days from the date the disputed order was served. The supplementary documentary evidence or written argument may not expand the issues on review and need not address every issue identified in the petition. Failure to timely serve supplementary documentary evidence and/or written argument constitutes a waiver of the right to do so.

(5) The Field Administrator or Director must serve written argument and supporting documentary evidence, if any, in defense of the disputed order no later than 15 days following the service of the petition for administrative review.

(6) The Assistant Administrator may ask the parties to submit additional information or attend a conference to facilitate administrative review.

(7) The Assistant Administrator will issue a written decision on the request for administrative review within 30 days of the close of the time period for the Field Administrator or the Director to serve written argument and supporting documentary evidence in defense of the order, or the actual filing of such written argument and documentary evidence, whichever is earlier.

(8) If a petition for administrative review is timely served and filed in accordance with this section, the disputed order is stayed pending the Assistant Administrator's review, unless the Assistant Administrator orders otherwise for good cause shown.

(9) The Assistant Administrator's decision on a petition for administrative review of an order issued under this section constitutes the Final Agency Order.

(h) *Petition for Rescission.* A motor carrier, intermodal equipment provider, broker, or freight forwarder may petition to rescind an order issued under this section if action has been taken to correct the deficiencies that resulted in the order.

(1) A petition for rescission must be made in writing to the Field Administrator or Director who issued the order.

(2) A petition for rescission must include a copy of the order requested to be rescinded, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(3) Upon request and for good cause shown, the Field Administrator or Director may grant the petitioner additional time, not to exceed 45 days, to complete corrective action initiated at the time the petition for rescission was filed.

(4) The Field Administrator or Director will issue a written decision on the petition for rescission within 60

days of service of the petition. The written decision will include the factual and legal basis for the determination.

(5) If the Field Administrator or Director grants the request for rescission, the written decision is the Final Agency Order.

(6) If the Field Administrator or Director denies the request for rescission, the petitioner may file a petition for administrative review of the denial with the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Attention: Adjudication Counsel or by electronic mail to *FMCSA.Adjudication @dot.gov*. The petition for administrative review of the denial must be served and filed within 15 days of the service of the decision denying the request for recession. The petition for administrative review must identify the disputed factual or procedural issues with respect to the denial of the petition for rescission. The petition may not, however, challenge the underlying basis of the order for which rescission was sought.

(7) The Assistant Administrator will issue a written decision on the petition for administrative review of the denial of the petition for rescission within 60 days. The Assistant Administrator's decision constitutes the Final Agency Order.

(i) *Other Orders Unaffected.* If a motor carrier, intermodal equipment provider, broker, or freight forwarder subject to an order issued under this section is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this section is in addition to, and does not amend or supersede such other order, prohibition, or requirement. A motor carrier, intermodal equipment provider, broker, or freight forwarder subject to an order issued under this section remains subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of regulations governing their operations.

(j) *Inapplicability of Subparts.* Subparts B, C, D, and E, except § 386.67, do not apply to this section.

4. Amend Appendix A to 49 CFR part 386, section IV, by redesignating existing paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

* * * * *

IV. * * *

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to $16,000 per day the operation continues after the effective date and time of the out-of-service order.

* * * * *

Issued on: December 7, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–31858 Filed 12–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 101126591–1705–02]

RIN 0648–XZ58

Endangered and Threatened Species; Proposed Threatened Status for Distinct Population Segments of the Bearded Seal

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

ACTION: Proposed rule; 6-month extension of the deadline for a final listing determination.

SUMMARY: We, NMFS, announce a 6-month extension of the deadline for a final determination regarding the December 10, 2010, proposed rule to list two distinct population segments (DPS) of the bearded seal (*Erignathus barbatus*) as threatened species under the Endangered Species Act of 1973, as amended (ESA). We are taking this action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule. An additional 6 months will allow us to solicit additional data, evaluate and assess special independent peer review of those aspects of the status review report over which there is substantial disagreement, and better inform our final determination on the proposed listing rule.

DATES: We intend to reopen the public comment period to accept comment on the special independent peer review report when it becomes available. We will soon announce the dates of the new public comment period in the **Federal Register.** A final determination on this proposed listing action will be made no later than June 10, 2012.

ADDRESSES: The proposed rule, status review report, and other materials relating to this proposal can be found on the Alaska Region Web site at: *http://alaskafisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, we initiated status reviews of bearded, ringed (*Phoca hispida*), and spotted seals (*Phoca largha*) under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list these three species of seals as threatened or endangered under the ESA, primarily due to concerns about threats to their habitat from climate warming and loss of sea ice. The Petitioner also requested that critical habitat be designated for these species concurrent with listing under the ESA. In response to the petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we proceeded with the status reviews of bearded, ringed, and spotted seals and solicited information pertaining to them.

Following completion of a status review report and 12-month finding for spotted seals in October 2009 (74 FR 53683, October 20, 2009; see also, 75 FR 65239; October 22, 2010), we established Biological Review Teams (BRT) to prepare status review reports for bearded and ringed seals. The status review report of the bearded seal is a peer-reviewed compilation of the best scientific and commercial data available concerning the status of the species, including the past, present, and future threats to this species. After the status review report was completed by the BRT (Cameron *et al.,* 2010), on December 10, 2010, we made a 12-month finding and proposed to list the Beringia DPS and the Okhotsk DPS of the *Erignathus barbatus nauticus* subspecies of bearded seals as threatened (75 FR 77496). No listing action was proposed for the *Erignathus barbatus barbatus* subspecies. We published our 12-month finding for ringed seals as a separate notification concurrently with this finding (75 FR 77476; December 10, 2010).

The proposed rule to list the Beringia and Okhotsk DPSs of bearded seals announced a 60-day comment period to close on February 8, 2011. On February 8, 2011, we extended the comment period 45 days to March 25, 2011 (76 FR 6755). Three public hearings were held

in Alaska in Anchorage, Barrow, and Nome (76 FR 9734, February 22, 2011; 76 FR 14883, March 18, 2011).

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinion of four independent scientists with expertise in seal biology and/or Arctic sea ice and climate change regarding the pertinent scientific data and assumptions concerning the biological and ecological information used in the proposed rule. The purpose of the review was to ensure that the best biological and commercial information was used in the decision-making process, including input of appropriate experts and specialists. We received comments from three of these reviewers.

There was significant disagreement among the peer reviewers regarding the magnitude and immediacy of the threat posed to the Beringia DPS by the projected changes in sea ice habitat. This disagreement was also evident in public comments received. A number of commenters disputed the assessment of the threat posed to the Beringia DPS by the projected habitat changes, including the State of Alaska, certain Tribal governments and Alaska Native organizations, and Canada's Department of Fisheries and Oceans. We have considered these comments, and we find that substantial disagreement exists concerning the sufficiency or accuracy of the analysis of model projections of future sea ice cover and related impacts to the Beringia DPS, and the magnitude and immediacy of the threats posed to this population by the projected habitat changes.

Extension of Final Listing Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

In consideration of the disagreement related to the model projections and analysis of future sea ice habitat in the range of the Beringia DPS, we are extending the timeline for the final determination by an additional 6 months (until June 10, 2012) to resolve the disagreement. We believe that the solicitation of additional data through special independent peer review of this aspect of the status review report will better inform our final determination on the proposed listing rule and will address the disagreement. We are therefore conducting peer review in accordance with our Policy on Peer Review, and we will provide an opportunity for the public to comment on the peer review report. The additional 6 months will allow time for us to evaluate and assess the special independent peer review comments and make the peer review report available for comment. We do not anticipate that this additional time will appreciably impact either of the two DPSs of bearded seals we proposed to list as threatened.

The reopening of the public comment period will be announced in the **Federal Register** when the availability of the peer review report compiling the special independent review comments is known. At that time, instructions for obtaining a copy of the peer review report will also be announced.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 6, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–31967 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 101126590–1705–02]

RIN 0648–XZ59

Endangered and Threatened Species; Proposed Threatened Status for Subspecies of the Ringed Seal

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

ACTION: Proposed rule; 6-month extension of the deadline for a final listing determination.

SUMMARY: We, NMFS, announce a 6-month extension of the deadline for a final determination regarding the December 10, 2010, proposed rule to list four subspecies of the ringed seal (*Phoca hispida*) as threatened species under the Endangered Species Act of 1973, as amended (ESA). We are taking this action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule. An additional 6 months will allow us to solicit additional data, evaluate and assess special independent peer review of the aspects of the status review report over which there is substantial disagreement, and better inform our final determination on the proposed listing rule.

DATES: We intend to reopen the public comment period to accept comment on the special independent peer review report when it becomes available. We will soon announce the dates of the new public comment period in the **Federal Register**. The final determination on this listing action will be made no later than June 10, 2012.

ADDRESSES: The proposed rule, status review report, and other materials relating to this proposal can be found on the Alaska Region Web site at: *http://alaskafisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, we initiated status reviews of ringed, bearded (*Erignathus barbatus*), and spotted seals (*Phoca largha*) under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list these three species of seals as threatened or endangered under the ESA, primarily due to concerns about threats to their habitat from climate warming and loss of sea ice. The Petitioner also requested that critical habitat be designated for these species concurrent with listing under the ESA. In response to the petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we proceeded with the status reviews of ringed, bearded, and spotted seals and solicited information pertaining to them.

Following completion of a status review report and 12-month finding for spotted seals in October 2009 (74 FR 53683, October 20, 2009; see also, 75 FR 65239; October 22, 2010), we established Biological Review Teams (BRT) to prepare status review reports for ringed and bearded seals. The status review report of the ringed seal is a peer-reviewed compilation of the best scientific and commercial data available concerning the status of the species, including the past, present, and future threats to this species. After the status

review report was completed by the BRT (Kelly *et al.,* 2010), on December 10, 2010, we made a 12-month finding and proposed to list the Arctic (*Phoca hispida hispida*), Baltic (*Phoca hispida botnica*), Okhotsk (*Phoca hispida ochotensis*), and Ladoga (*Phoca hispida ladogensis*) subspecies of ringed seals as threatened (75 FR 77476). We published our 12-month finding for bearded seals as a separate notification concurrently with this finding (75 FR 77496; December 10, 2010).

The proposed rule announced a 60-day comment period to close on February 8, 2011. On February 8, 2011, we extended the comment period 45 days to March 25, 2011 (76 FR 6754). Three public hearings were held in Alaska in Anchorage, Barrow, and Nome (76 FR 9733, February 22, 2011; 76 FR 14882, March 18, 2011).

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinion of four independent scientists with expertise in seal biology and/or Arctic sea ice and climate change regarding the pertinent scientific data and assumptions concerning the biological and ecological information used in the proposed rule. The purpose of the review was to ensure that the best biological and commercial information was used in the decision-making process, including input of appropriate experts and specialists. We received comments from three of these reviewers.

Two of the reviewers questioned the magnitude and immediacy of the threats posed to Arctic ringed seals by the projected changes in sea ice habitat, in particular on-ice snow cover. Public comments raised similar concerns, including from the State of Alaska; certain Tribal governments, Alaska Native organizations, and organizations representing the Inuit in Canada; Canada's Department of Fisheries and Oceans; and Greenland's Department of Fisheries, Hunting, and Agriculture. We have considered these comments, and we find that for Arctic ringed seals substantial disagreement exists concerning the sufficiency or accuracy of the analysis of model projections of future sea ice habitat, in particular on-ice snow cover, and related impacts. This disagreement extends to the magnitude and immediacy of the threats posed to this population by the projected habitat changes.

Extension of Final Listing Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

In consideration of the disagreement related to the model projections and analysis of future sea ice habitat, in particular snow cover, for Arctic ringed seals, we are extending the timeline for the final determination by an additional 6 months (until June 10, 2012) to resolve the disagreement. We believe that the solicitation of additional data through special independent peer review of this aspect of the status review report will better inform our final determination on the proposed listing rule and will address the disagreement. We are therefore conducting this additional review in accordance with our Policy on Peer Review, and we will provide an opportunity for the public to comment on the peer review report. The additional 6 months will allow time for us to evaluate and assess the special independent peer review comments and make the peer review report available for comment. We do not anticipate that this additional time will appreciably impact any of the four subspecies of the ringed seal we proposed to list as threatened.

The reopening of the public comment period will be announced in the **Federal Register** when the availability of the peer review report compiling the special independent review comments is known. At that time, instructions for obtaining a copy of the peer review report will also be announced.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 6, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–31969 Filed 12–12–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XA768

Endangered and Threatened Species; Initiation of Status Review for Ribbon Seal

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

ACTION: Initiation of status review and solicitation of information.

SUMMARY: We, NMFS, under the authority of the Endangered Species Act of 1973, as amended (ESA), announce the initiation of a status review for the ribbon seal (*Histriophoca fasciata*). We conduct status reviews to determine whether the entity should be listed as threatened or endangered under the ESA. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species (see below).

DATES: Information and comments on the subject action must be received by February 13, 2012.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0248, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0248 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: Submit written comments to P.O. Box 21668, Juneau, AK 99802.

Fax: (907) 586–7557.

Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments 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 or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2007, we received a petition from the Center for Biological Diversity (CBD) to list the ribbon seal as a threatened or endangered species under the ESA, primarily due to concern about threats to this species' habitat from climate warming and loss of sea ice. The Petitioner also requested that critical habitat be designated for ribbon seals concurrently with listing under the ESA. On March 28, 2008, we published a 90-day finding (73 FR 16617) in which we determined that the petition presented substantial information indicating that the petitioned action may be warranted and initiated a status review of the ribbon seal.

On December 30, 2008, we published our 12-month finding that listing of the ribbon seal was not warranted (73 FR 79822). In this finding we concluded that although ribbon seal population abundance is likely to decline gradually for the foreseeable future, primarily from slight but chronic impacts on reproduction and survival caused by reduced frequency of years with sea ice of suitable extent, quality, and duration of persistence, it is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

On September 3, 2009, CBD and Greenpeace, Inc. (collectively, ''Center'') filed a complaint in U.S. District Court challenging our 12-month finding. On December 21, 2010, after considering cross-motions for summary judgment, the Court denied the Center's motion for summary judgment and granted NMFS' cross-motion. The Center filed a notice of appeal of this judgment to the Ninth Circuit Court of Appeals on January 18, 2011.

Information has become available since publication of the December 30, 2008, 12-month finding that may have implications for the status of the ribbon seal relative to the listing provisions of the ESA, including new data on ribbon seal movements and diving, as well as a modified threat-specific approach to analyzing the foreseeable future which we used in the spotted (*Phoca largha),* ringed (*Phoca hispida*), and bearded seal (*Erignathus barbatus*) status reviews completed subsequent to the ribbon seal status review (75 FR 65239, October 22, 2010; 75 FR 77476 and 75 FR 77496, December 10, 2010). In consideration of this information, we entered a settlement agreement with the Center on August 30, 2011, under which we agreed to initiate a new status review and issue a 12-month finding on whether listing the ribbon seal as threatened or endangered is warranted and submit the determination to the Office of the **Federal Register** by December 10, 2012. This document initiates a new status review for the ribbon seal.

You may obtain copies of previous Federal actions relating to the ribbon seal from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

ESA Statutory Provisions and Policy Considerations

There are two key tasks associated with an ESA status review. The first is to delineate the taxonomic group under consideration and the second is to conduct an extinction risk assessment to determine whether the petitioned species is threatened or endangered.

Under the ESA, a listing determination can address a species, subspecies, or a distinct population segment (DPS) of a vertebrate species (16 U.S.C. 1532 (16)). The term ''distinct population segment'' (DPS) is not commonly used in scientific discourse, so the USFWS and NMFS developed the ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' to provide a consistent interpretation of this term for the purposes of listing, delisting, and reclassifying vertebrates under the ESA (61 FR 4722; February 7, 1996). We will use this policy to guide our determination of whether DPSs exist in ribbon seals.

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A threatened species is defined as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are opening a 60-day public comment period to solicit information from the public, government agencies, Alaska Natives, the scientific community, industry, and other interested parties on the status of the ribbon seal throughout its range. We are seeking:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and trends, habitat trends, and effects of management on ribbon seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ribbon seals and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas exploration and development, contaminants, hunting, and poaching, on the distribution and abundance of ribbon seals and their principal prey over the short- and long-term;

(4) Information on management programs for ribbon seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ribbon seals; and

(5) Information relevant to population structure of ribbon seals.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please submit any comments to the **ADDRESSES** listed above. We will base our finding on a review of the best scientific and commercial information available, including all information received during the public comment period.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–31959 Filed 12–12–11; 8:45 a.m.]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 239

Tuesday, December 13, 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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0042]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'') or the ''Bureau'', gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than January 12, 2012. The new system of records will be effective January 23, 2012 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0042, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB. The CFPB administers, enforces, and implements Federal consumer financial law, and, among other powers, has authority to protect consumers from unfair, deceptive, and abusive practices when obtaining consumer financial products or services. The CFPB will maintain the records covered by this notice.

The new system of records described in this notice, CFPB.012—Interstate Land Sales Registration Files will contain personal information submitted by developers of land or other individuals offering 25 or more lots for sale and using any means or instruments of interstate commerce (including the mails) in promoting or selling properties pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, and in the administration and management of the Interstate Land Sales Registration Program. The majority of information contained in this system is public data, however, it also includes some non-public data, such as Social Security numbers.

Pursuant to section 1061(b)(7) of the Act, the Department of Housing and Urban Development (''HUD'') functions of the Interstate Land Sales Full Disclosure Act (''ILSA''), 15 U.S.C. 1701 *et seq.,* transferred to the Bureau on July 20, 2011.

HUD previously published a system of records notice for this record system on August 25, 1983, at 48 FR166. The CFPB's system of records notice replaces the earlier notice published by HUD to reflect that fact that that responsibility for maintaining the system of records has transferred from HUD to the CFPB.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.12–Interstate Land Sales Registration Files'' is published in its entirety below.

Dated: December 8, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.012

SYSTEM NAME:

Interstate Land Sales Registration Files.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are developers of land and other individuals offering 25 or more lots for sale and using any means or instruments of interstate commerce (including the mails).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include, without limitation: Names, addresses, Social Security numbers and other identifying information contained in property reports; statements of record which contain full and current disclosure about the ownership of land; the state of title to the land; the physical characteristics of the land; and planned availability of roads, services, and utilities. Records also contain other information, including: Corporate charter and other entity organizational documents, such as articles of incorporation and organization and operating and partnership agreements; individual and corporate financial statements; title policy; title insurance products; deeds; mortgages; local ordinances; health regulations; availability of utilities; plats; information on roads and recreational

facilities and contracts; statistical records; budget estimates; microfilm information; exemption applications; and related information and documentation.

The case files also include property reports, correspondence, developer filings of land offered for sale, maps, subdivision registrations, annual reports, regulatory exemption opinions, advisory opinions, and developer notices to the government of voluntary suspension of ownership of the property and requests for suspension of the effective dates for registration. Additional records may include subpoenas, notices of hearings, investigatory documentation, and public complaints.

The majority of information contained in this system is public data, however, some of the data, such as Social Security numbers, is not available to the public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 90–448, codified at 15 U.S.C. 1701 *et seq.;* Public Law 111–203, Title X, Section 1061(b)(7)(A), codified at 12 U.S.C. 5581(b)(7)(A).[1]

PURPOSE(S):

The system allows for the submission of information related to interstate land sales registrations pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, Public Law 90–448, codified at 15 U.S.C. 1701 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's rules relating to Disclosure of Records and Information. Rules are promulgated at 12 CFR part 1070 *et seq.* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another Federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a Federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(10) Appropriate Federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license; and

(11) To the public, to the extent required by 15 U.S.C. 1704(d) and the Bureau's regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, but not limited to, OILSR file number, name of subdivision or name of the developer, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are securely maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain computer and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Assistant Director of Nonbank Supervision, 1700 G Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR,

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published rules on the Disclosure of Records and Information within 12 CFR Chapter X. This SORN is published pursuant to those rules and the Privacy Act.

''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from CFPB field representatives and individuals who are developers of land and other individuals offering 25 or more lots for sale and using any means or instruments of interstate commerce (including the mails).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–31892 Filed 12–12–11; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0041]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB), gives notice of the establishment of a new Privacy Act System of Records.

DATES: Comments must be received no later than January 12, 2012. The new database will be effective January 23, 2012, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0041, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau 1700 G Street NW., Washington DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G St. NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), Public Law 111–203, Title X, established the CFPB. The CFPB administers, enforces, and implements federal consumer financial laws, and, among other powers, has authority to protect consumers from unfair, deceptive, and abusive practices when obtaining consumer financial products or services. The Act establishes an Ombudsman's Office, Section 1013(a)(5), to liaise between the CFPB and ''any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau.'' The Ombudsman's Office is an independent, impartial, and confidential resource that will advocate for a fair process to resolve issues between the CFPB and an individual or a financial product or service provider. The CFPB Ombudsman's Office will maintain the records covered by this notice.

The new system of records described in this notice, CFPB.010—CFPB Ombudsman System will allow the Ombudsman's Office to track inquiries submitted to the Ombudsman while they are being adjudicated.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.010—Ombudsman System'' is published in its entirety below.

Dated: December 8, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.010

SYSTEM NAME:

CFPB Ombudsman System.

SYSTEM LOCATION:

CFPB Ombudsman's Office, Consumer Financial Protection Bureau, 1700 G Street NW., Washington DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, which may include, without limitation: (1) Current or former officers, employees, shareholders, agents, and independent contractors of covered persons and service providers as defined by the Act; (2) those who submit inquiries to the CFPB Ombudsman's Office and their representatives; and (3) employees of the CFPB assigned to review and/or respond to any inquiries, as requested by the Ombudsman's Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system may contain, without limitation: (1) Correspondence (including letters, memoranda, faxes, telegrams, and emails) received and sent; (2) identifying information regarding the individual who submitted the inquiry, such as the individual's name, phone number, address, email address, and any other disclosed identifiable information; (3) information about the CFPB employee who is responsible for addressing the inquiry; (4) information on the status of the inquiry; and (5) relevant dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Section 1013, codified at 12 U.S.C. 5493; Privacy Act of 1974, as amended, 5 U.S.C. 552a.[1]

PURPOSE:

The purpose of the information system is to enable the CFPB Ombudsman to efficiently and securely process information while providing assistance to individuals, financial product or service providers, or their

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published rules on the Disclosure of Records and Information within 12 CFR chapter X. This SORN is published pursuant to those rules and the Privacy Act.

representatives in resolving problems with the CFPB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules promulgated at 12 CFR part 1070 *et seq* to:

(1) Appropriate agencies, entities, and persons when (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job or other activity on behalf of the CFPB Ombudsman's Office or Federal Government and who have a need to access information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components; and

(7) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields, including the name of the individual or type of financial product or service provider, the date of the inquiry, the inquiry control number, or some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized CFPB Ombudsman personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those CFPB Ombudsman personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain computer and paper records until the National Archives and Records Administration approves the CFPB Ombudsman's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Ombudsman, 1700 G Street NW., Washington DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in title 12, chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures,'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures,'' above.

RECORD SOURCE CATEGORIES:

Information in this system is maintained about individuals or financial product or service providers who submit inquiries to the CFPB Ombudsman's Office and Ombudsman employees assigned to help review or respond to such inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–31894 Filed 12–12–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: United States Warehouse Act (USWA).

OMB Control Number: 0560–0120.

Summary of Collection: The Secretary of Agriculture authorizes the Farm Service Agency (FSA) as specified in the USWA to license public warehouse operators that are in the business of storing agricultural products; to examine such federally-licensed warehouses and to license qualified persons to sample, inspect, weigh, and classify agricultural products. FSA licenses over half of all commercial grain and cotton warehouse capacities in the United States. The USWA and Commodity Credit Corporation (CCC) functions are administered by FSA. Although there are several types of warehouses covered under the USWA and CCC function, the reporting requirements within a particular warehouse type are essentially the same. With some exceptions, the same forms are used bilaterally, that is, they are used for both USWA licensing and CCC purposes.

Need and Use of the Information: FSA will collect information as a basis to (1) Determine whether or not the warehouse and the warehouse operator making application for licensing and/or approval meets applicable standards; (2) issue such license or approvals; and (3) determine, once licensed or approved, that the licensee or warehouse operator continues to meet such standards and is conforming to regulatory or contractual obligations. Warehouses not meeting financial, bonding, operational or general approval standards may be denied and agreement (contract) unless a waiver is granted by the President or Executive Vice President of CCC.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: On occasion; Annually; Other (daily record).

Total Burden Hours: 8,817.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31860 Filed 12–12–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR part 235 State Administrative Expense Funds.

OMB Control Number: 0584–0067.

Summary of Collection: Because the Food and Nutrition Service (FNS) is accountable for State Administrative Expense (SAE) funds by fiscal year, State Agencies (SAs) are requested to report their SAE budget information on that basis. If the State budgets coincide with a fiscal year other than that used by the Federal government, the SA must convert its State budget figures to amounts to be used during the applicable Federal fiscal year for this purpose. In 7 CFR part 235, State Administrative Expense Funds, there are five reporting requirements, which necessitate the collection of information. They are as follows: SAE Plan, Reallocation Report, Coordinated Review Effort (CRE) Data Base Update, Report of SAE Funds Usage, and Responses to Sanctions. SAs also must maintain records pertaining to SAE. These include Ledger Accounts, Source Documents, Equipment Records and Record on State Appropriated Funds. FNS will collect information using forms FNS–74 and 525.

Need and Use of the Information: FNS will collect information on the total SAE cost the SA expects to incur in the course of administering the Child Nutrition Programs (CNPs); the indirect cost rate used by the SA in charging indirect cost to SAE, together with the name of the Federal agency that assigned the rate and the date the rate was assigned; breakdown of the current year's SAE budget between the amount allocated for the current year and the amount carried over from the prior year; and the number and types of personnel currently employed in administering the CNPs. The information is used to determine whether SA intends to use SAE funds for purposes allowable under OMB Circular A–87, Cost Principles for State and Local Governments; does SA's administrative budget provide for sufficient funding from State sources to meet the Maintenance of Effort requirement; and is SA's staff adequate to effectively administer the programs covered by the SA's agreement with FNS.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 13,525.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E & T) Program Activity Report.

OMB Control Number: 0584–0339.

Summary of Collection: The Balanced Budget Act of 1997 (Pub. L. 105–33), enacted on August 5, 1997, modified the Employment and Training (E&T) Program so that States' efforts are now focused on a particular segment of the Supplemental Nutrition Assistance Program (SNAP) (*formerly known as the Food Stamp Program*) population—able-bodied adults without dependents (ABAWDs). Section 6(d) of the Food Stamp Act of 1977 and 7 CFR 273.7

require each SNAP household members who is not exempt shall be registered for employment by the State agency at the time of application and once every twelve months thereafter, as a condition of eligibility. This requirement pertains to non-exempt SNAP household members age 16 to 60. Each State agency must screen each work registrant to determine whether to refer the individual to its E&T Program. States' E&T Programs are federally funded through an annual E&T grant. Both the Food Stamp Act and regulations require States to file quarterly reports about their E&T Programs so that the Food and Nutrition Service (FNS) can monitor their performance.

Need and Use of the Information: FNS will collect quarterly reports about their E&T programs so that the Department can monitor State performance to ensure that the program is being efficiently and economically operated. Without the information FNS would be unable to make adjustments or allocate exemptions in accordance with the statute.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Annually.

Total Burden Hours: 26,083.

Food and Nutrition Service

Title: Waivers Under Section 6(o) of the Food and Nutrition Act.

OMB Control Number: 0584–0479.

Summary of Collection: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (PRWORA) establishes a time limit for the receipt of Supplemental Nutrition Assistance Program (SNAP) (*formerly known as the Food Stamp Program*) benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waiver the provision for any group of individuals if the Secretary determines ''that the areas in which the individuals reside has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals.''

Need and Use of the Information: The Food and Nutrition Service uses the information provided by State SNAP agencies to evaluate whether the statutory requirements for a waiver of the SNAP time limit have been met and to determine specifically whether the designated areas' unemployment rate is over ten percent or if there is a lack of sufficient jobs available. If the information is not collected, the State SNAP agencies could not obtain waivers of time limits contained in Section 6(o) of the Act.

Description of Respondents: State, Local, or Tribal Government; Individuals or household; Federal Government.

Number of Respondents: 48.

Frequency of Responses: Reporting: On occasion, Annually.

Total Burden Hours: 1,308.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program (SNAP) Pre-Screening Tool.

OMB Control Number: 0584–0519.

Summary of Collection: Consistent with Section 5 of the Food Stamp Act of 1977, the Food and Nutrition Service (FNS) has initiated this program to enable potential Supplemental Nutrition Assistance Program (SNAP) (*formerly known as the Food Stamp Program*) applicants to assess their eligibility and the order of magnitude of the potential benefit they may qualify for. This Pre-Screening Tool also enables citizen advocacy groups to help constituents assess their benefit eligibility. This will also help the Supplemental Nutrition Assistance Program fulfill its role as a means-tested program in accordance with Section 5 of the Food Stamp Act and Part 273 of the SNAP regulations.

Need and Use of the Information: This SNAP Pre-Screening Tool will be accessible to the public as an online Web-based system. The user will be prompted to enter household size, income, expenses and resource information, and the tool will calculate and provide the user with an estimated range of benefits that the household may be eligible to receive. This information will help FNS determine the degree and type of system usage as well as potential areas for further study.

Description of Respondents: Individuals or households; State, Local, or Tribal Government; Not-for-profit institutions.

Number of Respondents: 396,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 66,132.

Food and Nutrition Service

Title: FNS User Access Request Form.

OMB Control Number: 0584–0532.

Summary of Collection: The Office of Management and Budget Circular No. A–130, Appendix III, Security of Federal Automated Information Resources, dated February 8, 1996, established a minimum set of controls to be included in Federal automated information security programs. Establishing personal controls to screen users to allow access to an authorized system is directed in this appendix. The Food and Nutrition Service (FNS) User Access Request Form, FNS–674, is designed for this purpose and will be used in all situations where access to an FNS computer system is required, where current access is required to be modified, or where access is no longer required and must be deleted. Users who access FNS systems are: State agencies, other Federal agencies, FNS Regional offices, FNS Field offices, FNS Compliance Offices, staff contractors, and FNS headquarters staff.

Need and Use of the Information: The State Coordinator is responsible for ensuring that State users and entities comply with the FNS Information Systems Security Guidelines and the Procedures Handbook 702 developed for State systems for their use in maintaining proper controls over FNS security features used by State clients. The information to be collected is: Name, e-Authentication ID, telephone number, home zip code, email address, contract expiration date, temporary employee expiration date, office address, State/locality codes, system name, form type, type of access, action requested, comments and special instructions. If access were not granted, users would be denied access to systems needed to deliver FNS programs.

Description of Respondents: State, Local, or Tribal Government; Federal Government; Businesses or other for-profit.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 73.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31861 Filed 12–12–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Select Agent Registration.

OMB Control Number: 0579–0213.

Summary of Collection: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 were signed into law June 12, 2002. This law is designed to prevent, prepare for and respond to bioterrorism and other public health emergencies. The law requires individuals possessing agents or toxins deemed a severe threat to animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture unless they have been specifically exempted. The registration process entail the use of a number of separate forms designed to obtain critical information concerning individuals or facilities in possession of certain agents or toxins, as well as the specific characteristics of the agents or toxins—including name, strain, and genetic information.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information to determine the biosafety level of an entity as well as the entity's biosecurity situation. The collected information will also be used to ensure that appropriate safeguard, containment, and disposal requirements commensurate with the risk of the agent or toxin are present at the entity, thus preventing access to such agents and toxins for use in domestic or international terrorism. If the information were not collected, APHIS efforts to more aggressively prevent a bioterrorism event in the United States would be compromised.

Description of Respondents: Business or other for profit; State, Local and Tribal Government; Not-for-profit institutions.

Number of Respondents: 1,163.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,290.

Animal and Plant Health Inspection Service

Title: Pale Cyst Nematode; Quarantine and Regulations.

OMB Control Number: 0579–0322.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), The Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) amended the ''Domestic Quarantine Notices'' in 7 CFR part 301, subpart titled ''Potato Cyst Nematode'' (§ .86 through 301.86.9, referred to as the regulations) by quarantining parts of Bingham and Bonneville Counties, ID, due to the discovery of the Potato Cyst Nematode there and establishing restrictions on the interstate movement of regulated articles from the quarantined area.

Need and Use of the Information: APHIS will collect information using certificates, limited permits and compliance agreements to prevent the spread of PCN and to ensure that regulated articles can be moved safely from the quarantined area without spreading PCN. If APHIS did not collect this information, the spread of PCN in the United States could result in a loss of domestic or foreign markets for U.S. potatoes and other commodities.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 152.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 342.

Animal and Plant Health Inspection Service

Title: Importation of Baby Squash and Baby Courgettes from Zambia.

OMB Control Number: 0579–0347.

Summary of Collection: Under the Plant Protection Act (7 U.S.C 7701), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. APHIS amended the fruits and vegetables regulations to allow the importation into the continental United States of baby squash and baby courgettes from Zambia. As a condition of entry, both commodities would have to be produced in accordance with a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest excluding packinghouse procedures. Both commodities would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the baby squash and baby courgette have been produced in accordance with the proposed requirements.

Need and Use of the Information: APHIS will collect information using the following: Physanitary Certificate, Records and Monitoring, Labeling on Cartons and Inspection of Greenhouses. Without this information, all shipments would need to be inspected very thoroughly, thereby requesting considerably more time.

Description of Respondents: Business or other for-profits; Federal Government.

Number of Respondents: 2.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 4.

Animal and Plant Health Inspection Service

Title: Revision of Hawaii and the Territories Fruits.

OMB Control Number: 0579–0346.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) has amended the regulations pertaining to the interstate movement of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to the regulations to make them easier to use.

Need and Use of the Information: APHIS will use the following forms and activities to collect information: PPQ 530, PPQ 586, PPQ 519, Labeling for Pest Free Area, and Inspection & Certification. If APHIS did not collect this information or if APHIS collected this information less frequently, the spread of dangerous plant diseases and pests that occur in Hawaii and the territories could cause millions of dollars in damage to U.S. agriculture.

Description of Respondents: Business or other for-profits; State, Local or Tribal Government.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,646.

Animal and Plant Health Inspection Service

Title: Importation of Longan from Taiwan.

OMB Control Number: 0579–0351.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. APHIS amended the fruits and vegetables regulations to allow the importation of commercial shipments of fresh longan with stems from Taiwan into the United States. As a condition of entry, the longan will be subject to cold treatment and special port-of-arrival inspection procedures for certain quarantine pests.

Need and Use of the Information: APHIS will use the following information collection activities to allow the import of commercial shipment of fresh longan with stems from Taiwan into the United States: Phytosanitary Certificate, Inspection by NPPOs in Taiwan and Stamping of Boxes. Failing to collect this information would cripple APHIS ability to ensure that longan from Taiwan are not carrying plant pests.

Description of Respondents: Business or other for-profits; Federal Government.

Number of Respondents: 12,004.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31862 Filed 12–12–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Forest Products Free Use Permit, Removal Permit and Cash Receipt, and Sale Permit and Cash Receipt.

OMB Control Number: 0596–0085.

Summary of Collection: Individuals and businesses that wish to remove forest products from national forest lands must request a permit. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pinecones, moss, and mushrooms. Regulations at 36 CFR 223.5 through 223.11 authorize the free use or sale of timber or forest products. Upon receiving a permit, the permittee must comply with the terms of the permit at 36 CFR 216.6 that designate the forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material.

Both the Forest Service (FS) and Department of the Interior, Bureau of Land Management (BLM) will use the Forest Products Removal Permit and Cash Receipt to collect information.

Need and Use of the Information: Using forms FS–2400–1/BLM–5450–24, FS–2400–4 and FS–2400–8, FS and BLM will collect the name, address and tax identification number from persons applying for permits. The information will be used to keep a record of persons buying forest products and to determine if the applicant meets the criteria under which free use or sale of forest products is authorized by the regulations and to ensure that the permittee has not received product values in excess of the amount allowed by regulation in any one fiscal year and complies with the regulations and terms of the permit. This information is also needed to allow FS compliance personnel to identify permittees in the field. Without the forest product removal program, achieving multiple use management programs such as reducing fire hazard and improving forest health on the National Forest would be impaired.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 151,000.

Frequency of Responses: Reporting: On occasion; Recordkeeping.

Total Burden Hours: 19,998.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31866 Filed 12–12–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Accounting Requirements for RUS Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Summary of Collection: Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture that makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas. Currently, there are approximately 650 active electric borrowers and 500 RUS telecommunications borrowers. RUS does not own or operate rural electric facilities. Its function is to provide, through self-liquidating loans and technical assistance, adequate and dependable electric and telecommunications service to rural people under rates and conditions that permit productive use of these utility services. RUS borrowers, as all businesses, need accounting systems for their own internal use as well as external use. Such records are maintained as part of normal business practices. Without systems, no records would exist, for example, or what they own or what they owe. Such records systems provide borrowers with information that is required by the manager and board of directors to operate on a daily basis, to complete their tax returns, and to support requests to state regulatory commissions for rate approvals.

Need and Use of the Information: RUS collects information to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans. If basic financial records were not maintained, the borrower, its investors, and RUS would be unable to evaluate a borrower's financial performance.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 1,150.

Frequency of Responses: Recordkeeping; Reporting: On Occasion.

Total Burden Hours: 31,050.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31865 Filed 12–12–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2011.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

DATES: Comments regarding these information collections are best assured of having their full effect if received by January 12, 2012. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Plan for Estimating Daily Livestock Slaughter Under Federal Inspection.

OMB Control Number: 0581–0050.

Summary of Collection: The Agriculture Marketing Act of 1946 (7 U.S.C. 1621) Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Grain news provides a timely exchange of accurate and unbiased information on a current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 30 State departments of agriculture. The up-to-the minute reports collected and disseminated by professional market reporters are intended to provide both buyers and sellers with the information necessary for making intelligent, informed marketing decisions, thus putting everyone in the marketing system in an equal bargaining position.

Need and Use of the Information: AMS will collect information on estimation of the current day's slaughter at their plant(s) and the actual slaughter of the previous day. The report is used to make market outlook projections and maintain statistical data. The

information must be collected and disseminated by an impartial their party. Since the government is a large purchaser of meat, a system to monitor the collection and reporting of data is needed. Collecting this information less frequently would hinder the timely use of this data.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 72.

Frequency of Responses: Reporting; Weekly; Other: Daily.

Total Burden Hours: 623.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31863 Filed 12–12–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–6–2011]

Foreign-Trade Zone 7—Mayaguez, PR; Application for Temporary/Interim Manufacturing Authority; Baxter Healthcare of PR (Pharmaceutical and Nutritional Intravenous Bags and Administration Sets); Aibonito and Jayuya, PR

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting temporary/interim manufacturing (T/IM) authority at two sites within FTZ 7 at the Baxter Healthcare of Puerto Rico (Baxter) facilities, located in Aibonito and Jayuya, Puerto Rico. The application was filed on December 6, 2011.

The Baxter facilities (200 million unit capacity) are used for the manufacture of pharmaceutical and nutritional intravenous (I.V.) bags and related components. Under T/IM procedures, Baxter has requested authority to produce filled pharmaceutical and nutritional I.V. bags (HTSUS 3004.20, 3004.40, 3004.50, 3004.90—duty rate: free) and I.V. administration sets and their components (HTSUS 9018.90—duty rate: free). Foreign materials that would be used in production (representing 9% of the value of the finished product) include: Foil pouches (HTSUS 3923.29), ABS resin (HTSUS 3903.30), L-tryptophan (HTSUS 2933.99), glutamic acid (HTSUS 2922.42), N–Acetyl-L–Tyrosine (HTSUS 2924.29) and L–Lysine-Acetate (HTSUS 2922.41) (duty rates range: 3–6.5%). T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt Baxter from customs duty payments on the foreign components used in export production. The company anticipates that some 22 percent of the facilities' shipments of I.V. administration sets and components will be exported. On its domestic sales, Baxter would be able to choose the duty rate during customs entry procedures that applies to filled I.V. products and administration sets (duty rate: free) for the foreign inputs noted above. Baxter could also be exempt from duty payments on foreign materials that become scrap or waste during the production process.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is January 12, 2012.

Baxter has also submitted a request to the FTZ Board for FTZ manufacturing authority beyond a two-year period. It should be noted that the request for extended authority is being docketed separately and will be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for extended authority would need to submit such comments pursuant to the separate notice that will be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Diane Finver at *Diane.Finver@trade.gov*, (202) 482–1367.

Dated: December 6, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–31935 Filed 12–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–933]

Frontseating Service Valves From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Brooke Kennedy, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4243 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2011, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on frontseating service valves for Zhejiang Sanhua Co., Ltd. and Zhejiang DunAn Hetian Metal Co., Ltd. for the period April 1, 2010, through March 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912 (May 27, 2011). The preliminary results of review are currently due no later than December 31, 2011.

Extension of Time Limit of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondents' sales practices, factors of production, as well as issue and review responses to

supplemental questionnaires. Therefore, we require additional time to complete these preliminary results. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 90 days until March 30, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 6, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–31939 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from United States Steel Corporation, an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. The period of review is May 1, 2010, through April 30, 2011. Based on the withdrawal of request for review submitted by United States Steel Corporation (the Petitioner), we are now rescinding this administrative review.

DATES: *Effective Date:* December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2011, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan covering the period May 1, 2010, through April 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011). The review covered eight companies. The Petitioner was the sole party to request reviews of these eight companies.

On August 8, 2011, the Petitioner withdrew its request for an administrative review for the following six companies: (1) E United Group; (2) Yieh Corp.; (3) Yieh Hsing Enterprise Co., Ltd.; (4) Far East Machinery Co. Ltd.; (5) Kao Hsing Chang Iron & Steel Corp. (also known as Kao Hsiung Chang Iron & Steel Corp.); and (6) Tension Steel Industries Co. Ltd. The Department rescinded the review with respect to these companies. *See Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 57020 (September 15, 2011).

On November 4, 2011, the Petitioner withdrew its request for an administrative review for the remaining two companies (i.e., Yieh Phui Enterprise Co., Ltd. and Chung Hung Steel Corporation).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Therefore, although Petitioner withdrew its request after the 90-day deadline, the Department has the discretion to extend this time limit. Consistent with the Department's practice, we find it reasonable to extend the withdrawal deadline and to rescind the review with respect to Yieh Phui Enterprise Co., Ltd. and Chung Hung Steel Corporation because the Department has not devoted significant time or resources to the review and Petitioner is the only party to request a review. *See, e.g., Welded Large Diameter Line Pipe From Japan: Notice of Rescission of Antidumping Duty Administrative Review,* 75 FR 38989, 38990 (July 7, 2010); *see also Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review,* 71 FR 13810, 13811 (March 17, 2006).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Yieh Phui Enterprise Co., Ltd. and Chung Hung Steel Corporation, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 7, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–31936 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Initiation of Anticircumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the American Honey Producers

Association and the Sioux Honey Association (collectively ''Petitioners''), the Department of Commerce (''Department'') is initiating an anticircumvention inquiry to determine whether certain imports are circumventing the antidumping duty order on honey from the People's Republic of China (''PRC'').

DATES: *Effective Date:* December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, telephone: (202) 482–3207, or Josh Startup, telephone: (202) 482–5260; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2011, pursuant to sections 781(c) and 781(d) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.225(i) and (j), Petitioners submitted properly filed requests for the Department to initiate and conduct a minor alterations and a later-developed merchandise anticircumvention inquiry to determine whether honey-rice syrup blends are circumventing the antidumping duty order on honey from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey From the People's Republic of China,* 66 FR 63670 (December 10, 2001) (''the *Order''*).

In their request, Petitioners allege that honey blended with rice syrup (''honey-rice syrup blend'') from the PRC is circumventing the *Order.* Specifically, Petitioners allege that Anhui Hundred Health Foods Co., Ltd. (also known as Anhui Hengjide Healthy Food Co., Ltd.)'s (''Anhui Hundred'') honey-rice syrup blend represents a minor alteration from in-scope honey blends, because rice syrup is indistinguishable from honey, and therefore, in-scope honey-rice syrup blends (consisting of 50 percent or more pure honey) are indistinguishable from out-of-scope honey-rice syrup blends (consisting of less than 50 percent pure honey). Consequently, Petitioners allege that Anhui Hundred's honey-rice syrup blend ''differs minimally, if at all, from honey and/or covered honey blends that are within the scope of the order.'' [1] Alternatively, Petitioners argue that the honey-rice syrup blends are a later-developed product of the subject merchandise because there was no knowledge of blends of honey and rice syrup being commercially available in the U.S. market at the time of the investigation.[2]

On September 15, 2011, the Department extended the deadline to initiate the anticircumvention inquiry by 45 days, pursuant to 19 CFR 351.302(b),[3] with the new deadline to initiate of November 10, 2011. On October 20, 2011, the Department extended the deadline to initiate by an additional 40 days, making the deadline December 20, 2011.[4] On October 20, 2011, the Department also sent a supplemental questionnaire to Petitioners requesting additional information to support their anticircumvention initiation request. The supplemental questionnaire was due on November 3, 2011. On October 27, 2011, the Department received and granted a supplemental questionnaire extension request from Petitioners, making the supplemental questionnaire response due November 14, 2011. On November 14, 2011, the Department received an additional supplemental questionnaire extension request from Petitioners. On November 14, 2011, the Department granted Petitioners' supplemental questionnaire extension request, making it due November 21, 2011. On November 1, 2011, Anhui Hundred submitted comments opposing the initiation of an anticircumvention inquiry.[5] On November 21, 2011, Petitioners submitted their response to the Department's supplemental questionnaire.[6]

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Merchandise Subject to the Anticircumvention Request

The merchandise subject to the anticircumvention request is honey-rice syrup blends from the PRC.

Minor Alterations Request

The Department has decided not to initiate Petitioners' minor alterations anticircumvention request which was submitted under 781(c) of the Act. In the case of a ''minor alteration'' allegation under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.[7] Petitioners have not provided evidence demonstrating that the cost of modification between Anhui Hundred's product, consisting of 90 percent rice syrup and ten percent honey, and an in-scope product consisting of 50 percent or more honey, could be considered minor. While Petitioners calculated a 2.2 percent difference between a product that is 51/49 percent honey compared to one that is 49/51 percent honey,[8] the only such product for which the Department has evidence on the record is from Anhui Hundred, which is 90 percent rice syrup and 10 percent honey. Therefore, Petitioners' price comparison is not valid for the purposes of this inquiry, because it is not for a specific product. Petitioners argue an importer might be able to sell a blend of 90 percent rice syrup and ten percent honey for the same amount as one with 10 percent rice syrup and 90 percent honey because of difficulties in testing for the amount of honey in a honey-rice syrup blend.[9] However, Petitioners have not provided any evidence that any party has engaged in this practice. Additionally, Petitioners have not provided evidence demonstrating that the amount of rice syrup required to

[1] *See* Petitioners' Request for Scope/Circumvention Inquiry on Honey Syrup from China and Opposition to Anhui Hundred Scope Request on Honey Syrup from China, filed August 12, 2011 (''Petitioners' Request'') at 33.

[2] *See* Petitioners' Request, at 40–1.

[3] *See* Letter to Petitioners dated February 24, 2011.

[4] *See* Letter to Petitioners dated October 11, 2011.

[5] *See* Opposition by Anhui Hundred to Petitioners' Request to Initiate an Anti-circumvention Inquiry on Honey Syrup from the People's Republic of China, dated November 1, 2011 (''Anhui Hundred Response'').

[6] *See* Petitioners' Supplemental Questionnaire Response, dated November 21, 2011 (''Petitioners' Questionnaire Response'').

[7] *See* Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987), which explained that in circumvention inquiries regarding minor alterations, the Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.

[8] *See* Petitioners' Request at 37.

[9] *Id.,* at 37–8.

dilute a mixture of 51 percent honey down to one that is only 10 percent honey is minor. For all these reasons, there is no basis for the Department to initiate a minor alterations anticircumvention inquiry.

Later-Developed Merchandise Anticircumvention Request

Section 781(d)(1) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise is developed after an investigation is initiated (''later-developed merchandise''). In conducting later-developed merchandise anticircumvention inquiries, under section 781(d)(1) of the Act, the Department will also evaluate whether the general physical characteristics of the merchandise under consideration are the same as the subject merchandise covered by the *Order*,[10] whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise,[11] whether the ultimate use of the subject merchandise and the merchandise under consideration are the same,[12] whether the channels of trade of both products are the same,[13] whether there are any differences in the advertisement and display of both products,[14] and if the merchandise under consideration was commercially available at the time of the investigation.[15]

A. General Physical Characteristics

Petitioners contend that the subject merchandise and honey-rice syrup blends containing less than 50 percent honey have identical physical characteristics. Specifically, according to Petitioners, pure honey, and honey-rice syrup blends with both more and less 50 percent honey content have identical fructose/glucose contents of approximately 70 percent and water contents of approximately 17 percent.[16] Petitioners note that three different test results on the record demonstrate that honey-rice syrup blends, regardless of honey content, have similar or identical physical characteristics.[17] Consequently, Petitioners allege that Anhui Hundred's honey blend of 90 percent rice syrup and 10 percent honey is indistinguishable and has the identical physical characteristics as both pure honey and honey blends containing both more and less than 50 percent honey.

B. Expectations of the Ultimate Purchasers

Petitioners state that users have the same expectations for honey-rice syrup blends and the subject merchandise. Petitioners support their claim by noting that Anhui Hundred describes its product as ''honey syrup,'' demonstrating that the consumer wants something that looks like and tastes similar to honey.[18] Petitioners also note that Anhui Hundred is a self-described producer of ''honey products'' on various Web sites.[19] Petitioners argue that the National Honey Board's (''NHB'') 2006 and 2009 survey of honey blends indicate that that there is no evidence that consumers do, or are able to, distinguish between honey blends with more than 50 percent or less than 50 percent honey.[20] Additionally, Petitioners cite the affidavit of an industry expert which states that both industrial users and retail consumers' expectations for honey-rice syrup blends with more or less than 50 percent honey are identical.[21]

C. Ultimate Use of Merchandise

Petitioners allege that the expectations of ultimate purchasers are identical for honey-rice syrup blends regardless of whether they contain more or less than 50 percent honey. Petitioners cite to Anhui Hundred's scope ruling request letter and the U.S. International Trade Commission (''ITC'') Investigation Report to support their argument that both products will be used as honey-based sweeteners.[22] Additionally, Petitioners cite as support for their argument an affidavit in which a honey industry expert states that honey-rice syrups composed of either more or less than 50 percent honey have identical ultimate uses.[23]

D. Channels of Trade

Petitioners maintain that honey-rice syrup blends and subject merchandise would both be sold to industrial users or health food stores for use as a honey-based sweetener in the same channels of trade.[24] Petitioners note that both in-scope and out-of-scope honey-rice syrup blends are sold in identical containers on Anhui Freedom Foods' Web site, a PRC seller of ''syrup honey.''[25] Petitioners also cite to an affidavit in which a honey industry expert states that regardless of honey content, honey blends are sold to industrial bakers, health food stores, grocery stores, and in traditional honey bear bottles.[26]

E. Advertisement and Display of Product

Petitioners maintain that honey syrups of varying contents are advertised identically. Petitioners contend that any honey/syrup mixtures are sold primarily in barrels, and displayed with the honey content displayed on the packaging.[27] Petitioners cite the Web site of Anhui Freedom Foods as evidence that honey blends ranging from 10 percent honey to 70 percent honey are labeled and packaged in identical containers.[28]

F. Commercial Availability

Petitioners state that, at the time of the investigation, honey-rice syrup blends did not exist in commercial quantities. Petitioners cite the ITC Investigation Report which does not specifically mention honey-rice syrup blends in its discussion of artificial honey, while it did list refined sugar and high-fructose corn syrup, as evidence that honey-rice syrup blends were not contemplated at the time of the *Order.*[29] Additionally, Petitioners note that the two previous investigations of honey imports from the PRC did (one of which specifically covered artificial honey and preparations of natural honey, and one which was limited to artificial honey containing more than 50 percent honey by weight) did not specifically mention the term ''rice syrup.''[30] Petitioners allege that the ITC

[10] *See* section 781(d)(1)(A) of the Act.

[11] *See* section 781(d)(1)(B) of the Act.

[12] *See* section 781(d)(1)(C) of the Act.

[13] *See* section 781(d)(1)(D) of the Act.

[14] *See* section 781(d)(1)(E) of the Act.

[15] *See Later–Developed Merchandise Anti-circumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 71 FR 32033, 32035 (June 2, 2006).

[16] *See* Petitioners' Request at 28, 43, Exhibit 2 at I–5, and Exhibit 3 at 2–3.

[17] *See* Petitioners' Questionnaire Response at 29–32. Specifically, Petitioners cite the test report provided by Anhui Hundred, the U.S. Customs and Border Protection (''CBP'') test report for JLS Trading, Inc. provided in Petitioners' Request, and the Eurofins Test Report in Anhui Hundred's Scope Request.

[18] *See* Petitioners' Request at 30.

[19] *Id.,* at 30, 44 and Exhibit 5. *See also* Petitioners' Questionnaire Response at 21–24, for additional examples of other PRC suppliers which emphasize honey in their advertising.

[20] *See* Petitioners' Questionnaire Response at 19.

[21] *See id.,* at 19–20, and affidavit of David Allibone, President and CEO of the Sioux Honey Association, at Exhibit 4.

[22] *See* Petitioners' Request at 29–30, and 43–4.

[23] *Id.,* at 24 and Exhibit 4.

[24] *See id.* at 31 and 44.

[25] *See* Petitioners' Questionnaire Response at 24–25.

[26] *See id.,* at 24–25, and Exhibit 4.

[27] *See* Petitioners' Request at 31 and 44.

[28] *See* Petitioners' Questionnaire Response at 25 and Exhibit 17.

[29] *See id.,* at 6.

[30] Specifically, Petitioners cite the ITC's 1993–94 ''safeguard'' investigation, *Honey from China,* Inv.

did not include rice syrup as a non-honey sweetener in the 2000–2001 investigation because only refined sugar and high fructose corn syrup were known to be mixed with honey, making them ''honey adulterants,'' and that the existence of these sweeteners is not evidence of a *bona fide* U.S. market for blends with rice syrup.[31]

Petitioners also state that PIERS ship manifest summaries show that there were no imports of honey-rice syrup blends from the PRC until August 2004.[32] Additionally, according to the affidavit of a honey industry expert, who is also CEO of petitioner Sioux Honey Association, there were no commercially available honey-rice syrup blends being marketed in the United States at the time of the investigation.[33] Petitioners also note that several studies on honey adulteration published from 1991 through 2002 do not mention rice syrup as an adulterant, and argue that this is evidence that honey-rice syrup blends were not available at the time of the investigation.[34] Finally, Petitioners state that the NHB's 2002 Honey Attitude and Usage Study, which was published ten months after the *Order* went into effect, does not refer to any blend of honey with any non-honey sweeteners, indicating that such blends were not commercially available at that time.[35]

Comments by Anhui Hundred

Anhui Hundred contends that honey-rice syrup blends are not newly developed products intended to circumvent the *Order.* Anhui Hundred argues that both artificial honey and food preparations existed before the initiation of the investigation, yet to its knowledge, neither Petitioners nor the Department attempted to include food preparations within the scope, and it is clear from the scope's language that a deliberate decision was made to include only food preparations of over 50 percent honey in the scope.[36] Additionally, Anhui Hundred argues that honey-rice syrup is not a substitute for pure honey, and to the best of its knowledge, honey-rice syrup is sold exclusively to commercial bakeries and process food manufacturers in large quantities.[37]

Initiation of Later-Developed Merchandise Antidumping Duty Anticircumvention Inquiry

Based on the information provided by Petitioners described above, the Department finds that there is sufficient basis to initiate an antidumping duty anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether honey-rice syrup blends are later-developed products that can be considered subject to the *Order.* While the Department notes that Anhui Hundred has raised legitimate questions with respect to whether rice-syrup is a later-developed product within the meaning of section 781(d) of the Act, these questions do not demonstrate that the Department should not initiate this anticircumvention inquiry. Instead, because the Petitioners have provided the Department with adequate evidence as outlined above, the Department is initiating a later-developed merchandise anticircumvention inquiry and the Department will provide interested parties, including Anhui Hundred, an opportunity to provide evidence and argument within the context of that inquiry.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues an affirmative preliminary determination, we will instruct CBP to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of this inquiry.

We intend to notify the ITC in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C), if applicable. The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation notice.

This notice is published in accordance with section 781(d) of the Act and 19 CFR 351.225(i) and (j).

Dated: December 7, 2011.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–31937 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–DS–P

No. TA–406–13, USITC Pub. 2715 (Jan. 1994), and the 1994–95 AD investigation, *Honey from the People's Republic of China,* Inv. No. 731–TA–722 (Preliminary), USITC Pub. 2832 (Nov. 1994). *See* Petitioners' Questionnaire Response at 3–5.

[31] *Id.,* at 6.

[32] *Id.,* at 11.

[33] *Id.,* at 13, and Exhibit 4 at paragraph 2.

[34] *Id.,* at 14–16.

[35] *Id.,* at 16–18.

[36] *See* Anhui Hundred Response at 3.

[37] *Id* ., at 5.

POSTAL REGULATORY COMMISSION

[Docket No. N2012–1; Order No. 1027]

Nationwide Change in Postal Delivery Service Standards

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request for an advisory opinion on an initiative involving examination of the continuation of service at postal retail locations. This document invites public comments on the request and addresses several related procedural steps.

DATES: 1. *Notices of intervention are due:* December 30, 2011, 4:30 p.m. Eastern Time.

2. *Prehearing conference:* January 4, 2012, at 10 a.m. (Commission hearing room, 901 New York Ave., NW 20268–0001, Suite 200).

ADDRESSES: Submit notices of intervention electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On December 5, 2011, the United States Postal Service (Postal Service) filed a request with the Postal Regulatory Commission (Commission) for the Commission to issue an advisory opinion under 39 U.S.C. 3661(c) regarding whether certain changes in the nature of postal services conform to the applicable polices of title 39.[1]

The Postal Service proposes to revise service standards for First-Class Mail,

[1] Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, December 5, 2011 (Request).

Periodicals, Package Services, and Standard Mail. The most significant revisions would eliminate the expectation of overnight service for significant portions of First-Class Mail and Periodicals. Within First-Class Mail, 3-digit origin-destination pair service standards would be modified to move overnight delivery to 2-day delivery, and to move a portion of 2-day delivery to 3-day delivery. *Id.* at 1. Although changes to service standards for competitive products such as Express Mail and Priority Mail are not being proposed, the realignment of 3-digit origin-destination pairs could also affect those products. *Id.* at 7.

The Postal Service asserts the service standard changes would allow for a significant consolidation of the Postal Service's processing and transportation networks. It contends the consolidated networks would better match current and projected mail volumes and result in substantial cost savings. *Id.* at 1–2. The Postal Service projects this effort will result in costs savings of $2.1 billion annually. *Id.* at 4.

Concurrent with this request for an advisory opinion, the Postal Service is separately pursuing modification of the market dominant product service standards appearing at 39 CFR parts 121 and 122. *Id.* at 6. The Postal Service asserts that no changes to service standards will be implemented until completion of the independent rulemaking anticipated for completion in March 2012. *Id.* at 14. Thus, the Postal Service realistically anticipates there will be no changes to service standards associated with the request for an advisory opinion until the first half of April 2012, at the earliest. *Id.*

The Postal Service's direct case. The Request is accompanied by 13 pieces of testimony, 33 public library references, and 6 non-public library references. The Postal Service explains that the circumstances under which it seeks this advisory opinion are explained in the Direct Testimony of David E. Williams on behalf of the United States Postal Service (USPS–T–1).

The modeling performed to study potential network changes as well as delivery, mail processing, maintenance and transportation operational changes that are being planned are explained in the Direct Testimony of Stephen Masse on behalf of the United States Postal Service (USPS–T–2), Direct Testimony of Emily R. Rosenberg on Behalf of the United States Postal Service (USPS–T–3), Direct Testimony of Frank Neri on behalf of the United States Postal Service (USPS–T–4), Direct Testimony of Dominic L. Bratta on behalf of United States Postal Service (USPS–T–5), and Direct Testimony of Cheryl D. Martin on behalf of the United States Postal Service (USPS–T–6).

The Direct Testimony of Pritha N. Mehra on behalf of the United States Postal Service (USPS–T–7) and Direct Testimony of Kevin Rachel on behalf of the United States Postal Service (USPS–T–8) discuss potential commercial mailer impacts and labor issues relating to potential cost savings.

Detailed estimates of the operational cost savings that could be achieved if the changes were in effect are provided in Direct Testimony of Marc A. Smith on behalf of the United States Postal Service (USPS–T–9) and Direct Testimony of Michael D. Bradley on behalf of the United States Postal Service (USPS–T–10).

Based upon quantitative and qualitative market research provided in Direct Testimony of Rebecca Elmore-Yalch on bhalf of the United States Postal Service (USPS–T–11), the Postal Service estimates the potential revenue loss that could result from implementing these service changes in Direct Testimony of Greg Whiteman on behalf of the United States Postal Service (USPS–T–12).

The Postal Service asserts the service changes described in this request potentially affect every sender and recipient of mail served directly by the United States Postal Service. Accordingly, the Direct Testimony of Susan M. Lachance on behalf of the United States Postal Service (USPS–T–13) summarizes the tools and techniques that the Postal Service has employed and will continue to employ for communicating effectively vital information to customers in a timely fashion.

The Request and all supporting public materials are on file in the Commission's docket room for inspection during regular business hours, and are available on the Commission's Web site at *http://www.prc.gov.*

Intervention. Section 3661(c) of title 39 requires that the Commission afford an opportunity for a formal, on-the-record hearing of the Postal Service's Request under the terms specified in sections 556 and 557 of title 5 of the United States Code before issuing its advisory opinion. All interested persons are hereby notified that notices of intervention in this proceeding shall be due on or before December 30, 2011. *See* 39 CFR 3001.20 and 3001.20a. It is the Commission's intent to hold hearings for the receipt of evidence in this proceeding.

Participants are reminded that discovery directed towards the Postal Service's direct case may begin upon intervention. Participants are encouraged to begin discovery as soon as possible because the Commission anticipates a limited discovery period in this proceeding.

Further procedures. At this time, the Commission cannot anticipate the duration, or even the exact form, proceedings on this matter will take. The Postal Service proposes that the Commission convene a prehearing conference at the earliest reasonable opportunity to consider all possible ways to expedite and streamline this proceeding. *Id.* at 13 n.15. The Commission will accommodate this request by scheduling a prehearing conference for January 4, 2012, at 10 a.m. in the Commission's hearing room.

Participants who wish to offer their views on procedural issues, including a procedural schedule, may do so during the prehearing conference. At a minimum, participants should be prepared to discuss and justify the length of time necessary for discovery on the Postal Service's direct case, and an estimation of time necessary for preparation of any rebuttal testimony after the Postal Service's direct case is entered into the record at hearing. Participants also are encouraged to comment on these issues within their notices of intervention if possible.

Shortly following the prehearing conference, a procedural schedule will be issued, as well as any special procedures that may be applicable to this proceeding. The procedural schedule will be established consistent with participants' due process rights for thorough consideration of all material issues relevant to this docket.

Public Representative. Section 3661(c) of title 39 requires the participation of an ''officer of the Commission who shall be required to represent the interests of the general public.'' Christopher Laver is designated to serve as Public Representative to represent the interests of the general public in this proceeding. The Public Representative shall direct the activities of Commission personnel assigned to assist him and, at an appropriate time, shall provide the names of these employees for the record. Neither the Public Representative nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding other than in their designated capacity.

It is ordered:

1. The Commission establishes Docket No. N2012–1 to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit *en banc* in this proceeding.

3. Notices of intervention are due no later than December 30, 2011.

4. A prehearing conference is scheduled for January 4, 2012, at 10 a.m., in the Commission's hearing room.

5. Pursuant to 39 U.S.C. 505 and 3661(c), the Commission appoints Christopher Laver to represent the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–31910 Filed 12–12–11; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting a new shipper review (''NSR'') of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). The Department preliminarily determines that Thuan An Production Trading & Services Co., Ltd. (''TAFISHCO'') did not sell subject merchandise at less than normal value (''NV''). Upon completion of the final results of this NSR, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''), August 1, 2010, through January 31, 2011, for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, 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) 482–0219.

SUPPLEMENTARY INFORMATION:

Case History

On August 12, 2003, the Department published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from Vietnam.[1] On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''Act''), the Department received a properly filed NSR request from TAFISHCO. On March 31, 2011, the Department published in the **Federal Register** a notice of initiation for the NSR of certain frozen fish fillets from Vietnam covering the period August 1, 2010, through January 31, 2011.[2] Between April 5, 2011, and October 5, 2011, TAFISHCO filed responses to the Department's original and supplemental antidumping duty questionnaires. On June 23, 2011, the Department extended the deadline for parties to submit surrogate country selection comments and surrogate value (''SV'') data.[3] On August 5, 2011, the Department extended the deadline for parties to file rebuttal surrogate country and SV comments.[4] Between July 22, 2011, and August 12, 2011, the Department received surrogate country and SV comments from interested parties. On September 27, 2011, the Department published a notice extending the time period for issuing the preliminary results of this NSR to November 4, 2011.[5] On November 11, 2011, the Department published a second notice extending the time period for issuing the preliminary results of this NSR to December 5, 2011.

Period of Review

The POR is August 1, 2010, through January 31, 2011.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius*), and *Pangasius Micronemus.* Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[6] The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009). None of the

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

[2] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 76 FR 17837 (March 31, 2011).

[3] *See* Memorandum for All Interested Parties, through Matthew Renkey, Acting Program Manager Import Administration, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Request to Submit Surrogate Values and Surrogate Country Selection Comments, dated June 23, 2011.

[4] *See* Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time to Submit Rebuttal Surrogate Country and Surrogate Value Comments, dated August 5, 2011.

[5] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the New Shipper Review,* 76 FR 59658 (September 27, 2011).

[6] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

In proceedings involving NME countries, there is 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 standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in 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 amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this review, TAFISHCO submitted a complete response to the separate rates section of the Department's NME questionnaire. The evidence submitted by TAFISHCO includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding each company's operations and selection of management. The evidence provided by TAFISHCO supports a finding of a *de jure* absence of government control over each of its export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire response, TAFISHCO submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) TAFISHCO sets its own export prices independent of the government and without the approval of a government authority; (2) TAFISHCO retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) TAFISHCO's sales manager, vice director, and managing director are authorized to negotiate and bind the company in an agreement; (4) the board of directors select senior management and the factory and operations managers appoint the other management team on a less formal basis; and (5) there is no restriction on any of the company's use of export revenues. Therefore, the Department preliminarily finds that TAFISHCO has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Bona Fide Sales Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by TAFISHCO in this NSR. We found that the sale made by TAFISHCO was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by TAFISHCO, and the company's eligibility for a separate rate (*see* Separate Rate Determination section above), we preliminarily determine that TAFISHCO has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating TAFISHCO's sale of subject merchandise to the United States as an appropriate transaction for this NSR.[7]

Surrogate Country and Surrogate Values

As stated above, between July 22, 2011, and August 12, 2011, the Department received surrogate country and SV comments from interested parties.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOPs''), valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Regarding economic comparability, TAFISHCO argues that the Philippines is not economically comparable to Vietnam. However, as explained in our list of surrogate countries, the Department considers Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan all comparable to Vietnam in terms of economic development.[8] Accordingly, unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries. Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has

[7] For a more detailed discussion of this issue, *see* Memorandum to the File, From Emeka Chukwudebe, Case Analyst, Office 9, Through Matthew Renkey, Acting Program Manager, Office 9: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Thuan An Production Trading & Services Co., Ltd. (''TAFISHCO''), dated November 4, 2011.

[8] *See* Memorandum from Carole Showers, Director, Office of Policy, to Matthew Renkey, Acting Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets (''Fish Fillets'') from the Socialist Republic of Vietnam, dated May 9, 2011 (''Surrogate Country List'').

been to identify those countries which are at a level of economic development similar to Vietnam in terms of gross national income (''GNI'') data available in the World Development Report provided by the World Bank.[9] In this case, the GNI available are based on data published in 2010. The GNI levels for the list of potential surrogate countries ranged from $520 to $2,010.[10] The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between Vietnam and other countries which is not required by the statute. In contrast, by identifying countries that are economically comparable to Vietnam based on GNI, the Department provides parties with a predictable practice which is also reasonable and consistent with the statutory requirements. Identifying potential surrogate countries based on GNI data has been affirmed by the Court of International Trade (''CIT'').[11]

As we have stated in prior new shipper reviews, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.[12] In this case, we have determined to use the broader category of frozen fish fillets data as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list. Based on 2008 export data from the United Nations Food and Agriculture Organization,[13] Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan are exporters of frozen fish fillets and, thus, significant producers.

After applying the first two selection criteria, if more than one country remains, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries.[14] In this case, the whole fish input is the most significant input because it accounts for the largest percentage of NV as fish fillets are produced directly from the whole live fish. As such, we must consider the availability and reliability of the surrogate values for whole fish on the record. This record does not contain any data for whole live fish from Sri Lanka or Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, this record does contain whole fish SV data from Bangladesh, the Philippines, Indonesia, and India.

Bangladesh

TAFISHCO placed the Bangladeshi Department of Agriculture Marketing, Ministry of Agriculture, pangas price data (''DAM data'') on the record, which includes monthly price data for 2008, 2009, and 2010.[15] The Department issued two letters to the Bangladeshi Department of Agriculture Marketing requesting, among other things, more information regarding the publicly availability of the DAM data.[16] We have yet to receive a response from the Bangladeshi Department of Agriculture Marketing.

Philippines

Petitioners placed the *Fisheries Statistics of the Philippines, 2007–2009,* published by the Philippines Bureau of Agricultural Statistics, Department of Agriculture (''*Fisheries Statistics*''), on the record.[17] The Department issued a letter to the Philippines Bureau of Agricultural Statistics (''BAS''), requesting among other things, more information regarding the public availability of the *Fisheries Statistics.*[18] We received a response from the Philippines BAS, which we placed on the record.[19]

Indonesia

The Department placed on the record 2009 annual Indonesian price and quantity data from the United Nations Food and Agriculture Organization's Fisheries Global Information System (''FIGIS data'').[20]

India

TAFISHCO placed the Present Status of the Pangasius, Pangasianodon-Hypophthalmus Farming in Andhra Pradesh, India (''Pangasius Study''), on the record.[21]

Analysis

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, is contemporaneous with the POR, represents a broad-market average, is from an approved surrogate country, is tax and duty-exclusive, and is specific to the input. There is no hierarchy; it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.

First, we note that the Pangasius Study regarding India is a ''first attempt''[22] study undertaken by a professor with estimated production quantities. When compared to the other sources on the record, we find that the Pangasius Study is not an appropriate source because there is uncertainty regarding public availability and broad market average. There is no information on how the study was obtained, or on the data collection methods, making it difficult to determine public availability

[9] *See Pure Magnesium from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum (''I&D Memo'') at Comment 4.

[10] *See* Surrogate Country List.

[11] *See Fujian Lianfu Forestry Co., Ltd.* v. *United States,* 638 F. Supp. 2d 1325 (Ct. Int'l Trade 2009).

[12] *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 11847 (March 12, 2010), unchanged in *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances,* 75 FR 45468 (August 2, 2010).

[13] *See* Surrogate Country List.

[14] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

[15] *See* TAFISHCO's First Surrogate Value Submission, dated July 29, 2011, at Exhibit 13A.

[16] *See* Letter to Fahmida Akhter, Deputy Director of Market Intelligence and Statistics, Department of Agricultural Marketing, from Matthew Renkey Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011; and Letter to Siddiqur Rahman, Director of Department of Agricultural Marketing, from James C. Doyle, Office Director: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated September 13, 2011.

[17] *See* Petitioners' Surrogate Country Comments and Submission of Proposed Factor Values, dated July 29, 2011, at Exhibit 9.

[18] *See* Letter to Romeo S. Recide, Director, Bureau of Agriculture Statistics, from Matthew Renkey, Acting Program Manager: Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated June 23, 2011.

[19] *See* Memorandum to the File, from Javier Barrientos, Senior Case Analyst, Regarding Response to Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated July 15, 2011.

[20] *See* Memorandum to the File, from Alexis Polovina, Case Analyst, dated July 15, 2011.

[21] *See* TAFISHCO's First Surrogate Value Submission, dated July 29, 2011, at Exhibit 32A.

[22] *See* Pangasius Study at 1.

or if the study represents a broad market average.[23] Furthermore, the study appears to be based on estimates for one Indian state.[24] Therefore, we find that the Pangasius Study is not the most suitable source on the record for purposes of these preliminary results.

TAFISHCO claims that the Philippines' *Pangasius* industries receive government assistance, in the forms of techno-farms and education, and should, therefore, be disregarded as a surrogate country. However, the Department's practice is to exclude data from consideration only when the record evidence demonstrates that the alleged subsidy programs constituted countervailable subsidies.[25] In this case, as we have found in prior reviews, there is no record evidence that the subsidies alleged by TAFISHCO constitute countervailing subsidies.

With respect to the DAM data, *Fisheries Statistics,* and the FIGIS data, we note that all are from approved surrogate countries, sufficiently specific to the input in question, tax and duty exclusive, and contemporaneous with the POR.

As noted above, Petitioners have raised concerns regarding the public availability of the DAM data. The Department issued letters to both the Bangladeshi Department of Agriculture Marketing and the Philippines BAS, requesting among other things, more information regarding the public availability of the DAM data and regarding the pricing data in the *Fisheries Statistics.*[26] While we received a response from the Philippines BAS, we have yet to receive a response from the Bangladeshi Department of Agriculture Marketing, and are therefore, at this time, unable to independently ascertain and confirm the public availability of the DAM data.

As a result of the uncertainty regarding public availability of the DAM data, we find that Bangladesh does not provide the best available information with respect to valuation of whole live fish for purposes of these preliminary results. Therefore, the FIGIS data and the *Fisheries Statistics* remain. When considering specificity to the input, as we have found in prior reviews, the *Fisheries Statistics* are specific to the species, *Pangasius Hypothalmus.*[27] As noted above, the FIGIS data indicate specificity only to the genus level, *Pangasius;* however, the record also contains a 2005 World Wildlife Fund article indicating that Indonesia is the second largest producer of *Pangasius* behind Vietnam, and that the majority of farmed *Pangasius* is that of *Pangasianodon hypothalamus.* With respect to broad-market average, the FIGIS data indicate that the Indonesian *Pangasius* industry has grown in size every year since 2006, to 109,685 MT, while the survey size of the *Fisheries Statistics* now represents only 34.34 MT for 2009. While we note the FIGIS data only contain one data point for the whole country, this one data point represents a significant volume. Additionally, the observations the Department made in the previous reviews with respect to the *Fisheries Statistics,* and clearly explained in the I&D Memos,[28] still remain, and we note these observations do not apply to the FIGIS data. Finally, with respect to contemporaneity, given that the yearly data for 2009 is not so far removed from the POR for this NSR, we do not find contemporaniety to be an issue in selecting Indonesia as the primary surrogate country in lieu of either the Philippines or Bangladesh.

Based on the analysis above, we find that the FIGIS data represent a more reliable broad-market average for purposes of valuing whole live fish. Therefore, for the preliminary results, the Department will select Indonesia as the primary surrogate country. We recognize, with respect to determining surrogate financial ratios, that we have no useable financial statements on the record at this time with respect to Indonesia. As both Bangladesh and the Philippines satisfy the remaining criteria for selection of surrogate country and because the record contains more numerous sources from both Bangladesh and the Philippines, we find them to be suitable secondary surrogate countries. In particular, we intend to rely on financial statements from Bangladesh for purposes of these preliminary results. The record contains three financial statements from Bangladesh, including one from a processing company (Gemini Sea Food) that matches the production experience of TAFISHCO. Thus, for purposes of these preliminary results, we intend to use the financial statements from Gemini Sea Food to calculate the financial ratios.

We hereby invite parties to submit additional comments regarding surrogate country selection to be considered for the final results.[29]

Fair Value Comparisons

To determine whether sales of the subject merchandise made by TAFISHCO to the United States were at prices below NV, we compared the company's export price (''EP'') to its NV, as described below.

U.S. Price

For TAFISHCO's EP sale, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made

[23] Other than stating the report was compiled over 15 days based on farmer interviews and farm visits, there is no information regarding the data collection methods (*i.e.,* how the farms were selected, the number of farms selected, and who collected the data).

[24] *See* Pangasius Study at 28.

[25] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 19174 (April 17, 2007) and accompanying I&D Memo at Comment 1; *See also Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews,* 72 FR 58641(October 16, 2007) and accompanying I&D Memo at Comment 2.

[26] *See* Letter to Romeo S. Recide, Director, Bureau of Agriculture Statistics, from Matthew Renkey, Acting Program Manager: Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated June 23, 2011; Letter to Fahmida Akhter, Deputy Director Department of Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011, and; Letter to Siddiqur Rahman, Director of Department of Agricultural Marketing, from James C. Doyle, Office Director: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated September 13, 2011.

[27] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review,* 76 FR 15941 (March 22, 2011), and accompanying I&D Memo (''*6th AR Final*''). *See also, Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty New Shipper Reviews,* 76 FR 35403 (June 17, 2011), and accompanying I&D Memo (''*09–10 NSR Final*'').

[28] For complete details regarding the Department's observations, *see 6th AR Final* I&D Memo at 9–14, and *09–10 NSR Final* I&D Memo at 10–15.

[29] Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying I&D Memo at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

prior to importation. To calculate EP, we deducted foreign inland freight, foreign cold storage, foreign brokerage and handling, foreign containerization, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOP reported by TAFISHCO pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Factor Valuation

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by TAFISHCO for the POR. The Department valued the processing FOPs using publicly available Indonesian and Bangladeshi SVs. To calculate NV, the Department valued TAFISHCO's reported per-unit factor quantities using publicly available Indonesian, Bangladeshi, and Indian SVs. Indonesia is our primary surrogate country source from which to obtain data to value inputs, and when data were not available from Indonesia, we used Bangladeshi and Indian sources. In selecting SVs, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to SVs using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[30] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[31] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For further detail, *see* Memorandum to The File, through Matthew Renkey, Acting Program Manager, Import Administration, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated December 5, 2011 (''Surrogate Values Memo'').

Labor

Section 773(c) of the Act provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise.[32]

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). However, on May 14, 2010, the Court of Appeals for the Federal Circuit (''CAFC''), in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest*''), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.[33]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[34] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

In this review, however, the Department has selected Indonesia as the surrogate country. Because Indonesia does not report labor data to the ILO under Chapter 6A, for these preliminary results, we are unable to use ILO's Chapter 6A data to value TAFISHCO's labor wage and instead will use industry-specific wage rate using earnings or wage data reported under ILO's Chapter 5B. The Department finds the two-digit description under ISIC–Revision 3 (''Manufacture of Food Products and Beverages'') to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 5B of the Yearbook, the Department

[30] *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong.,* 2nd Sess. (1988) (''*OTCA 1988*'') at 590.

[31] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010) and accompanying I&D Memo at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005) and accompanying I&D Memo at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying I&D Memo at 17, 19–20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination,* 66 FR 50410 (October 3, 2001) and accompanying I&D Memo at 23.

[32] *See* section 773(c)(4) of the Act.

[33] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment,* 76 FR 9544 (February 18, 2011).

[34] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

calculated the labor input using labor data reported by Indonesia to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated wage rate is 4,568.71 Indonesian Rupiahs per hour. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Values Memo.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of the Review

The Department preliminarily finds that the following margin exists for the period August 1, 2010, to January 31, 2011.

Exporter	Producer	Weighted-average margin (dollars per kilogram)
Thuan An Production Trading & Services Co., Ltd.	Thuan An Production Trading & Services Co., Ltd	0.00

Public Comments

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.[35] If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.[36] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[37] The Department intends to issue the final results of this new shipper review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from TAFISHCO entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by TAFISHCO, the cash deposit rate will be $0.00/Kg.; (2) for subject merchandise exported by TAFISHCO but not manufactured by TAFISHCO, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.11 per kilogram); and (3) for subject merchandise manufactured by TAFISHCO, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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.

We are issuing and publishing this determination in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: December 5, 2011.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2011–31934 Filed 12–12–11; 8:45 am]

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[35] *See* 19 CFR 351.310(c).

[36] *See* 19 CFR 351.309(c); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

[37] *See* 19 CFR 351.309(d).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA860

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of application for scientific research permit 16608 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from the U.S. Bureau of Reclamation (USBR) in Sacramento, CA. This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on January 12, 2012.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via email or the Internet. The applications and related documents

are available for review, by appointment, for permit 16608: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814 (Ph: (916) 930–3600, Fax: (916) 930–3629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301) 713–1401.

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number: (916) 930–3606, or email: *Shirley.Witalis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the federally-listed threatened California Central Valley (CCV) steelhead (*Oncorhynchus mykiss*) distinct population segment.

New Application Received

The USBR, in affiliation with the San Joaquin River Restoration Program (SJRRP), requests a 3-year permit to conduct the SJRRP Steelhead Monitoring Plan (SMP) in the San Joaquin River upstream of the Merced River confluence, in the Central Valley, California.

The SJRRP intends to research the presence or absence of CCV steelhead within the SJRRP restoration area, defined as the mainstem San Joaquin River from Friant Dam to the confluence of the Merced River. The SMP focuses monitoring efforts on the CCV steelhead adult migration from mid-December through mid-March when the SJRRP Interim Flows Project is implemented to maintain sufficient river conditions for fish in the SJRRP restoration area.

The SMP includes several sampling methodologies in response to monitoring challenges in the restoration area. Trammel nets will be deployed to drift during short durations in high velocity water in areas where adult steelhead are most likely to be present. Raft mounted electrofishers will be used to navigate through shallow water (*e.g.,* backwater sloughs, around in-river structures, under bypasses) locations where other sampling methodologies are ineffective. Fyke nets with wing walls and fish traps will be deployed for effective sampling during pulse flows, flood releases, and high riverine turbidity. Monitoring staff will employ best management practices and follow NMFS electrofishing guidelines to minimize sampling effects on fish.

All captured steelhead will be recorded, measured, identified as to gender, sampled for scales and tissues, and checked for injuries and the presence of tags. Additionally, fish will be Floy-tagged with a unique identification number to document any recaptures that may occur in the study area. Sampled fish will then be transported by tank truck equipped with oxygen diffusers, and acclimated to river temperature prior to release into suitable habitat downstream of the mouth of the Merced River.

The SMP will monitor continuously from December 1 through March 31 throughout the study period. USBR requests authorization for an estimated annual non-lethal take of 6 steelhead by fyke net, 10 steelhead by electrofisher, and 2 steelhead by trammel net. No indirect mortality is anticipated during fish capture, sampling and release activities carried out for the study.

Dated: December 7, 2011.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–31956 Filed 12–12–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA863

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 28 pre-data workshop webinar for Gulf of Mexico and South Atlantic Spanish mackerel and cobia.

SUMMARY: The SEDAR 28 assessments of the Gulf of Mexico and South Atlantic stocks of Spanish mackerel and cobia will consist of a series of workshops and webinars: A Data Workshop and webinar, an Assessment Workshop and webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 28 pre-data workshop webinar will be held Wednesday, January 11, 2012, from 1 p.m. to 5 p.m. The established time may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Kari H. Fenske at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Kari H. Fenske, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *Kari.Fenske@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing a workshop and webinars, (3) Review Workshop. The product of the

Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

During the SEDAR 28 pre-data workshop webinar participants will present summary data, and discuss data needs and treatments.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: December 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–31886 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA864

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Whiting Oversight and Advisory Panel, in January, 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, January 18, 2012 at 10 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903: *telephone:* (401) 861–8000; *fax:* (401) 861–8002.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The advisors and committee will review and revise Draft Amendment 19 which proposes to implement Annual Catch Limits and accountability measures. The committee may also identify preferred alternatives. If approved at the January 31–February 2 Council meeting, public hearings will be held on the final Draft Amendment 19 document. If sufficient time exists at this meeting, the advisors and committee may also discuss limited access issues that will be considered in the next amendment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–31933 Filed 12–12–11; 8:45 am]

BILLING CODE 3510–22–P

COUNCIL ON ENVIRONMENTAL QUALITY

Draft Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability, draft guidance on improving the process for preparing efficient and timely environmental reviews under the National Environmental Policy Act.

SUMMARY: The Council on Environmental Quality (CEQ) is issuing its draft guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act for public review and comment. The National Environmental Policy Act (NEPA) and CEQ Regulations implementing NEPA provide numerous techniques for preparing efficient and timely environmental reviews. CEQ is issuing this guidance for Federal departments and agencies to emphasize and clarify these techniques, consistent with a thorough and meaningful environmental review and keeping in mind the following basic principles: (1) NEPA encourages simple, straightforward, and concise reviews and documentation that are proportionate to and effectively convey the relevant considerations in a timely manner to the public and decisionmakers, while comprehensively addressing the issues presented; (2) NEPA should be integrated into project planning rather than be an after-the-fact add-on; (3) NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference; (4) Early and well-defined scoping can assist in focusing environmental reviews on

appropriate issues that would be meaningful to a decision on the proposed action; (5) Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews; and (6) Agencies should respond to comments in proportion to the scope and scale of the environmental issues raised. This guidance applies to the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) consistent with legal precedent and agency NEPA experience and practice. This guidance does not change or substitute for any law, regulations, or any other legally binding requirement. Rather, it provides CEQ's interpretation of existing regulations promulgated under NEPA.

DATES: CEQ must receive comments on or before January 27, 2012.

ADDRESSES: The NEPA Draft Guidance is available at *http://www.whitehouse.gov/administration/eop/ceq/initatives/nepa.* Comments on the NEPA Draft Guidance ''Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act'' should be submitted electronically at *http://www.whitehouse.gov/administration/eop/ceq/initatives/nepa*, or in writing to The Council on Environmental Quality, ATTN: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight, 722 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION, CONTACT: The Council on Environmental Quality (*Attn:* Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight), 722 Jackson Place NW., Washington, DC 20503. *Telephone:* (202) 395–5750.

SUPPLEMENTARY INFORMATION: Enacted in 1970, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370, is a fundamental tool used to harmonize our environmental, economic, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before deciding to adopt proposals or take action.[1] Our ongoing review of the CEQ Regulations confirms the benefits of integrating planning and environmental reviews, coordinating multi-agency or multi-governmental reviews and approvals, and setting clear schedules for preparing EAs and EISs. This guidance promotes a sufficient and effective process that is tailored to avoid excessive burden. This guidance also reflects CEQ's continuing commitment to implement its Plan for Retrospective Review of Existing Regulations (Plan) in accordance with Executive Order 13563.[2]

The guidance addresses numerous individual issues associated with the NEPA review process in a manner that meets the above-stated goals. The individual issues addressed include the use of concise NEPA documents focused on particular environmental issues, the integration of NEPA into preliminary parts of the planning process, and a more prevalent role of scoping in the development of NEPA reviews. The guidance also advises agencies to collaborate with other government bodies—including state, local, or Tribal—and coordinate reviews and documents with other laws to allow for greater efficiency. It further explains the adoption of other Federal agency reviews, the procedure and ability to incorporate information contained in other documents into a review, and the role of reasonable and proportionate responses to comments within the NEPA process. Finally, the guidance proposes agencies utilize appropriate time limits to promote efficiency. Thus, this guidance offers concrete tools for each step of the NEPA review process, providing, in sum, a more thorough, efficient, and informed analysis of environmental issues.

This guidance provides CEQ's interpretation of existing regulations promulgated under NEPA, and does not change agencies' fundamental obligations with regard to NEPA and the CEQ Regulations. The draft guidance document is provided below and is available at the Council on Environmental Quality Web site at *http://www.whitehouse.gov/administration/eop/ceq/initatives/nepa.*

For the reasons stated above, CEQ is seeking public comment on the following draft guidance, entitled ''Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act.''

The Draft Guidance: The National Environmental Policy Act (NEPA) provides for a wide array of tools for the efficient and timely conduct of environmental reviews. The Council on Environmental Quality (CEQ) Regulations implementing NEPA contain a number of opportunities for achieving this goal. CEQ is issuing this guidance for Federal departments and agencies to emphasize and clarify those opportunities, fully consistent with a thorough and meaningful environmental review. The guidance also makes it clear that many of the provisions of the CEQ Regulations which specifically refer to an Environmental Impact Statement (EIS) can also apply to an Environmental Assessment (EA). This guidance applies to the preparation of an EA or an EIS consistent with legal precedent and agency NEPA experience and practice.

In conducting all environmental reviews pursuant to NEPA, agencies should use the methods set out in the CEQ Regulations mindful of the following basic principles:

- NEPA encourages simple, straightforward, and concise reviews and documentation that are proportionate to and effectively convey the relevant considerations in a timely manner to the public and decisionmakers while comprehensively addressing the issues presented;
- NEPA should be integrated into project planning rather than be an after-the-fact add-on;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference;
- Early and well-defined scoping can assist in focusing environmental reviews to appropriate issues that would be meaningful to a decision on the proposed action;
- Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should respond to comments in proportion to the scope and scale of the environmental issues raised.

This guidance also reflects CEQ's continuing commitment to implement its Plan for Retrospective Review of Existing Regulations (''Plan'') in accordance with Executive Order 13563.[3] Our ongoing review of the CEQ Regulations confirms the benefits of integrating environmental reviews, coordinating multi-agency or multi-governmental reviews and approvals, and setting clear schedules for preparing EAs and EISs. This guidance promotes

[1] A discussion of NEPA applicability is beyond the scope of this guidance. For more information see CEQ, The Citizen's Guide to the National Environmental Policy Act, available at *ceq.hss.doe.gov/nepa/Citizens_Guide_Dec07.pdf.*

[2] ''Improving Regulation and Regulatory Review,'' Exec. Order 13,563, 76 FR 3821 (January 21, 2011), *available at http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

[3] ''Improving Regulation and Regulatory Review,'' Exec. Order 13,563, 76 FR 3821 (January 21, 2011), *available at http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

a sufficient and effective process that is tailored to avoid excessive burden. This guidance provides CEQ's interpretation of existing regulations promulgated under NEPA, and does not change agencies' obligations with regard to NEPA and the CEQ Regulations.[4]

Introduction and Steps to Date: CEQ was created by NEPA in 1970 and is charged with overseeing NEPA implementation by Federal agencies. In 1978, CEQ issued the CEQ Regulations.[5] From time to time, CEQ issues guidance for the Federal agencies, to clarify the requirements and applicability of various provisions of NEPA and the CEQ Regulations, and to ensure that those requirements can be met in a timely and effective fashion.[6] These guidance documents represent CEQ's interpretation of NEPA, which the U.S. Supreme Court has said is ''entitled to substantial deference.'' [7]

NEPA requires Federal agencies to consider the potential environmental consequences of their proposed action, and any reasonable alternatives, before deciding whether and in what form to take an action. Environmental reviews prepared under NEPA should provide a decisionmaker with relevant and timely information, and the CEQ Regulations make it clear that ''NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.'' [8]

Complying with NEPA can take three forms, that of a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement:

- Categorical Exclusion (CE): A CE is a category of actions that is expected not to have individually or cumulatively significant environmental impacts.[9] Each agency's procedures for implementing NEPA sets out that agency's CEs, which are established after CEQ and public review. A proposed action within such a category is excluded from further analysis and documentation in an Environmental Assessment or an Environmental Impact Statement.[10] A CE can be concluded with a determination that a proposed action falls within one of the categories of actions and there are no extraordinary circumstances indicating further environmental review is warranted.
- Environmental Assessment (EA): When a CE is not appropriate and the agency has not determined whether the proposed action will cause significant environmental effects, then an EA is prepared. If, as a result of the EA, a Finding of No Significant Impact (FONSI) is appropriate, then the NEPA review process is completed with the FONSI, including documentation of its basis in the EA; otherwise an Environmental Impact Statement is prepared.[11]
- Environmental Impact Statement (EIS): The most intensive level of analysis is the Environmental Impact Statement, which is typically reserved for the analysis of proposed actions that are expected to result in significant environmental impacts. When an EIS is prepared, the NEPA review process is concluded when a record of decision (ROD) is issued.[12]

CEQ has been working with agencies to modernize and reinvigorate NEPA implementation in several ways. CEQ issued guidance on the development and use of Categorical Exclusions in November 2010.[13] Properly developed and applied, Categorical Exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require a more resource-intensive EA or EIS. The use of Categorical Exclusions can reduce paperwork and delay for proposed actions that do not raise the potential for significant environmental effects.[14] In January 2011, CEQ provided guidance that specifically addressed the appropriate use of a FONSI to conclude the NEPA review process relying on an EA. A mitigated FONSI is appropriate when mitigation is used to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS.[15] In addition, in May 2010, CEQ issued guidance on ensuring efficient and expeditious compliance with NEPA when agencies must take exigent action to protect human health or safety and valued resources in a timeframe that does not allow sufficient time for the normal NEPA process.[16]

In August 2011 the President called for further steps to enhance the efficient and effective permitting and environmental review of infrastructure development ''through such strategies as integrating planning and environmental reviews; coordinating multi-agency or multi-governmental reviews and approvals to run concurrently; setting clear schedules for completing steps in the environmental review and permitting process; and utilizing information technologies to inform the public about the progress of environmental reviews as well as the progress of Federal permitting and review processes.''[17] This guidance sets forth straightforward ways by which the CEQ Regulations, properly understood and applied, support these strategies.

1. *Concise NEPA Documents:* Agencies are encouraged to concentrate on environmental analysis in their EAs and EISs, not to produce an encyclopedia of all applicable information.[18] Environmental analysis should focus on significant issues, discussing insignificant issues only briefly.[19] Impacts should be discussed in proportion to their significance, and if the issues are not deemed significant there should be only enough discussion to show why more study is not warranted.[20] Scoping,[21] incorporation by reference,[22] and integration of other

[4] This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulations, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory terminology such as ''guidance,'' ''recommend,'' ''may,'' ''should,'' and ''can,'' is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as ''shall,'' ''must,'' and ''required'' is intended to describe controlling requirements under NEPA and the CEQ Regulations, but this document does not establish legally binding requirements in and of itself.

[5] 40 CFR parts 1500–1508 (The Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations), *available on http://www.nepa.gov* at *ceq.hss.doe.gov/ceq_regulations/regulations.html*).

[6] These guidance documents are available online at *ceq.hss.doe.gov/ceq_regulations/guidance.*

[7] *Andrus* v. *Sierra Club,* 442 U.S. 347, 358 (1979).

[8] 40 CFR 1500.1(c).

[9] Categorical Exclusions can also be created legislatively.

[10] 40 CFR 1508.4, 1500.5(k).

[11] 40 CFR 1508.9.

[12] 40 CFR 1505.2.

[13] CEQ Memorandum, ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act,'' November 23, 2010, *available at ceq.hss.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf.*

[14] 40 CFR 1500.4(p) (recommending use of categorical exclusions as a tool to reduce paperwork), 1500.5(k) (recommending categorical exclusions as a tool to reduce delay).

[15] CEQ Memorandum, ''Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,'' January 14, 2011, *available at ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.*

[16] CEQ Memorandum, ''Emergencies and the National Environmental Policy Act,'' May 12, 2010, *available at ceq.hss.doe.gov/ceq_regulations/Emergencies_and_NEPA_Memorandum_12May2010.pdf.*

[17] Presidential Memorandum, ''Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review'' August 31, 2011, available at *http://www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more.*

[18] 40 CFR 1500.4(b), 1502.2(b).

[19] 40 CFR 1502.2(c); *see also* 40 CFR 1502.2(a) (''Environmental impact statements shall be analytic rather than encyclopedic.'').

[20] 40 CFR 1502.2(b).

[21] 40 CFR 1500.4(g).

[22] 40 CFR 1500.4(j).

environmental analyses[23] are additional methods that may be used to avoid redundant or repetitive discussion of issues.[24]

All NEPA environmental documents, not just EISs, should be written in plain language,[25] follow a clear format, and emphasize important portions of the impact analysis over mere background material. Clarity and consistency ensure that the substance of the agency's analysis is understood clearly, avoiding unnecessary confusion or risk of litigation that could result from an ambiguous or opaque analysis. The CEQ Regulations indicate that the text of a final EIS that addresses the purpose and need, alternatives, affected environment, and environmental consequences should normally be less than 150 pages and a final EIS for proposals of unusual scope or complexity should normally be less than 300 pages.[26]

In light of the growth of environmental requirements since the publication of the CEQ Regulations, and the desire to use the EIS to address, via integration, those requirements, it is recognized that there will be a range of appropriate lengths of EISs. Nevertheless, agencies should keep EISs as concise as possible (continuing to relegate relevant studies and technical analyses to appendices) and no longer than necessary to comply with NEPA and the other legal and regulatory requirements being addressed in the EIS, and to provide decision makers and the public with the information they need to assess the significant environmental effects of the action under review. Length should vary with the number, complexity and significance of potential environmental problems.[27]

Similarly, the CEQ guidance issued in 1981 indicated that 10–15 pages is generally appropriate for EAs.[28] This guidance must be balanced with the requirement to take a hard look at the impacts of the proposed action. As with EISs, an EA's length should vary with the scope and scale of potential environmental problems, rather than just with the scope and scale of the proposed action.[29] The EA should be no more elaborate than necessary to fulfill the functions and goals set out in the CEQ Regulations: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS; (2) aid an agency's compliance with NEPA when no EIS is necessary, *i.e.,* the EA helps to identify and analyze better alternatives and mitigation measures; and (3) facilitate preparation of an EIS when one is necessary.[30]

2. *Early NEPA Integration in Planning:* An agency should first consider integrating the NEPA process into planning when it structures its internal process for developing a proposed policy, program, management plan, or project. Agencies must integrate the NEPA process into their planning at the earliest possible time to ensure that planning and decisions reflect environmental values, avoid delays later in the process, and anticipate and attempt to resolve potential issues.[31] NEPA should not become an after-the-fact process that justifies decisions that have entirely, or in large part, already been made.[32]

The CEQ Regulations emphasize early NEPA planning in the context of an EIS. The scoping process can be used before a notice of intent to seek useful information on a proposal from agencies and the public.[33] For example, agencies can commence the process to prepare an EIS during the early stages of development of a proposal, to ensure that the environmental analysis can be completed in time for the agency to consider the final EIS before making a decision on the proposal.[34] Further, an agency shall prepare an EIS so that it can inform the decisionmaking process in a timely manner ''and will not be used to rationalize or justify decisions already made.''[35]

If agencies are to prepare efficient EAs, then they should adhere to these same principles and ensure that the EA is prepared in conjunction with the development of the proposed action, and in time to inform the public and the decisionmaker. Agencies should review their NEPA implementing procedures as well as their NEPA practices to ensure that NEPA is integrated into overall project management to the fullest extent possible whether the agencies are preparing an EA or an EIS.

The CEQ Regulations call upon agencies to provide for situations where the initial planning process is in the hands of an applicant or other non-Federal entity.[36] The Regulations require Federal agencies to address these situations in their NEPA implementing procedures.[37] Consequently, agencies that have a reasonably foreseeable role in actions that are initially developed by private applicants or other non-Federal entities must plan for those situations. The NEPA implementing procedures for such agencies must provide access to designated staff or the policies that can inform applicants and other non-Federal

[23] 40 CFR 1500.4(k).

[24] *See generally* 40 CFR 1502.2 (EISs should be written in plain language so that decisionmakers and the public can understand them).

[25] 40 CFR 1502.8.

[26] 40 CFR 1502.7.

[27] 40 CFR 1502.2(c) (length should vary first with potential environmental problems and then with project size).

[28] CEQ Memorandum to Agencies, ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (Question and Answer 36a), March 16, 1981, *available at http://ceq.hss.doe.gov/nepa/regs/40/30–40.HTM #36.* Note that at the time of this memorandum CEQ was of the opinion that mitigated Findings of No Significant Impact were only appropriate if the mitigation measures were imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal (Question & Answer 40). CEQ has since published guidance accepting mitigated FONSIs as another means of efficiently concluding the NEPA process without producing an EIS (''Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,'' November 23, 2010, *available at http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.*

[29] 40 CFR 1508.9 (The EA is ''a concise public document''); 40 CFR 1502.2(c) (interpreting the conciseness requirement for an EIS to mean that ''length should vary first with potential environmental problems and then with project size'').

[30] 40 CFR 1508.9(a).

[31] 40 CFR 1501.2.

[32] 40 CFR 1502.2(g).

[33] CEQ Memorandum to Agencies, ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (Question and Answer 13), March 16, 1981 *available at ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13.*

[34] 40 CFR 1508.23 (A proposal exists as soon as an agency has a goal, is developing one or more alternatives to achieve that goal, and the effects can be meaningfully evaluated).

[35] 40 CFR 1502.5. For guidelines specific to different agency activities, see 40 CFR 1502.5(a)—(d). Misuse of the NEPA process to justify decisions already made is counterproductive and can result in litigation that could delay and ultimately prevent a proposed action from proceeding.

[36] 40 CFR 1501.2(d) (non-Federal entities plan activities prior to Federal involvement that trigger NEPA requirements).

[37] 40 CFR 1507.3(b)(1). All agencies are required to adopt procedures that supplement the CEQ Regulations and provide NEPA implementing guidance that both provides agency personnel with additional, more specific direction for implementing the procedural provisions of NEPA and informs the public and State and local officials of how the CEQ Regulations will be implemented in agency decisionmaking. Agency procedures should therefore provide Federal personnel with the direction they need to implement NEPA on a day-to-day basis. The procedures must also provide a clear and uncomplicated picture of what those outside the Federal government may do to become involved in the environmental review process under NEPA. *See* CEQ Memorandum, ''Agency Implementing Procedures Under CEQ's NEPA Regulations,'' January 19, 1979 *available at ceq.hss.doe.gov/nepa/regs/exec11979.html.* Some examples of agency NEPA implementing procedures are the Department of the Interior Department Manual, National Park Service, ''Managing the NEPA Process,'' May 27, 2004, *available at http://206.131.241.18/app_dm/act_getfiles.cfm?relnum=3622* and the Department of the Interior Department Manual, Bureau of Land Management, ''Managing the NEPA Process,'' May 8, 2008, *available at http://elips.doi.gov/app_dm/act_getfiles.cfm?relnum=3799.*

entities of studies or other information foreseeably required for later Federal action.[38]

Advanced planning for initially non-Federal actions must also ensure that the Federal agency is able to initiate early consultation with appropriate Tribes, States, local agencies, and interested private persons and organizations when Federal involvement is reasonably foreseeable.[39] For actions initiated at the request of a non-Federal entity, Federal agencies should begin the NEPA process for preparing their EA or EIS as early as possible but no later than upon receipt of a complete application.[40] Federal agencies should, whenever possible, guide applicants to gather and develop the appropriate level of information and analyses in advance of submitting an application or other request for federal agency action. For example, several agencies require an applicant to prepare and submit an environmental report to help prepare the NEPA analyses and documentation and facilitate the lead agency's independent environmental review of the proposal.

3. *Scoping:* To effectuate integration, avoid duplication, and focus the NEPA review, the CEQ Regulations provide for ''scoping.'' [41] In scoping, the lead agency determines the issues that its EA or EIS will address and identifies the significant issues related to the proposed action that will be considered in the analysis.[42] To increase efficiency, the lead agency can solicit cooperation at the earliest possible time from other agencies that have jurisdiction by law or special expertise on any environmental issue that should be considered. Cooperating agencies with jurisdiction by law or special expertise can work with the lead agency to ensure that, whenever possible, one NEPA review process informs all the decisions needed to determine whether and, if so, how a proposed action will proceed.[43]

The CEQ Regulations explicitly address the role of scoping in preparation of an EIS. Agencies can also choose to take advantage of scoping when preparing an EA that deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action. For example, a lead agency preparing such an EA may use scoping to identify and eliminate from detailed study the issues that are not significant or that have been covered by prior environmental review.[44] The scoping process provides a transparent way to identify significant environmental issues and to deemphasize insignificant issues,[45] thereby focusing the analysis on the most pertinent issues and impacts.[46]

The scoping process can be particularly helpful in identifying opportunities to coordinate reviews and related surveys and studies required by other laws or by executive orders. Scoping should also be used to begin inter- and intra-governmental coordination if it is not already ongoing. To accomplish these goals, the lead agency preparing an EA or an EIS can choose to invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and ''other interested persons (including those who might not be in accord with the action on environmental grounds).'' [47] In addition to facilitating coordination and the development of required environmental reviews, scoping will help to identify the universe of matters that need to be addressed with particular care and flag issues for thorough consideration, thereby defusing potential conflict that, absent early attention, could arise later and potentially delay the timely completion of the relevant NEPA review.[48]

In sum, the scoping process provides an early opportunity to plan collaboration with other governments,[49] assign responsibilities,[50] and develop the planning and decisionmaking schedule.[51] It also affords lead agencies the option of setting page limits for environmental documents and setting time limits for the steps in the NEPA process.[52] Agencies may also choose to use scoping whenever any of these techniques can provide for the more effective and efficient preparation of an EA.

4. *Inter-Governmental Coordination (State, Local, or Tribal Environmental Reviews):* CEQ encourages Federal agencies to collaborate with Tribal, State, and local governments to the fullest extent possible to reduce duplication, unless the agencies are specifically barred from doing so by some other law.[53] The CEQ Regulations explicitly provide for agencies to conduct joint planning processes, joint environmental research and studies, joint public hearings (except where otherwise provided by statute), and joint environmental assessments.[54] Federal agencies should explore every reasonable opportunity to integrate the requirements of NEPA with the external planning and environmental reviews required on the Federal as well as the State, Tribal, and local levels of

[38] 40 CFR 1501.2(d)(1).

[39] 40 CFR 1501.2(d)(2). Agencies should be cognizant of their obligations under current Executive Orders 13175 (Consultation and Coordination with Indian Tribal Governments, Nov 6, 2000) and 112898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb 11, 1994), *available at ceq.hss.doe.gov/laws_and_executive_orders/executive_orders.html.*

[40] 40 CFR 1501.2(d)(3).

[41] 40 CFR 1501.7 (''There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.'')

[42] 40 CFR 1500.4(b), (g) and 1501.7.

[43] 40 CFR 1501.6, 1508.5 (responsibilities of the lead agency include the requirement to request the participation of any other Federal agency which has jurisdiction by law). Previous guidance on engaging other agencies with jurisdiction over permits and other approvals required for a proposal to proceed include: CEQ Memorandum for Heads of Federal Agencies, ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' (January 30, 2002), *available at ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html;* and CEQ Memorandum to Agencies, ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (Question and Answer 14), March 16, 1981 *available at ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#14.*

[44] 40 CFR 1501.7(a)(3).

[45] 40 CFR 1500.4(g).

[46] 40 CFR 1501.4(b) (agencies are to involve the public in the preparation of EAs; the manner in which they do so is left to the agency).

[47] 40 CFR 1501.7(a)(1), 1501.4(b), 1506.6. Establishing cooperating agency status is discussed in greater detail in the CEQ Memorandum for Heads of Federal Agencies, ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,'' 30 January 2002 *available at ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html.*

[48] In cases where a Federal agency uses scoping for an EA and subsequently determines it is necessary to conduct an EIS, the agency should refer to the guidance provided in the CEQ Memorandum to Agencies, ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (Question and Answer 13), March 16, 1981, *available at http://ceq.hss.doe.gov/nepa/regs/40/30-40.HTM#13* (scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered).

[49] 40 CFR 1501.6 and 1508.5. CEQ has published guidance encouraging lead agencies to establish a formal cooperating agency relationship with other Federal agencies as well as State, Tribal, and local governmental entities. CEQ memorandum, ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,'' January 30, 2002, *available at ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html.*

[50] 40 CFR 1501.7(a)(4) (a lead agency may allocate responsibility for EIS preparation and analysis among cooperating agencies during scoping).

[51] 40 CFR 1501.7(a)(7).

[52] 40 CFR 1501.7(b)(1)–(2), 1501.8.

[53] 40 CFR 1506.2(b).

[54] 40 CFR 1506.2(b); *see also* 40 CFR 1500.4(n) (encouraging Federal agencies to eliminate duplication with State and local procedures, by providing for joint preparation).

government so that those reviews can run concurrently rather than consecutively.[55]

Where State law or local ordinances contain environmental impact analysis and documentation requirements in addition to, but not in conflict with, those in NEPA, the CEQ Regulations provide authority for producing joint EISs.[56] In such cases, Federal agencies shall cooperate in fulfilling the State, Tribal, and local environmental impact analysis and documentation requirements as well as the requirements of other environmental laws so that one document will suffice for complying with as many applicable laws as practicable. Federal agencies should seek efficiencies and avoid delay by attempting to meet applicable non-Federal NEPA-like requirements in conjunction with either an EA or an EIS wherever possible.

The CEQ Regulations also require that a Federal agency preparing an EIS better integrate the EIS into non-Federal planning processes by discussing and explaining any inconsistency of a proposed Federal action with any approved State or local plan and laws.[57] When preparing an EA or EIS, if an inconsistency with any approved Tribal, State, or local plan or laws exists, the Federal agency should describe the extent to which it will reconcile its proposed action with the non-Federal plan or law.[58]

5. *Coordinating Reviews and Documents Under Other Applicable Laws:* Agencies must integrate, to the fullest extent possible, their draft EIS with environmental impact analyses and related surveys and studies required by other laws or by executive order.[59] Coordinated and concurrent environmental reviews are appropriate whenever other analyses, surveys, and studies will consider the same issues and information as a NEPA analysis. Such coordination should be considered when preparing an EA as well as when preparing an EIS.

The goal should be to conduct concurrent rather than sequential processes whenever appropriate. In situations where one aspect of a project is within the particular expertise or jurisdiction of another agency an agency should consider whether adoption or incorporation by reference of materials prepared by the other agency would be more efficient.

A coordinated or concurrent process may provide a better basis for informed decision making, or at least achieve the same result as separate or consecutive processes while avoiding unnecessary duplication of effort. In addition to integrating the reviews and analyses, the CEQ Regulations also state that any environmental document that complies with NEPA may be combined with any other agency document to reduce duplication and paperwork.[60]

6. *Adoption:* The adoption of one Federal agency's EIS, or a portion of that EIS, by another Federal agency is an efficiency that the CEQ Regulations provide.[61] An agency preparing an EA should similarly consider adopting another agency's EA when the EA or a portion thereof addresses the proposed action and meets the standards for an adequate EA under NEPA, the CEQ's Regulations, and the adopting agency's NEPA implementing procedures.

The CEQ Regulations require agencies to involve agencies, applicants and the public; however, they do not require agencies to prepare a draft EA and circulate a draft or final EA for public review or comment.[62] If an agency's implementing NEPA procedures establish requirements for public review and comment when preparing an EA, however, then the adopting agency must provide a similar process when it adopts the preparing agency's EA.

In those cases where the adopting agency is also a cooperating agency in the preparation of an EIS, it may adopt the lead agency's EIS without additional public involvement when, after an independent review, it concludes that the lead agency has adequately addressed the adopting agency's comments and suggestions.[63] Similarly, when the adopting agency was a cooperating agency in the preparation of an EA, it may adopt the EA without additional public involvement.

7. *Incorporation by Reference:* Incorporation by reference is another method that provides efficiency and timesaving when preparing either an EA or an EIS. The CEQ Regulations direct agencies to incorporate material into an EIS by reference to reduce the size of the EIS and avoid duplicative effort.[64] An agency must cite the incorporated material in an EIS and briefly describe the content.[65] An agency may not incorporate any material by reference in an EIS unless the material is reasonably available for inspection by potentially interested persons within the time allowed for comment.[66] Agencies can, consistent with NEPA and the CEQ Regulations, incorporate documents into an EA by reference provided the content has been briefly described and the materials are reasonably available for review by interested parties.

8. *Expediting Responses to Comments:* Agencies should provide a reasonable and proportionate response to comments on a draft EIS by focusing on the environmental issues and information conveyed by the comments. When preparing a final EIS, if the draft EIS complies with NEPA, CEQ regulations, and agency implementing procedures, the agency may use the draft EIS as the final EIS under certain conditions. If changes in response to comments are minor and are limited to factual corrections and/or explanations of why the comments do not warrant further agency response, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement.[67] In such cases, the agency must circulate only the comments, the responses and the changes, and not the final statement.[68] Only the comments, responses, and changes need be filed with the draft document and a new cover sheet to make the EIS final, under those circumstances.[69] Similarly, if an agency issues an EA for comment and the changes in response to comments are minor and limited to factual corrections and/or explanations of why the comments do not warrant further agency response, then the agency may prepare a similar cover and errata sheet and use its draft EA as the final EA.

9. *Clear Time Lines for NEPA Reviews:* Establishing appropriate time limits promotes the efficiency of the NEPA process.[70] The CEQ Regulations do not prescribe universal time limits for the entire NEPA process; instead they set certain minimum time limits for the various portions of the NEPA process.[71] The CEQ Regulations do

[55] 40 CFR 1500.2(c). This point is reiterated throughout the CEQ Regulations.

[56] 40 CFR 1506.2(c).

[57] 40 CFR 1506.2(d).

[58] 40 CFR 1506.2(d).

[59] 40 CFR 1502.25(a). Examples provided in the Regulation are: the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.);* the National Historic Preservation Act (16 U.S.C. 470 *et seq.*); and the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

[60] 40 CFR 1506.4; *see also* 40 CFR 1500.4(k), (n).

[61] 40 CFR 1506.3.

[62] 40 CFR 1501.4(b) and 1506.6 (Agencies are to involve the public in the preparation of EAs, the manner in which they do so is left to the agency).

[63] 40 CFR 1506.3(c).

[64] 40 CFR 1502.21.

[65] 40 CFR 1502.21.

[66] 40 CFR 1502.21 (material based on proprietary data which is itself not available for review and comment cannot be incorporated by reference).

[67] 40 CFR 1503.4(c); *see also* 40 CFR 1500.4(m).

[68] 40 CFR 1503.4(c).

[69] 40 CFR 1503.4(c).

[70] 40 CFR 1500.5(e).

[71] 40 CFR 1506.10 (setting 90 day time period between EPA publication of the notice of availability of a draft EIS and the Record of Decision, 30 day time period between EPA publication of the notice of availability of a final

Continued

encourage Federal agencies to set appropriate time limits for individual actions, however, and provide a list of factors to consider in establishing timelines.[72] Those factors include: the potential for environmental harm; the size of the proposed action; other time limits imposed on the action by other laws, regulations, or executive orders; and the degree of public need for the proposed action and the consequences of delay. The CEQ Regulations refer to the EIS process when describing the ''constituent parts of the NEPA process'' to which time limits may apply, require agencies to set time limits at the request of an applicant, and allow agencies to set time limits at the request of other interested parties.[73] It is entirely consistent with the purposes and goals of NEPA and with the CEQ Regulations for agencies to also determine appropriate time limits for the EA process when requested by applicants, Tribes, States, local agencies, or members of the public.

Conclusion: This guidance describes methods provided in the CEQ regulations that agencies preparing an EA or an EIS may employ to prepare concise and timely NEPA reviews. Using methods such as integrating planning and environmental reviews and permitting, coordinating multi-agency or multi-governmental reviews and approvals, and setting schedules for completing the environmental review will assist agencies in preparing efficient and timely EAs and EISs consistent with legal precedent and agency NEPA experience and practice.

Nancy H. Sutley,

Chair.

[FR Doc. 2011–31983 Filed 12–12–11; 8:45 am]

BILLING CODE 3225–F2–P

EIS and the Record of Decision, and 45 days for comment on a draft EIS).

[72] 40 CFR 1501.8 (CEQ encourages Federal agencies to set time limits consistent with the time intervals required by § 1506.10).

[73] 40 CFR 1501.8(a) and (c).

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2011–0028]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force proposes to alter a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on January 12, 2012 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods: *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on December 6, 2011 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: December 7, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG E

SYSTEM NAME:

Medical Record System (June 18, 2010, 75 FR 34709).

CHANGES:

Change System ID to read ''F044 F SG E.''

SYSTEM NAME:

Delete entry and replace with ''Electronic Medical Records System.''

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), Air Force Medical Service Chief Information Officer's Office (AFMS CIO's office), 5201 Leesburg Pike, Suite 1501, Falls Church, VA 22041–3214.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs. Uniformed services medical beneficiaries who receive or have received care at one or more dental treatment facilities or other system locations including medical aid stations, Educational and Developmental Intervention Services clinics and Service Medical Commands. Uniformed service members serving in a deployed status and those who receive or received care through the Department of Veterans Affairs (VA).''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Full name, Social Security Number (SSN) or Military Service Number, date treatment was provided, name of facility providing treatment, inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes: Patient's medical history, physical examination, treatment received; supporting documentation, such as laboratory and x-ray reports, cover sheets and summaries of hospitalization, diagnoses, procedures or surgery performed, administrative forms which concern medical conditions, such as Line of

Duty Determinations, physical profiles, and medical recommendations for flying duty. Secondary files are maintained, such as patient registers, nominal indices, x-ray and laboratory files. This also includes healthcare unique information on the medical staff and resources (staff, logistics and financial) used to support beneficiary healthcare.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapter 55, Sections 1071–1097b, Medical and Dental Care; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; DoD 6025.18–R, DoD Health Information Privacy Regulation; DoD 6010.8–R, CHAMPUS; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities: Foreign Service Care; Third-Party Collection; Beneficiary Counseling and Assistance Coordinators (BCACs); Pub.L. 104–91, Health Insurance Portability and Accountability Act of 1996; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient or Ambulatory Procedure Visit (APV) medical records of DoD beneficiaries may be disclosed to third party payers for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of those beneficiaries. Records are used and reviewed by healthcare providers, clinic managers, disease management care coordinators and other appropriate medical staff in the performance of their duties. Healthcare providers include military and civilian providers assigned to the medical facility where care is being provided, students participating in a training affiliation program with a military medical facility as part of their training program, and approved personnel conducting military studies designed to benchmark or standardized/better future healthcare practices. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to Veteran members of the Armed Services or Active Duty members if based on shared services agreements.

(2) Officials and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by the record system and for the conduct of research studies.

(3) Private organizations, including educational institutions and individuals for authorized health research in the interest of the Federal government and the medical schools/teaching facilities commissioned to assist in those studies. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease of prognosis and of epidemiology. Each study in which the records of members, former members and dependents of members of the Armed Services are used must be approved by the Surgeon General (or designated representative) of the appropriate service. If the study entails all of the Medical Health Service data the concurrence must be obtained from the Surgeon General (or designated representative) of all the services.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations. These surveys may or may not be subject to Internal Review Board (IRB) approval and guidelines. Determination must be documented prior to data release as either approved or exempt by appropriate IRB authority.

(7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order or by treaty.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Forces compilation of record system notices apply to this system, except as stipulated in Notes below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Last name and/or by SSN.''

SAFEGUARDS:

Delete entry and replace with ''Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel only. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level. Automated records with Personally Identifiable Information are controlled and limited as well as tracked via system security logs by authorized personnel with a need-to-know to conduct daily business. Storage of records is all via an encrypted database and maintained on a military network with a current and approved Authority to Operate.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Files retention is based on medical need. The current limitation is ten years. After use is determined to be no longer required, electronic records are archived and then deleted from server for active use.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Air Force Medical Support Agency Healthcare Informatics (SG6H), 3515 S. General McMullen, San Antonio, TX 78226–1710.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), Air Force Medical Service Chief Information Officer's Office (AFMS CIO's Office), 5201 Leesburg Pike, Suite 1501, Falls Church, VA 22041–3214.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQDA G–3/5/7–CSF, Director, Zackery Taylor Building, 2530 Crystal Drive, Arlington, VA 22202–0400.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

F044 F SG E

SYSTEM NAME:

Electronic Medical Records System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), Air Force Medical Service Chief Information Officer's Office (AFMS CIO's office), 5201 Leesburg Pike, Suite 1501, Falls Church, VA 22041–3214.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs. Uniformed services medical beneficiaries who receive or have received care at one or more dental treatment facilities or other system locations including medical aid stations, Educational and Developmental Intervention Services clinics and Service Medical Commands. Uniformed service members serving in a deployed status and those who receive or received care through the Department of Veterans Affairs (VA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, Social Security Number (SSN), or Military Service Number, date treatment was provided, name of facility providing treatment, inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes: patient's medical history, physical examination, treatment received, supporting documentation, such as laboratory and x-ray reports, cover sheets and summaries of hospitalization, diagnoses, procedures or surgery performed, administrative forms which concern medical conditions, such as Line of Duty Determinations, physical profiles, and medical recommendations for flying duty. Secondary files are maintained, such as patient registers, nominal indices, x-ray and laboratory files. This also includes healthcare unique information on the medical staff and resources (staff, logistics and financial) used to support beneficiary healthcare.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapter 55, Sections 1071–1097b, Medical and Dental Care; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; DoD 6025.18–R, DoD Health Information Privacy Regulation; DoD 6010.8–R, CHAMPUS; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities: Foreign Service Care; Third-Party Collection; Beneficiary Counseling and Assistance Coordinators (BCACs); Pub. L. 104–91, Health Insurance Portability and Accountability Act of 1996; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach/compile statistical data; and conduct medical research and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient or Ambulatory Procedure Visit (APV) medical records of DoD beneficiaries may be disclosed to third party payers for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of those beneficiaries. Records are used and reviewed by healthcare providers, clinic managers, disease management care coordinators and other appropriate medical staff in the performance of their duties. Healthcare providers include military and civilian providers assigned to the medical facility where care is being provided, students participating in a training affiliation program with a military medical facility as part of their training program, and approved personnel conducting military studies designed to benchmark or standardized/better future healthcare practices. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to Veteran members of the Armed Services or Active Duty members if based on shared services agreements.

(2) Officials and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by the record system and for the conduct of research studies.

(3) Private organizations including educational institutions and individuals for authorized health research in the interest of the Federal government and the medical schools/teaching facilities commissioned to assist in those studies. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease of prognosis and of epidemiology. Each study in which the records of members, former members and dependents of members of the Armed Services are used must be approved by the Surgeon General (or designated representative) of the appropriate service. If the study entails all of the Medical Health Service data the concurrence must be obtained from the Surgeon General (or designated representative) of all the services.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations. These surveys may or may not be subject to Internal Review Board (IRB) approval and guidelines. Determination must be documented prior to data release as either approved or exempt by appropriate IRB authority.

(7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order or by treaty.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Forces compilation of record system notices apply to this system, except as stipulated in Notes below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Last name and/or by SSN.

SAFEGUARDS:

Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel only. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level. Automated records with Personally Identifiable Information are controlled and limited as well as tracked via system security logs by authorized personnel with a need-to-know to conduct daily business. Storage of records is all via an encrypted database and maintained on a military network with a current and approved Authority to Operate.

RETENTION AND DISPOSAL:

Files retention is based on medical need. The current limitation is ten years. After use is determined to be no longer required, electronic records are archived and then deleted from server for active use.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Medical Support Agency Healthcare Informatics (SG6H), 3515 S. General McMullen, San Antonio, TX 78226–1710.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), Air Force Medical Service Chief Information Officer's Office (AFMS CIO's Office), 5201 Leesburg Pike, Suite 1501, Falls Church, VA 22041–3214.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQDA G–3/5/7–CSF, Director, Zackery Taylor Building, 2530 Crystal Drive, Arlington, VA 22202–0400.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

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'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers, such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–31807 Filed 12–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement Regarding the Wolfpen Knob Development Company's Proposed Mason Dixon Mining Complex, a Deep Coal Mine, Located 1.3 Miles Northwest of Wadestown, in the Battelle District of Monongalia County, WV

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Pittsburgh District (Corps), intends to prepare a draft Environmental Impact Statement (EIS) for the proposed Mason Dixon Mining Complex. The District Engineer is requiring an EIS to be prepared to assess the direct, indirect, and cumulative environmental, social, and economic effects that the issuance of a Department of the Army permit, under Section 404 of the Clean Water Act, may have related to discharges of dredge and fill material into Waters of the United States associated with the construction of the proposed Mason Dixon Mining Complex. The Corps will prepare the EIS in accordance with the National Environmental Policy Act of 1969 (NEPA), NEPA's implementing regulations and the applicable Corps' regulations.

ADDRESSES: U.S. Army Corps of Engineers, Pittsburgh District, William S. Moorhead Federal Building, 1000 Liberty Avenue Pittsburgh, PA 15222–4186.

FOR FURTHER INFORMATION CONTACT: Jon T. Coleman, Regulatory Project Manager, at *mason.dixon@usace.army.mil* or (412) 395–7188.

SUPPLEMENTARY INFORMATION:

1. Description of the Proposed Action: The purpose of the Mason Dixon Mining Complex, as proposed by the permit applicant, the Wolfpen Knob Development Company, is to extract bituminous coal from the Pittsburgh coal seam. The mining complex will include: A deep mine, a preparation plant, a refuse disposal site, a water impoundment, and a new rail line. The estimated lifespan of the proposed mining complex would be approximately 20 years. Coal from the Pittsburgh seam will be processed at the preparation plant with refuse being sent to the refuse disposal site. The water impoundment would provide water for the operation of the preparation plant and dust control at the deep mine, preparation plant, and associated haul roads. A railroad line would be constructed to link the proposed mining operations with the national railroad distribution network.

2. Alternatives: Alternatives available to the Corps for the proposed project are to: (1) Issue the Department of the Army Permit, (2) issue the Department of the Army permit with special conditions, or (3) deny the Department of the Army permit. Alternatives available to Wolfpen Knob Development Company are to: (1) Construct, operate, and reclaim the Mason Dixon Mining Complex preparation plant, deep mine, disposal area, and freshwater impoundment and rail line as proposed in the proposed location; (2) construct, operate, and reclaim the Mason Dixon Mining Complex preparation plant, deep mine, disposal area, and freshwater impoundment and rail line in a different location; (3) construct, operate, and reclaim the Mason Dixon Mining Complex preparation plant, deep mine, disposal area, and freshwater impoundment and rail line using different methods; or (4) take no action and forgo the construction, operation, and reclamation of the Mason Dixon Mining Complex preparation plant, deep mine, disposal area, and freshwater impoundment and rail line and secure needed coal supplies elsewhere.

3. Scoping and Public Review Process: One or more public scoping meetings to disseminate information about the proposed project and its potential effects on the human environment and to seek public comments on the proposed project will be conducted. Additional public information meeting(s) may be held during the draft EIS process. Relevant comments and issues identified by the public and interested parties will be incorporated into the document as appropriate.

4. The public scoping meeting will be held at the Clay-Battelle High School located at Route 7 West Blacksville, West Virginia on January 17, 2012. The meeting will begin at 5:30 p.m. and conclude at 8:30 p.m. In the event of inclement weather, the meeting will be held on January 25, 2012. Consult the Corps' Web site, *http://www.lrp.usace.army.mil/or/or-f/permits.htm,* for meeting updates.

5. Significant Issues: Based on preliminary analysis, the issues to be given significant analysis in the EIS are likely to include, but not be limited to: The effects to surface water and groundwater resources, including water quantity and quality, effects on the immediate and adjacent property owners and nearby communities, downstream hydraulics and hydrology, geologic resources, vegetation, fish and wildlife, threatened and endangered species, soils, prime farmland, noise, light, aesthetics, historic and prehistoric cultural resources, socioeconomics, land use, public roads, and air quality.

6. Cooperating Agencies: Identified cooperating agencies include the U.S. Surface Transportation Board and the U.S. Environmental Protection Agency (Region III). All other agencies (including Federal, state and local agencies, as well as tribes) which have special expertise with respect to any environmental issue which should be addressed in the draft EIS should submit a letter of intent to be a Cooperating Agency to Jon T. Coleman, Regulatory Project Manager, at (see **ADDRESSES**).

7. Additional Review and Consultation: Compliance with other Federal and State requirements that will be addressed in the EIS include, but will not be limited to, state water quality certification under Section 401 of the Clean Water Act, protection of water quality under the West Virginia/National Pollutant Discharge Elimination System, protection of air quality under the West Virginia Air Pollution Control Act, protection of endangered and threatened species under Section 7 of the Endangered Species Act, and protection of cultural resources under Section 106 of the National Historic Preservation Act.

8. Availability of the Draft EIS: It is estimated that a draft EIS is will be available for public review in 6 to 12 months. Individuals interested in obtaining a copy of the draft EIS for review should contact Jon T. Coleman.

Dated: November 30, 2011.

William H. Graham,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 2011–31873 Filed 12–12–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 12, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 8, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Annual Report on Appeals Process (RSA–722).

OMB Control Number: 1820–0563.

Agency Form Number(s): RSA–722.

Frequency of Responses: Annually.

Affected Public: State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 80.

Total Estimated Annual Burden Hours: 160.

Abstract: Pursuant to Subsection 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973 as amended the Annual Report on Appeals Process RSA–722 is needed to meet specific data collection requirements on the number of requests for mediations, hearings, administrative reviews and other methods of dispute resolution requested and the manner in which they were resolved. The information collected is used to evaluate the types of complaints made by applicants and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilition.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4733. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocket Mgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339.

[FR Doc. 2011–31957 Filed 12–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 12, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 7, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Impact Evaluation of Race to the Top (RTT) and School Improvement Grants (SIG).

OMB Control Number: 1850–0884.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 1,526.

Total Estimated Annual Burden Hours: 2,459.

Abstract: This Office of Management and Budget (OMB) package requests clearance for data collection, analysis, and reporting activities from 50 states and the District of Columbia, and approximately 134 districts and 1,200 schools as part of an evaluation of Race to the Top (RTT) and School Improvement Grants (SIG). The American Recovery and Reinvestment Act contained substantial funding for systemic education reform. This included $4 billion in RTT grants, which were awarded to 11 states and the District of Columbia based both on their education reform plans and their past success in creating the conditions for reform, and $3 billion in additional funding for SIG, which is aimed at implementing one of four School Turnaround Models (STMs) in the lowest-performing schools. The evaluation is designed to (1) study the implementation of RTT and SIG; (2) analyze the impact of SIG- or RTT-funded STMs on student outcomes using a regression discontinuity design; (3) analyze the relationship between receipt of RTT funds and student outcomes using an interrupted time series design; and (4) investigate the relationship between STM turnaround models (and strategies within those models) and student outcomes in low-performing schools. This OMB package follows a previously approved package for recruitment activities (#1850–0884), and includes data collection forms, and burden estimates of the number of respondents and hours of response time.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4718. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocket Mgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–31953 Filed 12–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 12, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 8, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Extension.

Title of Collection: Charter Schools Program Grand Award Database.

OMB Control Number: 1855–0016.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 40.

Total Estimated Annual Burden Hours: 98.

Abstract: This request is for renewal of Office of Management and Budget approval to collect data necessary for the *Charter Schools Program (CSP) Grant Award Database.* The CSP is authorized under Title V, Part B, Subpart 1, Sections 5201 through 5211 of the Elementary and Secondary Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. Under Title V, Part B, Section 5205 of the ESEA, the Secretary reserves CSP funds to carry out national activities to provide charter schools with information, to evaluate and study charter schools, and to provide other types of technical assistance. This data collection is coordinated with the EDFacts initiative to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED) through the Education Data Exchange Network (EDEN). Under the current data collection, ED collects CSP grant award information from grantees (State agencies and some schools) for a database of current CSP-funded charter schools and award amounts; ED merges performance information extracted from the EDEN database with the database of CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic performance, financial integrity, and program effectiveness.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4731. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocket Mgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–31949 Filed 12–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 12, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 7, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Quarterly Cumulative Caseload Report (RSA–113).

OMB Control Number: 1820–0013.

Agency Form Number(s): RSA–113.

Frequency of Responses: Annually; Quarterly.

Affected Public: State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 80.

Total Estimated Annual Burden Hours: 320.

Abstract: State agencies that administer vocational rehabilitation programs provide key caseload data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and their program outcomes. The Rehabilitative Services Administration collects this information quarterly from states and reports it in the Annual Report to Congress on the Rehabilitation Act.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4720. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339.

[FR Doc. 2011–31960 Filed 12–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Research Fellowships Program

AGENCY: Office of Special Education and Rehabilitative Service, National Institute on Disability and Rehabilitation Research (NIDRR), Department of Education.

ACTION: Notice.

Overview Information: Research Fellowships Program; Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F–1.

DATES: *Applications Available:* December 13, 2011.

Deadline for Transmittal of Applications: February 13, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities.

Note: This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8166), can be accessed on the Internet at the following site: *http://www2.ed.gov/legislation/FedRegister/other/2006–1/021506d.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities: This competition contains one absolute priority and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations for this program (34 CFR 356.10).

Absolute Priority: For FY 2012, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Research Fellowships Program

Fellows must conduct original research in an area authorized by

section 204 of the Rehabilitation Act of 1973, as amended (the Act). Section 204 authorizes research, demonstration projects, training, and related activities, the purposes of which are to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency, of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Act.

Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(1) The Secretary is particularly interested in applications from eligible applicants who are individuals with disabilities.

(2) The Secretary is particularly interested in applications that result in practical methods of improving participation and community living and employment outcomes for individuals with disabilities.

Note: The Secretary is interested in outcomes-oriented research projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge or improvements in policy and practice. Applicants should propose projects that are optimally designed to be consistent with these goals. Submission of the information identified under this paragraph is not required by law or regulation, but is desired.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61, and parts 77, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR part 356. (c) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $110,485,000 for the NIDRR program for FY 2012, of which we intend to use an estimated $505,000 for the Research Fellowships Program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $60,000 to $65,000 for Merit Fellowships and $70,000 to $75,000 for Distinguished Fellowships. (These fellowships are described in the *Eligible Applicant* section of this notice.)

Estimated Average Size of Awards: $63,000 for Merit Fellowships and $73,000 for Distinguished Fellowships.

Maximum Awards: We will reject any application that proposes a budget exceeding $65,000 for Merit Fellowships and $75,000 for Distinguished Fellowships for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Seven total, including both Merit Fellowships and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months. We will reject any application that proposes a project period exceeding 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Eligible individuals must: (1) satisfy the requirements of 34 CFR 75.60 and 75.61 and (2) have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

Note: In the most recent competitions for this program, Merit Fellowship recipients had research experience at the doctoral level.

(b) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

Note: Institutions are not eligible to be recipients of Research Fellowships.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–(877) 433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–(877) 576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133F.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 24 double-spaced pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract; the eligibility statement; the curriculum vitae; the bibliography; the letters of recommendation; or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 13, 2011.

Deadline for Transmittal of Applications: February 13, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal. The Merit Fellowships and Distinguished Fellowships awards are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the term of the fellowship award. We define ''one FTE'' as equal to 40 hours per week. No Fellow is allowed to be a direct recipient of Federal government grant funds in addition to those provided by the Merit or Distinguished Fellowship grant (during the duration of the Fellowship award performance period). Fellows may, subject to compliance with their institution's policy on additional employment, work on a Federal grant that has been awarded to the Fellow's institution.

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Requirements for Registering for Grants.gov and Submitting Your Application:*

All individuals applying for a Research Fellowship must register with *www.Grants.Gov* prior to submitting their application. To register with Grants.gov you must know the Funding Opportunity Number (FON) of the Grant opportunity you are applying for. This number is available on the Research Fellowship Program Notice Inviting Applications for new awards for fiscal year (FY) 2012. Once you register with *www.Grants.gov* using the FON, you will be asked to create a profile with your username and password, which will be used to identify you within the system and create an electronic signature to have your grant application forwarded to the appropriate government agency safely and securely. Details on registering for *www.Grants.gov* as an individual are outlined in the following Grants.gov tutorial (see *http://www.grants.gov/assets/IndividualRegistrationOverview.html*).

To register for Grants.gov you do not have to provide a Data Universal Numbering System Number (DUNS), a Taxpayer Identification Number (TIN) or your Social Security Number. You also do not have to complete a CCR registration in order to access Grants.gov or submit your application.

However, your Social Security Number is required to complete your application for a Research Fellowship.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Research Fellowships Program—CFDA Number 84.133F–1 must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Research Fellowships Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133F).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format only. Do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1 (800) 518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7643.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F–1), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline

date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F–1,) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the Research Fellowships program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through a review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1 (800) 877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1 (800) 877–8339.

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: December 8, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–31947 Filed 12–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Small Business Innovation Research Program (SBIR)—Phase I

AGENCY: Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research (NIDRR), Department of Education

ACTION: Notice.

Overview Information

Small Business Innovation Research Program (SBIR)—Phase I Notice is inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

DATES:

Applications Available: December 13, 2011.

Deadline for Transmittal of Applications: February 13, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of research supported by the U.S. Department of Education (Department), and improve the return on investment from federally funded research for economic and social benefits to the Nation.

Note: This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Executive Order 13329 states that continued technological innovation is critical to a strong manufacturing sector in the United States economy and ensures that Federal agencies assist the private sector in its manufacturing innovation efforts. The Department's SBIR program encourages innovative research and development (R&D) projects that are manufacturing-related, as defined by Executive Order 13329. Manufacturing-related R&D encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems. The projects supported under the Department's SBIR program encompass a range of manufacturing-related R&D, including projects leading to the manufacture of such items as artificial intelligence or information technology devices, software, and systems. For more information on Executive Order 13329, please visit the following Web site: *http://www.sba.gov/sbir/execorder.html* or contact Lynn Medley at: *lynn.medley@ed.gov.*

Background

The Small Business Reauthorization Act of 2000 (Act) was enacted on December 21, 2000. The Act requires certain agencies, including the Department, to establish SBIR programs by reserving a statutory percentage of their extramural R&D budgets to be awarded to small business concerns through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I projects determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. An application for Phase I should concentrate on research that will contribute significantly to proving the scientific or technical feasibility of the approach or concept. Scientific or technical feasibility is a prerequisite to the Department's provision of further support in Phase II. Phase I awards are for a period of up to six months in an amount up to a maximum total of $75,000.

Phase II: Phase II projects expand on the results of and further pursue the development of Phase I projects. Phase II is the principal R/R&D effort of the SBIR program. Applications for Phase II projects must be more comprehensive than applications for Phase I projects; Phase II applications must outline the proposed effort in detail, including the commercial potential of projects or processes developed or researched during the Phase I project. Phase II applicants must be Phase I grantees with approaches that appear sufficiently promising as a result of their efforts in Phase I. Phase II awards are for periods of up to two years in amounts up to a maximum total of $500,000 over a period of two years.

Phase III: In Phase III, the small business grantee must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities. (See 29 U.S.C. 760). Activities may include: Conducting manufacturing-related R&D that encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems; exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities; and improving the quality and utility of disability and rehabilitation research.

Priorities: NIDRR has established five invitational priorities for this competition.

Invitational Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

Each of the following invitational priorities relates to innovative research utilizing new technologies to address the needs of individuals with disabilities. Under this competition we are particularly interested in applications that address one of the five invitational priorities. These invitational priorities are:

(1) Increased independence of individuals with disabilities in the workplace, recreational settings, or

educational settings through the development of technology to support access and promote integration of individuals with disabilities.

(2) Enhanced sensory or motor function of individuals with disabilities through the development of technology to support improved functional capacity.

(3) Enhanced workforce participation through the development of technology to support access to employment, promote sustained employment, and promote employment advancement for individuals with disabilities.

(4) Enhanced community participation and living for individuals with disabilities through the development of accessible information technology including Web access technology, software, and other systems and devices that promote access to information in educational, employment, and community settings, and voting technology that improves access for individuals with disabilities.

(5) Improved interventions and increased use of health-care resources through the development of technology to support independent access to health-care services in the community for individuals with disabilities.

Applicants should describe the approaches they expect to use to collect empirical evidence demonstrating the effectiveness of the technology they are proposing. This empirical evidence should facilitate the assessment of the efficacy and usefulness of the technology.

Note: In responding to all invitational priorities, NIDRR encourages applicants to adhere to universal design principles and guidelines. The term ''universal design'' is defined as ''the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'' (The Center for Universal Design, 1997). Universal design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products. (For more information see *http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*).

Program Authority: The Small Business Act, Pub. L. 85–536, as amended (15 U.S.C. 631 and 638), and title II of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760, *et seq.*).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, and 97.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $110,485,000 for NIDRR for FY 2012, of which we intend to use an estimated $1,125,000 for the SBIR Phase I competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, minus prior commitments for Phase II continuation awards.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $70,000–$75,000.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of up to six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months. We will reject any application that proposes a project period that exceeds a single budget period of up to six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Entities that are, at the time of award, small business concerns as defined by the Small Business Administration (SBA). This definition is included in the application package.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination that the applicant is eligible under its definition of small business concern.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee. For Phase I projects, at least two-thirds of the research or analytic activities must be performed by the proposing small business concern grantee.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* The total of all consultant fees, facility leases or usage fees, and other subcontracts or purchase agreements may not exceed one-third of the total funding award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-(877) 433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1-(877) 576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its email address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letters of support; related application or award; or documentation of multiple Phase II awards, if applicable. However, the page limit does apply to all of the application project narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III project narrative; resume of staff; and other related materials, if applicable.

3. *Content Restrictions:* If an applicant chooses to respond to more than one invitational priority, we request that the applicant submit a separate application for each priority. There is no limitation on the number of different applications that an applicant may submit under this competition. An applicant may submit separate applications for different priorities or different applications under the same priority.

Applicants should consult NIDRR's Long-Range Plan when preparing their applications. The Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics.

4. *Submission Dates and Times:*

Applications Available: December 13, 2011.

Deadline for Transmittal of Applications: February 13, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 8. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from DUN and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *http://www.grants.gov/applicants/get_registered.jsp.*

8. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the SBIR Program, CFDA number 84.133S–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the SBIR Competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the

CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133S).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–(800) 518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its SBIR grantees to determine—

- The percentage of NIDRR-funded grant applications that receive an average peer review score of 85 or higher.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC

20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–(800) 877–8339.

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 the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 8, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–31966 Filed 12–12–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9503–4]

California State Nonroad Engine Pollution Control Standards; Ocean-Going Vessels At-Berth in California Ports; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: EPA has granted the California Air Resources Board (CARB) its request for an authorization to adopt and enforce regulations for its airborne toxic control measures for auxiliary diesel engines operated on ocean-going vessels at-berth in California ports (''At-Berth Regulation''). The At-Berth Regulation is designed to reduce emissions of oxides of nitrogen and particulate matter from auxiliary diesel engines on container vessels, passenger vessels and refrigerated cargo vessels while they are docked at specified California ports.

DATES: Petitions for review must be filed by February 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2011–0548. All documents relied upon in making this decision, including those submitted to EPA by CARB, and public comments, are contained in the public docket. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all Federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0548 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J) NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2800. Email: *knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. California's At-Berth Regulation

By letter dated August 2, 2010, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulations to enforce its airborne toxic control measures (ATCM) for auxiliary diesel engines operated on ocean-going vessels at-berth in California ports (''At-Berth Regulation'').[1] The At-Berth Regulation is designed to significantly reduce emissions of diesel particulate matter (PM), which is a CARB-identified toxic air contaminant, oxides of nitrogen (NO_X), and carbon dioxide (CO_2), a greenhouse gas. These reductions will assist California in meeting Federal and state ambient air quality standards for the South Coast and San Joaquin Valley air basins for ozone and fine particulate matter ($PM_{2.5}$). CARB approved the At-Berth Regulation at a public hearing on December 6, 2007 (by Resolution 07–57).[2] After making modifications to the regulation available on August 22, 2008 for supplemental public comment, CARB's Executive Officer formally adopted the At-Berth Regulation in Executive Order R–08–013 on October 16, 2008.[3] The At-Berth Regulation is codified in title 13, California Code of Regulations, section 2299.3, and title 17, California Code of Regulations, section 93118.3.[4]

CARB's At-Berth Regulation contains requirements that apply, with limited exceptions,[5] to any person who owns,

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[1] California Air Resources Board (''CARB''), ''Request for Authorization,'' August 2, 2010, EPA–HQ–OAR–2011–0548–0001.

[2] CARB Attachment #4, ''Resolution 07–57,'' EPA–HQ–OAR–2011–0548–0006.

[3] CARB Attachment #6, ''Executive Order R–08–013,'' EPA–HQ–OAR–2011–0548–0008.

[4] CARB Attachment #8, ''Final Regulation Order for title 13, CCR section 2299.3,'' EPA–HQ–OAR–2011–0548–0010; CARB Attachment #9, ''Final Regulation Order for title 17, CCR section 93118.3,'' EPA–HQ–OAR–2011–0548–0011.

[5] The following vessels are exempt from the At-Berth Regulation: Ocean going vessel voyages consisting of continuous and expeditious navigation (*i.e.,* traversing Regulated California Waters without entering California internal estuarine waters or calling at a port); vessels owned or operated by local, state, Federal, or foreign governments in government non-commercial services; steamships; auxiliary engines using natural gas; and fleets composed solely of container or refrigerated cargo vessels making fewer than twenty-five visits to the same California port in a calendar year or fleets composed solely of passenger

Continued

operates, charters, rents or leases any container vessel, passenger vessel, or refrigerated cargo vessel that visits any of six specified California ports.[6] It also contains requirements that affect any person who owns or operates those ports or terminals located at them.

The At-Berth Regulation requires fleets of container vessels, passenger vessels and refrigerated cargo vessels to either: (1) Limit the amount of time they operate their auxiliary diesel engines by connecting to shore power for most of a vessel's stay at port (''Shore Power Option''); or (2) achieve equivalent emission reductions by employing other emission control techniques (''Equivalent Emission Reduction Option'').[7] Fleet operators who elect the Shore Power Option are required to obtain the power that would otherwise be provided by a vessel's auxiliary engines by connecting to shore power for a percentage of the fleet's annual port visits.[8] The required percentage of shore power connected port visits increases over the life of the regulation. Specifically, fifty percent of a fleet's total visits must be connected to shore power by 2014, followed by seventy percent by 2017, and eighty percent by 2020. Additionally, if a vessel is equipped to connect to shore power and it visits a berth equipped to provide compatible power, the vessel must use the shore power provided.

Fleet operators who elect the Equivalent Emission Reduction Option must reduce their fleet's auxiliary engine emissions by specific amounts below the fleet's baseline emissions by specific dates.[9] This option requires that a fleet achieve a ten percent reduction from the fleet's baseline emissions by 2010, a twenty-five percent reduction by 2012, a fifty percent reduction by 2014, a seventy percent reduction by 2017, and an eighty percent reduction by 2020. Emission reductions can be achieved by: (1) Using grid-based shore power; (2) using distributed generation equipment to provide power to the vessel; (3) using alternative emission controls onboard a vessel or at the berth; or (4) using a combination of these techniques. Fleets that achieve reductions of emissions of oxides of nitrogen or particulate matter in excess of the prescribed reductions receive fleet emission credits that can be used to comply with emission reduction requirements in subsequent years.

The At-Berth Regulation also requires operators of terminals that received more than fifty vessel visits in 2008 to submit terminal plans identifying how the terminals will be upgraded to accommodate vessels under the two compliance options, including a schedule for implementing the needed infrastructure improvements. Terminal operators are required to submit plan updates at a frequency dependent upon the compliance option selected by the vessel fleet owner or operator and the terminals. The At-Berth Regulation also includes associated enforcement requirements, such as reporting and recordkeeping requirements.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce its own standards for new nonroad engines or vehicles that are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards. On October 8, 2008, the regulations promulgated in that rule were moved to 40 CFR part 1074, and modified slightly.[10] As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[11]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (DC Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals

vessels making fewer than five visits to the same California port in a calendar year. Exemptions also exist for emergency events and hotelling required by a Federal agency. Title 17, California Code of Regulations (CCR), section 93118.3(b)(3), CARB Attachment #9, ''Final Regulation Order for title 17, CCR section 93118.3,'' EPA–HQ–OAR–2011–0548–0011.

[6] The At-Berth Regulation applies to vessels docked at six California ports: the Port of Hueneme, the Port of Los Angeles, the Port of Long Beach, the Port of Oakland, the Port of San Diego, and the Port of San Francisco.

[7] ''Fleet'' means ''all container, passenger, and refrigerated cargo vessels, visiting a specific California port, which are owned and operated by, or otherwise under the direct control, of the same Person * * * For purposes of this section, a person shall be deemed to have separate fleets for each California port visited and each fleet is composed of one type of vessel.'' Title 17, CCR section 93118.3(c)(16). *See also* CARB, ''Authorization Support Document,'' EPA–HQ–OAR–2011–0548–0002.

[8] ''Shore power'' is defined as ''electrical power being provided by either the local utility or by distributed generation.'' CARB Attachment 9, ''Final Regulation Order for title 17, CCR section 93118.3,'' EPA–HQ–OAR–2011–0548–0011.

[9] CARB, ''Authorization Support Document,'' August 2, 2010, EPA–HQ–OAR–2011–0548–0002 (hereinafter ''CARB Support Document''.

[10] The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable Federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[11] *See* 59 FR 36969 (July 20, 1994).

stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[12]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [13]

The court upheld the Administrator's position that, to deny a waiver, there must be 'clear and compelling evidence' to show that proposed procedures undermine the protectiveness of California's standards.[14] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[15]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [16]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[17]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [18] Therefore, the Administrator's burden is to act ''reasonably.'' [19]

D. EPA's Administrative Process in Consideration of California's At-Berth Regulation

Upon review of CARB's request, EPA offered an opportunity for a public hearing, and requested written comment on issues relevant to a full section 209(e) authorization analysis, by publication of a **Federal Register** notice on June 29, 2011.[20] Specifically, we requested comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

In response to EPA's June 29, 2011 **Federal Register** notice, EPA received one public comment. The comment is from the Pacific Merchant Shipping Association (''PMSA''). PMSA makes four general comments. First, PMSA comments that California's At-Berth Regulation is arbitrary and capricious under section 209 of the Clean Air Act. Second, PMSA comments that the At-Berth Regulation does not adequately address significant economic impact issues and assess fleet composition. Third, PMSA comments that CARB lacks statutory authority to pursue its At-Berth Regulation as an in-use operation regulation that requires retrofits. Fourth, PMSA comments that the California At-Berth Regulation is preempted under section 209(e)(2) of the Clean Air Act.

II. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. CARB's Board made a protectiveness determination in Resolution 07–57, finding that California's At-Berth Regulation will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards.[21] CARB highlights that EPA is authorized to regulate new nonroad engines, and only California may adopt emission standards and other emission-related requirements for in-use nonroad engines.[22] Accordingly, CARB points out that EPA has not adopted any emission standards or other requirements applicable to in-use nonroad engines, including auxiliary diesel engines operated on ocean-going vessels. CARB concludes that ''no question exists that the At-Berth Regulation is at least as protective of public health and welfare as applicable federal standards.''

EPA did not receive any comments directly challenging California's protectiveness determination, but did receive one comment from PMSA, who

[12] *MEMA I,* 627 F.2d at 1122.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[17] *MEMA I,* 627 F.2d at 1121.

[18] *Id.* at 1126.

[19] *Id.*

[20] 76 FR 38155 (June 29, 2011).

[21] ''BE IT FURTHER RESOLVED that the Board hereby determines, pursuant to section 209(e)(2) of the Federal Clean Air Act, the requirements in the adopted regulation, to the extent they are determined to be emission standards or requirements related to the control of emissions, are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions, and that the adopted requirements, standards, and accompanying provisions are consistent with the provisions in section 209.'' CARB, Resolution 07–57, EPA–HQ–OAR–2011–0549–0007.

[22] CARB Support Document at 7; *see Engine Mfrs. Assoc.* v. *EPA,* 88 F.3d 1075, 1089–1090 (DCCir 1996).

presents that California's At-Berth Regulation is, more generally, arbitrary and capricious. PMSA's ''arbitrary and capricious'' comment is not concerned with California's protectiveness determination (*i.e.,* the stringency of the standards, or the health and welfare effects of the regulation); what PMSA is concerned about is that the regulation should be more closely tailored to the emissions it seeks to reduce. PMSA complains that California regulates only some types of vessels and not others. EPA's review of California's protectiveness determination, however, is limited under section 209(e)(2)(i). The Agency's review is highly deferential to California's policy judgment as expressed in its final regulation. The Clean Air Act does not leave room for EPA to second-guess the wisdom of California's policy. EPA is charged with determining whether California made its protectiveness determination arbitrarily and capriciously; conversely, EPA is not tasked with conducting a more searching ''arbitrary and capricious'' review of California's regulation. Furthermore, the issues PMSA raises when it opines that California's At-Berth Regulation is ''arbitrary and capricious'' are not the type of issues that EPA traditionally considers as part of its evaluation of California's protectiveness determination. When evaluating California's protectiveness determination, EPA traditionally compares the stringency of the California and Federal standards at issue in a given waiver or authorization request. That comparison is undertaken within the broader context of the previously waived California program, which relies upon protectiveness determinations that EPA previously found were not arbitrary and capricious. EPA refrains from conducting a more detailed examination of the California rulemaking more generally. Such an undertaking would seemingly go beyond the review that Congress intended.[23] Considering PMSA's comments within the context of EPA's traditional protectiveness provides no additional opportunity to question California's protectiveness determination because PMSA provides no indication that California's standards are less stringent than comparable Federal standards. Additionally, even if we were to take into account PMSA's ''arbitrary and capricious'' concerns when reviewing California's protectiveness determination, PMSA's concerns to do not present sufficient evidence to meet its burden of proof. PMSA does not present any factual evidence or analysis of any health and welfare effects they expect to be caused by California's regulation. Such evidence and analysis would be necessary to show that California's standards are less protective of health and welfare. Thus, in this comment PMSA does not meet its burden to show that California's protectiveness determination was arbitrary and capricious.[24]

Therefore, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

B. Need for California Standards To Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions. * * *'' This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[25] As discussed above, for over forty years CARB has repeatedly demonstrated the need for its mobile source emissions program to address compelling and extraordinary conditions in California. In its Resolution 07–57, CARB affirmed its longstanding position that California continues to need its own motor vehicle and engine program to meet its serious air pollution problems. Likewise, EPA has consistently recognized that California continues to have the same ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems.'' [26] Furthermore, no commenter has presented any argument or evidence to suggest that California no longer needs a separate mobile source emissions program to address compelling and extraordinary conditions in California.[27] Therefore, EPA has determined that we cannot deny California a waiver for its At-Berth Regulation under section 209(e)(2)(ii).

C. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As described above, EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C).

1. Consistency With Section 209(a)

To be consistent with section 209(a) of the Clean Air Act, California's At-Berth Regulation must not apply to new motor vehicles or new motor vehicle engines. California's At-Berth Regulation apply to auxiliary diesel engines, which are nonroad engines, not on-highway motor vehicles or engines. CARB further clarifies that because auxiliary diesel engines are regulated as nonroad engines, they fall within the regulatory definition of nonroad engine, and are, thus, consistent with section 209(a). No commenter presented otherwise; therefore, EPA cannot deny California's request on the basis that California's At-Berth Regulation is not consistent with section 209(a).

2. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's At-Berth Regulation must not affect new farming or construction vehicles or engines that are below 175 horsepower, or new locomotives or their engines. CARB again clarifies that its At-Berth Regulation applies to in-use auxiliary diesel engines operated on ocean-going vessels while at-berth in a California port. Such engines are not used in locomotives and are not primarily used in farm and construction equipment vehicles. No commenter presented otherwise; therefore, EPA cannot deny California's request on the basis that California's At-Berth Regulation is not consistent with section 209(e)(1).

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with

[23] *MEMA I,* 627 F.2d at 1121.

[24] PMSA's ''arbitrary and capricious'' comment is also addressed below in section III.D.

[25] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[26] 49 FR 18887, 18890 (May 3, 1984); *see also* 76 FR 34693 (June 14, 2011), 74 FR 32744, 32763 (July 8, 2009), and 73 FR 52042 (September 8, 2008).

[27] PMSA did comment that the possibility that other states may adopt California's At-Berth Regulation ''raises the issue that CARB has not demonstrated that this regulation is necessary 'to meet compelling and extraordinary conditions' under section 209(e)(2)(A)(ii), of the Act.'' However, after raising the issue, PMSA did not offer any argument or evidence to support its conclusion. California clearly provided a demonstration in its request for authorization that it needs its standards to meet compelling and extraordinary conditions.

section 202(a) of the Act. California standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if Federal and California test procedures conflicted. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the Federal test procedures.[28]

a. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[29] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[30] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead-time to implement that technology.[31] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[32]

CARB presents that the technology required to comply with both the Shore Power Option and the Equivalent Emission Reduction Option is currently available, and that it has provided sufficient lead-time.[33] For the Shore Power Option, which CARB expects to be the choice of most vessel operators, CARB asserts that technology is proven and currently in use at several terminals. The technology needed to comply with the Shore Power Option is grid-based shore power, in which vessel operators shut off vessel auxiliary engines and switch to shore based electricity to power a berthed vessel. CARB acknowledges that while some terminals already have implemented shore power capacity, others have not; nevertheless, all twenty-eight terminals subject to the At-Berth Regulation have already submitted compliance plans to install grid-based shore power at their terminals. Also, although the installation may take between two and three years to complete, CARB has provided six years of lead-time. CARB also notes that vessels have an additional flexibility, because fleets may route ships to certain ports to comply. For the Equivalent Emission Reduction Option, CARB asserts that there are a variety of emission control technologies that currently exist and are already in use, including distributed electrical generation technologies, such as compressed natural gas generators that are equipped with best available control technology. CARB explains that the At-Berth Regulation allows vessel operators to combine technologies and shore power to meet their emission reduction requirements, and that the compliance levels require increasing reductions over the course of ten years. CARB believes that its compliance flexibilities and phased-in timelines establish that there is sufficient lead-time.

CARB also considered the cost of compliance in its rulemaking record, and asserts that ''ports, terminal operators, and fleet owners and operators will largely be able to pass on their compliance costs for both compliance options [] to their customers without incurring significant economic disruption or impact on business competitiveness.''[34] CARB presents that costs incurred by terminal operators will be passed along to vessel fleet operators, who will pass them along to their customers. CARB expects the cost of its At-Berth Regulation on a typical terminal operator to be about $11 million over the course of the 2009–2020 compliance schedule. CARB also expects that costs will be passed on to customers, at different rates depending on the category of vessel and each vessel's particular use. Compliance with the Shore Power Option will also include the added cost of the grid-based electricity. CARB presents that container ships will not see a net increase because lower fuel costs will offset the increased electricity costs; passenger vessels and refrigerated cargo vessels, on the other hand, may see an increase in energy cost that can be passed along to customers through ''negligible increases in cargo costs.''[35] Based on its presentation of technological feasibility and cost of compliance, CARB concludes ''the At-Berth Regulation is feasible within the time provided for compliance, giving appropriate consideration of costs.''[36]

EPA did not receive any comments suggesting that CARB's standards and test procedures are technologically infeasible. EPA did receive comments—from PMSA—suggesting that CARB did not adequately address the cost of compliance. PMSA asserts that California's At-Berth Regulation did not adequately address the significant economic impact issues or appropriately assess fleet composition. PMSA therein presents several challenges to the cost-effectiveness of the At-Berth Regulation. First, PMSA suggests that CARB did not consider actual baseline emissions of vessels at-berth. Second, PMSA suggests that there is tremendous variability of compliance costs associated with the At-Berth Regulation, so terminal operators and ocean-carriers who find themselves on the high end of the cost spectrum due to their port authority and municipal utility will face higher compliance costs. Third, PMSA asserts that CARB failed to identify ports as direct contributors in its assignment of costs. PMSA presented each of these comments in the California rulemaking, and CARB responded to each in its Final Statement of Reasons for Rulemaking (''FSOR''). With regard to PMSA's first point, CARB answered that it did not count voluntary emission reductions because they are not required by law, and that it did not count reductions from its low sulfur fuel requirements so as not to double-count those reductions.[37] With respect to PMSA's second point on cost-effectiveness, CARB agrees with PMSA that compliance costs are variable, and

[28] *MEMA I,* 627, F.2d at 1126.

[29] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[30] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[31] 41 FR 44209 (October 7, 1976).

[32] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[33] CARB Support Document at 9–11.

[34] CARB Support Document at 11; *see also* CARB, Technical Support Document, EPA–HQ–OAR–2011–0548–0006.

[35] *Id.*

[36] *Id.*

[37] CARB, ''Final Statement of Reasons for Rulemaking Including Summary of Comments and Agency Responses,'' EPA–HQ–OAR–2011–0548–0010, pp. 70–71 (hereinafter ''CARB FSOR'').

answers that the At-Berth Regulation presents compliance options that treat terminal operators and ports fairly, and that the market—not CARB—will determine who bears the various costs of compliance.[38] With respect to PMSA's third point on identification of ports as direct contributors, CARB concurred that ports will incur costs due to the regulation, and explained that it allocated costs to vessel fleet operators, terminals, and utilities because vessel fleet operators are the entities who are responsible for costs associated with compliance.[39] CARB assigned the cost of port improvements to the terminals on its assumption that ports would make the improvements and pass the costs of the improvements along to the terminals.

EPA's own review with regard to cost of compliance occurs within the context of its review of whether California's At-Berth Regulation is consistent with section 202(a) of the Clean Air Act. As described above, EPA's review here is narrow. That is, section 202(a) consistency calls for a limited review of technological feasibility, including analysis of the cost of new technology, if technology does not currently exist. Section 202(a) does not allow EPA to conduct a more searching review of whether the costs are outweighed by the overall benefits of the California regulations. In this case, no party has objected to CARB's demonstration that technologies are in existence and are being used in actual operation. EPA's traditional review of costs considers whether the cost of compliance per engine would render the regulation cost prohibitive and thus infeasible, not whether California's regulation is cost-effective. Here, CARB acknowledges and understands that there are significant costs associated with compliance, but CARB expects those costs to eventually be passed on to the consumer, without significant effect. PMSA's comments do not challenge the feasibility of the regulation. PMSA instead challenges overall cost-effectiveness of the regulation, how costs are allocated, and the variability of costs. These issues are more appropriately considered by CARB in its rulemaking, and not here in EPA's limited section 209(e) authorization review. More importantly for this proceeding, PMSA has not presented that the compliance costs are such that compliance with the At-Berth Regulation would be infeasible or unreasonable. To the contrary, CARB has presented that the costs of the regulation are not prohibitive. CARB has found that cost of the At-Berth Regulation is reasonable, cost-effective, and capable of being absorbed by the regulated industry and passed on to consumers, with minimal overall economic impact. Consequently, based on the record, EPA cannot deny California's authorization based on technological infeasibility.

b. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the Federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and Federal testing requirements using the same test vehicle or engine.[40]

CARB presents that its At-Berth Regulation does not pose any inconsistency as between California and Federal test procedures. First, CARB asserts that its At-Berth Regulation does not adopt or create any new test procedures. Second, CARB asserts that although its At-Berth Regulation incorporates by reference a number of standards and test procedures, it does not require any additional certification requirement beyond those already required for new engines, at the Federal and state levels. Third, CARB asserts that its At-Berth Regulation does not conflict with existing Federal and state diesel emission control verification testing.

EPA received no comments suggesting that CARB's At-Berth Regulation poses a test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a). Consequently, EPA cannot deny CARB's request based on this criterion.

D. Other Issues

PMSA presents three general comments in opposition to California's At-Berth Regulation that are outside the scope of EPA's scope of review of California authorization requests under section 209(e)(2).

First, PMSA asserts that California's regulation is arbitrary and capricious under section 209 of the Clean Air Act. To that end, PMSA asserts that California's At-Berth Regulation is discriminatory in its application to types of vessels without regard to the frequency with which those vessels visit California ports, and in its advantage towards vessels already equipped with shore power connections. PMSA first presented these comments to CARB in its rulemaking, and CARB answered these comments directly. CARB disagreed that the At-Berth Regulation is discriminatory, arbitrary and capricious.[41] CARB further stated that it intends to develop regulations to reduce at-berth emissions from all ship categories, but in this first regulation it has targeted emissions from three ship categories.

In response to these comments from PMSA, EPA again notes its limited review of California's request under section 209, which only includes the three criteria listed in section 209(e)(2) for California's At-Berth Regulation. PMSA's comment here goes to the overall reasonableness of the At-Berth Regulation, and not specifically towards any of the section 209(e)(2) criteria. As such, it is outside the scope of EPA's authorization evaluation. Additionally, we note that these are issues that PMSA already raised in the California rulemaking, which CARB considered and responded to with reasoned analysis.

Second, PMSA asserts that California lacks statutory authority to pursue its At-Berth Regulation as an ''In-Use Operations'' regulation that requires retrofits. PMSA's point here is that the Equivalent Emissions Reduction Option would require retrofits or modifications that could affect the stability, structural integrity, and general safety of a ship. PMSA believes that such requirements can result in impacts that are under the purview of the U.S. Coast Guard, and the respective classification societies as designated by a ship's flag state. PMSA made this same comment in the California rulemaking, and CARB responded.[42] CARB first answered that the At-Berth Regulation does not require vessels to retrofit or perform modifications to ships and engines because the regulation is not prescriptive but allows flexibility between its two compliance options. Then, CARB pointed out that its At-Berth Regulation, section (b)(2), expressly states:

> Nothing in this section shall be construed to amend, repeal, modify, or change in any way any applicable U.S. Coast Guard requirements. Any person subject to this section shall be responsible for ensuring compliance with both U.S. Coast Guard regulations and requirements of this section, including but not limited to, obtaining any

[38] CARB FSOR at 69–70.

[39] CARB FSOR at 70.

[40] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[41] CARB FSOR at 87.

[42] CARB FSOR at 19.

necessary approvals, exemptions, or orders from the U.S. Coast Guard.[43]

CARB also points out that many vessels already use shore power while docked, presumably in compliance with U.S. Coast Guard regulations.

As above, PMSA's comment here is again outside the scope of EPA's section 209(e)(2) evaluation of California's authorization request. EPA does not review the general appropriateness of California's regulations; nor does EPA's review permit analysis of whether California's regulations conflict with areas of Federal law under the purview of other agencies. This PMSA comment does not make any attempt to show that California's regulations are in conflict with any of the criteria in section 209(e)(2). It therefore cannot be the basis for any denial of California's request for authorization under section 209(e)(2).

Third, PMSA comments that California's At-Berth Regulation's ''retrofit requirements'' are preempted under section 209(e) of the Clean Air Act. This is another issue that PMSA first presented to CARB during the California rulemaking. At that time, CARB disagreed.[44] CARB again pointed out that its At-Berth Regulation does not require vessel operators to retrofit or modify their engines. CARB further pointed out that despite section 209(e)'s preemption, section 209(e)(2) allows California to seek authorization to adopt and enforce its nonroad engine regulations, which it intended to do and has now done.

PMSA's comments compare this situation to the one addressed by the Supreme Court in *United States* v. *Locke,* 529 U.S. 89 (2000). However, in this case, unlike in the case of *Locke,* the statute in question, the Clean Air Act, explicitly permits California to promulgate its own standards applicable to emissions from marine vessels as long as EPA does not make any of the findings required under section 209(e)(2) to deny authorization.

Also, as part of this third general comment, PMSA raises two additional issues. First, PMSA raises the issue that EPA's authorization would allow other states to adopt the At-Berth Regulation, and that it is difficult to envision how other states would do so. PMSA is correct that other states may adopt and enforce California standards, if such states meet the requirements of section 209(e)(2)(B) of the Act. While PMSA notes that there may be difficulties with other states' adoption of the At-Berth Regulation—and PMSA has not made it clear that there would be—PMSA makes no attempt to explain how this difficulty in any way effects California's ability to receive authorization under section 209(e)(2)(A). Second, PMSA presents its opposition to California's At-Berth Regulation on the basis that ocean-going vessel emissions are an issue of broad concern and should be addressed internationally through the International Maritime Organization. This comment relates to the broad policy considerations affecting California's regulation of vessels, but it does not address any of the criteria in section 209(e)(2). It is therefore not within the scope of EPA's review under that section.

As EPA has stated on numerous occasions, sections 209(b) and 209(e) of the Clean Air Act limits our authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests based on any other criteria.[45] In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination.[46]

None of the above-described issues PMSA raises is among—or fits within the confines of—the criteria listed under sections 209(e).[47] Therefore, in considering California's At-Berth Regulation, EPA cannot deny California's request for authorization based on these comments.

E. Authorization Determination for California's At-Berth Regulation

After a review of the information submitted by CARB and PMSA, EPA finds that those opposing California's request have not met the burden of demonstrating that authorization for California's At-Berth Regulation should be denied based on any of the three statutory criteria of section 209(e)(2). For this reason, EPA finds that an authorization for California's At-Berth Regulation should be granted.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's At-Berth Regulation, CARB's submissions, and the public comments from PMSA, EPA is granting an authorization to California for its At-Berth Regulation.

My decision will affect not only persons in California, but also entities outside the State who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by February 13, 2012. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: November 28, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–31909 Filed 12–12–11; 8:45 am]

BILLING CODE 6560–50–P

[43] At-Berth Regulation section (b)(2), section 93118.3(b)(2), title 17, chapter 1, subchapter 7.5, California Code of Regulations, EPA–HQ–OAR–2011–0548–0012.

[44] CARB FSOR at 20.

[45] *See, e.g.,* 74 FR 32744, 32783 (July 8, 2009).

[46] *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (DC Cir.1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (DC Cir. 1979).

[47] PMSA may raise these issues in a direct challenge to California's regulations in other forums, but these issues are not relevant to EPA's limited review under section 209(e).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9503–5]

California State Nonroad Engine Pollution Control Standards; Commercial Harbor Craft Regulations; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision.

SUMMARY: EPA has granted the California Air Resources Board (CARB) its request for an authorization to adopt and enforce regulations for the control of emissions of particulate matter and oxides of nitrogen from new and in-use diesel-fueled engines on commercial harbor craft.

DATES: Petitions for review must be filed by February 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2011–0549. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0549 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice. The page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J) NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2800. Email: *knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. California's Commercial Harbor Craft Regulations

In a letter dated April 12, 2010, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulations to enforce emission standards for new and in-use commercial harbor craft operated within California waters and twenty-four nautical miles of the California baseline (''commercial harbor craft regulations'').[1] The CARB Board approved the commercial harbor craft regulations at its November 15, 2007 hearing (by Resolution 07–47).[2] After making modifications, as directed by the Board, CARB's Executive Officer formally adopted the rulemaking in Executive Order R–08–007 on September 2, 2008.[3] CARB's commercial harbor craft regulations became operative under California state law on November 19, 2008.[4] The regulations are codified in title 13, California Code of Regulations (CCR), section 2229.5 and title 17, CCR section 93118.5.[5]

California's commercial harbor craft regulations establish emission standards, requirements related to the control of emissions, and enforcement provisions. The requirements are applicable to diesel propulsion and auxiliary engines on new and in-use commercial harbor crafts, with some exceptions.[6] Commercial harbor craft include a variety of different types of vessels, including ferries, excursion vessels, tugboats, towboats, and commercial and charter fishing boats. Approximately eighty percent of commercial harbor craft engines operating in California are previously unregulated diesel engines, accounting for approximately 3.3 tons per day (tpd) of diesel particulate matter (PM) and 73 tpd of oxides of nitrogen (NO_X). California's commercial harbor craft regulations aim to reduce these emissions so that California can meet the 2014 National Ambient Air Quality Standards (NAAQS) deadline for $PM_{2.5}$ in the South Coast Air Basin. The commercial harbor craft regulations apply separately to new and in-use engines used on harbor craft.[7]

For new harbor craft, each propulsion and auxiliary diesel engine on the vessel is required to be certified to the most stringent federal new marine engine emission standards for that engine's power rating and displacement in effect at the time of sale, lease, rent, or acquisition.[8] The regulation imposes additional requirements for larger new ferries (with the capacity to transport seventy-five or more passengers), either by using best available control technology (''BACT''),[9] or by using a federal Tier 4 certified propulsion engine.

For in-use harbor craft, new or in-use diesel engines may not be sold, offered for sale, leased, rented, or acquired unless the diesel propulsion or auxiliary engines are certified to at least the federal Tier 2 or Tier 3 marine emission standards for new engines of the same power rating and displacement.[10] In-use emission requirements are imposed on Tier 0 and Tier 1 marine engines in ferries, excursion vessels, tugboats, towboats, push boats, and multipurpose harbor craft. Those harbor craft are required to meet emission limits equal to or cleaner than the federal new marine engine certification standards in effect for the year that in-use engine compliance is required.

California's commercial harbor craft regulations also impose requirements related to monitoring, reporting and recordkeeping of compliance on owners and operators of new and in-use harbor craft.[11] Subject to CARB approval, harbor craft owners and operators may opt to meet requirements by implementing alternative emission control strategies.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce its own

[1] Letter from James Goldstene to Lisa P. Jackson, EPA–HQ–OAR–2011–0549–0001.

[2] CARB, Resolution 07–47, EPA–HQ–OAR–2011–0549–0027.

[3] CARB, Executive Order R–08–007, EPA–HQ–OAR–2011–0549–0030.

[4] *See* CARB, Approval Notice, EPA–HQ–OAR–2011–0549–0035.

[5] *See* CARB, Final Regulation Order, EPA–HQ–OAR–2011–0549–0034.

[6] *See* CARB, Authorization Support Document, p. 5, EPA–HQ–OAR–2011–0549–0002 (hereinafter ''CARB Support Document'').

[7] CARB Support Document, pp. 2–6.

[8] CARB Support Document at 2.

[9] BACT is the diesel emission control strategy (DECS) determined by CARB to be the greatest feasible reduction of NO_X or PM.

[10] CARB Support Document at 3.

[11] CARB Support Document at 5.

standards for new nonroad engines or vehicles that are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards. On October 8, 2008, the regulations promulgated in that rule were moved to 40 CFR part 1074, and modified slightly.[12] As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[13]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[14]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [15]

The court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed procedures undermine the protectiveness of California's standards.[16] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[17]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [18]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[19]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [20] Therefore, the Administrator's burden is to act ''reasonably.'' [21]

D. EPA's Administrative Process in Consideration of California's Commercial Harbor Craft Regulations

Upon review of CARB's request, EPA offered an opportunity for a public hearing, and requested written comment on issues relevant to a full section 209(e) authorization analysis, by publication of a **Federal Register** notice on June 29, 2011.[22] Specifically, we

[12] The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[13] *See* 59 FR 36969 (July 20, 1994).

[14] *MEMA I,* 627 F.2d at 1122.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[19] *MEMA I,* 627 F.2d at 1121.

[20] *Id.* at 1126.

[21] *Id.* at 1126.

[22] 76 FR 38153 (June 29, 2011).

requested comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

In response to EPA's June 29, 2011 **Federal Register** notice, EPA received two written comments. The written comments are from the American Waterways Operators (''AWO'') [23] and K-Sea Transportation Partners L.P. (''K-Sea'').[24] AWO initially requested a public hearing, and later withdrew that request. After the close of the comment period, EPA met with AWO to discuss comments from their members.[25]

AWO comments that California does not need the new standards to meet compelling and extraordinary conditions. AWO also comments that California's standards and enforcement procedures are not consistent with the Clean Air Act section 209. Additionally, AWO expressed other concerns in their comments related to the commercial harbor craft regulation's compliance schedules.

K-Sea comments that the new regulations are not consistent with section 202(a) of the Clean Air Act. K-Sea also comments that California does not need the new regulations to meet compelling and extraordinary conditions. Additionally, K-Sea does not believe that CARB adequately assessed the financial impacts and compliance costs associated with implementation of California's commercial harbor craft regulations.

II. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that CARB was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. CARB's Board made a protectiveness determination in Resolution 07–47, finding that California's commercial harbor craft regulation will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.[26] CARB asserts that EPA has no basis to find that the CARB Board's determination is arbitrary or capricious.[27] CARB points out that most of the commercial harbor craft requirements (for new diesel engines in newly acquired harbor craft and ferry propulsion engines) are identical to the federal requirements for those engines. CARB also highlights that its requirements for new propulsion diesel engines in larger new ferries are more stringent that federal standards because they additionally require BACT technology. With respect to the commercial harbor craft regulation's in-use requirements, CARB additionally asserts that its requirements are more stringent than applicable federal regulations because EPA does not have the authority to regulate in-use nonroad engines.

No commenter expressed an opinion or presented evidence suggesting that CARB was arbitrary and capricious in making its above-noted protectiveness findings or that CARB's requirements are not, in the aggregate, as stringent as applicable federal standards. Therefore, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

B. Need for California Standards to Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions.'' This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[28] As discussed above, for over forty years CARB has repeatedly demonstrated the need for its motor vehicle emissions program to address compelling and extraordinary conditions in California. In its Resolution 07–47, CARB re-affirmed its longstanding position that California continues to need its nonroad emission standards to meet its serious air pollution problems. Likewise, EPA has consistently recognized that California continues to have the same ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems.'' [29]

AWO asserts that California does not need the commercial harbor craft regulations to meet compelling and extraordinary conditions. AWO focuses on California's goal of improving upon the South Coast Air Basin's non-attainment status by reducing NO_X and $PM_{2.5}$ levels. AWO states that there is no justification for CARB to adopt statewide regulations of NO_X and $PM_{2.5}$ in order to meet the 2014 NAAQS deadline for $PM_{2.5}$ in the South Coast Air Basin. AWO reviewed CARB's Initial Statement of Reasons (''ISOR'') and believes that the ISOR does not provide sufficient detail to explain the relationship between pollutant exceedances and commercial harbor craft emissions. Additionally, AWO believes that the data CARB used from 2006 and earlier for its analysis of commercial harbor craft's contribution to NO_X and $PM_{2.5}$ levels is inaccurate and outdated in that it does not represent the most current operation of tugboats in California waters. AWO also points to CARB's statements regarding decrease in emissions for diesel NO_X and $PM_{2.5}$ because of other effects and factors. Further, in comparing data for emission reductions with and without the proposed standards, AWO concludes that CARB's emission reduction goals would be met without implementing the commercial harbor craft regulation.

K-Sea also asserts that California does not need the commercial harbor craft regulation to meet compelling and extraordinary conditions. K-Sea argues that California used data from 2006 and earlier in its rulemaking, which is

[23] The American Waterways Operators (''AWO''), Comments, EPA–HQ–OAR–2011–0549–0038 (hereinafter ''AWO Comments'').

[24] K-Sea Transportation Partners L.P. (''K-Sea''), Comments, EPA–HQ–OAR–2011–0549–0037 (hereinafter ''K-Sea Comments'').

[25] EPA, ''Memorandum from Tayyaba Waqar to Docket EPA–HQ–OAR–2011–0549,'' EPA–HQ–OAR–2011–0549–0039.

[26] ''BE IT FURTHER RESOLVED that the Board hereby determines, in accordance with section 209(e)(2) of the CAA, that to the extent the regulation approved herein affects nonroad engines as defined in CAA section 216(10) and (11), the emission standards and other requirements related to the control of emissions in the regulation approved herein are, in the aggregate, at least as protective of public health and welfare as applicable federal standards; California needs its nonroad emission standards to meet compelling and extraordinary conditions; and the standards and accompanying enforcement procedures approved herein are consistent with CAA section 209.'' CARB Resolution 07–47, EPA–HQ–OAR–2011–0549–0028.

[27] CARB Support Document at 7–8.

[28] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[29] 49 FR 18887, 18890 (May 3, 1984); *see also* 76 FR 34693 (June 14, 2011), 74 FR 32744, 32763 (July 8, 2009), and 73 FR 52042 (September 8, 2008).

outdated and inaccurate. K-Sea bases that argument on its belief that because of the recession, which started in 2008, emissions have already been in decline. K-Sea also states that the data CARB used to assess harbor craft emissions from tugboats in coastwise service did not accurately capture their duty cycles or operations within the 24-mile zone of the California regulated waters.

AWO and K-Sea have both presented arguments and information suggesting that California does not need its commercial harbor craft regulations to meet compelling and extraordinary conditions. However, as discussed above, EPA's inquiry under the section 209(e)(2)(ii) criterion restricts EPA's inquiry to whether California needs its own mobile source air pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[30] Congress decided in 1977 to allow California to promulgate individual standards that are not as stringent as comparable federal standards, as long as the standards are ''in the aggregate, at least as protective of public health and welfare as applicable federal standards.'' This decision by Congress requires EPA to allow California to promulgate individual standards that are part of California's overall approach to reducing mobile source emissions to address air pollution problems. Congress intended to provide California the ''broadest possible discretion'' in selecting the best means to protect its citizens and the public welfare and did not intend for EPA to weigh which particular regulations are most appropriate for California to implement to protect public health and welfare. Consequently, Congress provided EPA a much more limited role in considering objections raised by opponents of the waiver.

Although AWO and K-Sea believe that California does not need its commercial harbor craft regulations to meet compelling and extraordinary conditions, CARB has provided evidence that it does. In the California rulemaking, CARB explained its need for the commercial harbor craft regulation.[31] Regarding the comment that California's air quality problems are limited to the South Coast Air Basin, EPA has never suggested in previous authorization or waiver proceedings that localized air quality concerns are not sufficient to receive authorization under this criterion. However, even if EPA were to accept this comment for the sake of argument, CARB has explained that it has statewide goals and federal Clean Air Act requirements to reduce NO_X and $PM_{2.5}$ emissions. CARB explained that NO_X and $PM_{2.5}$ reductions are necessary because of the relationship between those pollutants and the federal non-attainment status in both the South Coast and San Joaquin Valley air basins:

> The South Coast and San Joaquin Valley air basins are the two areas in the State that exceed the annual $PM_{2.5}$ standards. These areas are required by federal law to develop State Implementation Plans (SIPs) describing how they will attain the standards by 2015. The U.S. EPA further requires that all necessary emission reductions be achieved one calendar year sooner—by 2014—in recognition of the annual average form [sic] the standard. NO_X emission reductions are needed because NO_X leads to formation in the atmosphere of both ozone and $PM_{2.5}$; diesel PM emission reductions are needed because diesel PM contributes to ambient concentrations of $PM_{2.5}$. San Joaquin Valley and South Coast air basins are also in non-attainment for the federal ozone standard.* * *
>
> While all sources of NO_X emissions are important, marine vessels, which include commercial harbor craft engines, are one of several key contributors to $PM_{2.5}$ that will determine whether California is able to meet the 2014 deadline for $PM_{2.5}$ attainment in the South Coast air basin.
>
> * * * Staff projects that the regulation would reduce in-use harbor craft diesel PM emissions about 70 percent and NO_X emissions about 60 percent from the 2004 baseline by 2020. These emission reductions would occur in areas along waterways, near ports, and in those communities surrounding these areas, as well as further inland.
>
> The regulation would also reduce diesel PM and NO_X emissions that contribute to exceedances throughout the State of ambient air quality standards for both $PM_{2.5}$ and ozone. These reductions would assist California in its goal of achieving state and federal air quality standards.
>
> The emission reductions from the proposed regulation would result in lower ambient PM levels and reduced exposure to diesel PM. Staff estimates that approximately 310 premature deaths statewide would be avoided by year 2025 from implementation of the proposed regulation. The estimated cost benefit of the avoided premature deaths and other health benefits due to the emission reductions are estimated to range from $1.3 to $2.0 billion.[32]

Thus, contrary to AWO's argument, CARB presents that it does need statewide commercial harbor craft regulations, because NO_X and PM pollution problems affect the entire state.

Although AWO and K-Sea claim that California's 2006 data is outdated, because emissions have decreased since 2008 due to the recession and other emission reduction strategies, they have not presented evidence proving this to be the case. EPA must rely on the record in front of us. Moreover, while both AWO and K-Sea suggest that California may have overstated the emission contributions from harbor craft, they do not show that harbor craft do not contribute to emissions that affect California's air quality. While the level of air pollution may go to the overall benefits of the program, it is not relevant for determining the need for California's nonroad engine program. Indeed, AWO's comments make clear that the harbor craft regulations will result in emission reductions.[33]

Moreover, AWO's argument relies on California's other emission reduction strategies to make its case, but it is inappropriate for EPA to decide which California regulations are needed, and which are not. CARB presented that they expect the emission reductions from the commercial harbor craft regulation to benefit the entire state in meeting federal standards and reaching their statewide emission reduction goals. While AWO believes California's state goals will be met without the commercial harbor craft regulation, they do not present evidence to support that belief, nor do they suggest that the San Joaquin or South Coast air basins would actually meet federal ozone and PM standards without the commercial harbor craft regulation. Nor would it be appropriate for EPA to decide that the other emission controls on which AWO relies are necessary but the controls on commercial harbor craft are not. Aside from the fact that all sources of pollution could argue that other sources should be regulated instead of them, EPA's review is not intended to replace the policy decisions of California in determining the appropriate emission control strategies it will use to meet its air quality needs.

Based on the above, those opposing the authorization have not met the burden of proof necessary for EPA to find that California no longer needs a separate mobile source emissions program to address compelling and extraordinary conditions in California. Therefore, EPA has determined that we cannot deny California authorization for its commercial harbor craft regulations under section 209(e)(2)(ii).

[30] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[31] CARB, Technical Support Document, EPA–HQ–OAR–2011–0549–0007, pp. I–1–I–3.

[32] *Id.*

[33] For example, AWO analyzed CARB's ISOR, and found that California's commercial harbor craft regulation would achieve ''only 10 percent'' of California's total estimated statewide PM emission reductions and ''only 6 percent'' of California's total estimated statewide NO_X reductions.

C. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As described above, EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C).

1. Consistency With Section 209(a)

To be consistent with section 209(a) of the Clean Air Act, California's commercial harbor craft regulations must not apply to new motor vehicles or new motor vehicle engines. California's commercial harbor craft regulations apply to nonroad engines, not on-highway motor vehicles or engines. CARB states that the new vessel requirements regulate new diesel engines, and apply only to nonroad engines that are neither new motor vehicles nor new motor vehicle engines. No commenter presented otherwise; therefore, EPA cannot deny California's request on the basis that California's commercial harbor craft regulations are not consistent with section 209(a).

2. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's commercial harbor craft regulations must not affect new farming or construction vehicles or engines that are below 175 horsepower, or new locomotives or their engines. CARB presents that commercial harbor craft engines are not used in locomotives and are not primarily used in farm and construction equipment vehicles. No commenter presented otherwise; therefore, EPA cannot deny California's request on the basis that California's commercial harbor craft requirements are not consistent with section 209(e)(1).

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. California standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if the federal and California test procedures were not consistent. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedure.[34]

a. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[35] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[36] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead-time to implement that technology.[37] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[38]

CARB presents that the technological feasibility of most of the commercial harbor craft requirements are ''clearly technologically feasible'' because they mirror requirements that EPA has already adopted and determined were technologically feasible after considering cost of compliance when setting its Tier 2, 3, and 4 emission standards.[39] Such is the case for the new vessel engine requirements, for which compliance is based on meeting applicable federal Tier 2, 3, or 4 emission standards. Larger new ferry propulsion engines must similarly meet applicable federal standards, with those that meet Tier 2 or 3 federal standards also required to be equipped with BACT. CARB states that the BACT requirement is technologically feasible because a BACT determination is made on a case-by-case assessment of technological availability for each specific ferry application. If no BACT is available for a specific ferry application, compliance with federal Tier 2 or 3 standards is all that is required. This aspect of California's commercial harbor craft regulations is the only aspect which does not rely upon compliance with a federal standard; for this aspect, CARB contends that the cost of compliance on ferry owners and operators will largely be passed along to customers without significant economic disruption. CARB's in-use requirements also rely on compliance with federal emission standards and includes four compliance options: (1) Engine replacement with new federal Tier 2 or 3 compliant engines, (2) demonstrating compliance with federal Tier 2 or 3 standards (*e.g.,* rebuilding), (3) demonstrating that a vessel will not operate more than three hundred hours in a compliance year, and (4) flexibility through exemptions and compliance extensions.

EPA did not receive any comments suggesting that California's commercial harbor craft regulations are technologically infeasible. EPA did receive comments—from AWO and K-Sea—suggesting that CARB did not adequately address the cost of compliance within the lead-time provided.

AWO asserts that California's commercial harbor craft regulations are inconsistent with section 202(a) because there has been inadequate lead-time to permit the development and widespread commercial availability of the technology necessary to comply, and CARB has not given appropriate consideration to the cost of compliance within the lead-time provided. AWO further asserts that approximately four-fifths of the towing vessel fleet is equipped with pre-Tier 1 or Tier 1 certified engines, and current regulations only require use of an EPA-approved kit, if available; California's commercial harbor craft regulations, on the other hand, will require these vessels to rebuild with a Tier 2 kit or completely repower. AWO also asserts that CARB does not address the cost of a retrofit versus the cost of replacement; this, AWO believes, is a failure to provide adequate lead-time, ''with appropriate consideration to the cost of compliance.'' AWO emphasizes that its

[34] *MEMA I,* 627, F.2d at 1126.

[35] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[36] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[37] 41 FR 44209 (October 7, 1976).

[38] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[39] CARB Support Document at 9–13.

members cannot afford these costs, particularly because ninety percent of the towing industry is comprised of small businesses. Additionally, AWO stresses that these cost concerns (*e.g.,* vessel downtime required during drydocks, the residual value of engine replacement, cost of installation and maintenance, equipment and shipyard availability) were not given full consideration by CARB. AWO believes that many towing companies may be forced to cease operations in California. Furthermore, even though California provides funding options, AWO asserts that such funding is largely unavailable for AWO members because they do not primarily operate within California. AWO believes that the cost increases associated with the commercial harbor craft regulation will drive up the cost of waterways transportation.

K-Sea also believes that CARB did not adequately assess the financial impacts and cost of compliance. K-Sea emphasizes that out of its 18 tugs, they would need to replace 13. K-Sea informs EPA that they cannot afford this, and will be forced to either make a radical capital investment to comply, or cease operating in California. K-Sea represents that they cannot obtain CARB funding because it does not operate primarily in California. K-Sea also states that they could relocate compliant vessels to California, which would merely shift pollution out of state. K-Sea believes this renders the ''necessity of the regulation to be 'arbitrary and capricious' * * *''

EPA's review with regard to cost of compliance occurs within the context of its review of whether California's commercial harbor craft regulations are consistent with section 202(a) of the Clean Air Act. As described above, EPA's review here is narrow. That is, section 202(a) consistency calls for a limited review of technological feasibility, including analysis of the cost of new technology, if technology does not currently exist. Section 202(a) does not allow EPA to conduct a more searching review of whether the costs are outweighed by the overall benefits of the California regulations. In this case, no party has objected to CARB's demonstration that technologies are in existence and are being used in actual operation; AWO and K-Sea only challenge the cost of compliance. EPA's traditional review of costs considers whether the cost of compliance per engine would render the regulation cost prohibitive and thus infeasible. Here, CARB understands that there are significant costs associated with compliance, but it expects those costs to eventually be passed on to the consumer, without significant impact on the industry. AWO and K-Sea, on the other hand, present that compliance with the commercial harbor craft regulations would impose unreasonable costs that could lead operators to cease operations in California. AWO and K-Sea did not further express that the costs associated with compliance would render compliance entirely infeasible. Notably, CARB responded to similar if not identical concerns from industry—including comments from AWO—during the California rulemaking.[40] In response to comments with respect to the significant costs of compliance and impact on the industry, CARB stood by its rulemaking findings. CARB addressed the many points AWO and K-Sea now raise in this proceeding. Specifically, CARB stated, among other things, that it does not believe the commercial harbor craft regulation will have significant economic impacts; that the potential impacts on affected tugboat and towboat businesses will, on average, decrease a business's return on investment by 3.6 and 0.5 percent, respectively; that engine replacement is the most expensive compliance option, but there may be other less costly options, including rebuilding, employing emission control technologies, applying for approval of alternative control of emissions plan, or applying for compliance extensions; that tugboats will be able to pass on the added compliance costs to their customers; that the regulation will not result in job losses or significant impact on tugboat businesses because they provide a necessary service that will continue to be in high demand; and that CARB has given six years of lead-time for businesses to plan for compliance in which they may apply for incentive funds or choose other less costly compliance options. In previous waiver and authorization determinations, EPA has consistently given California substantial deference on its policy judgments, including those related to the costs associated with compliance. For example, in a previous authorization determination where cost of compliance was an issue, EPA stated: ''CARB's regulations are feasible with respect to cost objectively; i.e., all fleet operators face the same cost per unit to comply. While this cost may have different impacts on fleets of varying sizes, EPA recognizes that it is up to CARB to choose who it will regulate under its standards.''[41] Similarly here, EPA is in no position to second-guess CARB's regulatory choices. Because the cost of compliance is not so burdensome to render compliance options out of reach, the fact that some operators may have difficulties with the cost of compliance does not render the program infeasible.

Therefore, based on the record before us, EPA finds that opponents of the authorization have not met their burden of proof. Consequently, EPA cannot deny California's authorization based on technological infeasibility.

b. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[42]

CARB presents that none of the commercial harbor craft requirements pose any inconsistency as between California and federal test procedures. CARB asserts that the compliance methods for new vessel engines are EPA's Tier 2, 3, or 4 federal marine engine test procedures. For larger new ferries, CARB also relies on federal marine engine test procedures, and asserts that the added BACT requirement is not inconsistent with federal procedures because EPA has no comparable requirement. The regulation's in-use requirements also rely on federal marine engine test procedures. CARB further presents that the in-use requirements are not inconsistent with federal requirements because EPA does not have any comparable in-use standards and test procedures.

EPA received no comments suggesting that CARB's commercial harbor craft requirements pose a test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a). Consequently, EPA cannot deny CARB's request based on this criterion.

D. Other Issues

AWO requests that the compliance dates for the affected vessels be reset

[40] CARB, ''Final Statement of Reasons for Rulemaking,'' EPA–HQ–OAR–2011–0549–0032, pp. 57–67.

[41] EPA, Authorization of In-Use Emission Standards for Transport Refrigeration Unit Engines,'' January 9, 2009, at 63.

[42] *See, e.g.,* 43 FR 32182 (July 25, 1978).

according to the date that EPA approves California's authorization request to facilitate compliance. AWO also expressed concerns about inconsistent regulation for vessels engaged in interstate commerce. K-Sea echoed a similar concern, stating that the regulations will shift the burden of dealing with emissions to other states because companies may choose to relocate a non-CARB compliant engine to operations elsewhere. With respect to AWO's request for a delayed compliance schedule, EPA cannot change an aspect of California's regulation. EPA is only authorized to review California's standards to determine compliance with section 209. It is not authorized to change California's regulations. With respect to the AWO and K-Sea comments regarding the interstate implications of California's commercial harbor craft regulations, that issue is also beyond the scope of EPA's review under the three section 209(e)(2) criteria. As EPA has stated on numerous occasions, sections 209(b) and 209(e) of the Clean Air Act limit our authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria.[43] In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination.[44] Neither of these other issues AWO and K-Sea raises is among—or fits within the confines of—the criteria listed under section 209(e).[45] It is clear that Congress intended that California have the ability to promulgate standards that are more stringent than those that would otherwise apply to mobile sources under federal regulations. Indeed, other states could also promulgate such standards if they are identical to California's. Therefore, in considering California's commercial harbor craft regulations, EPA may not deny authorization based on these issues.

E. Authorization Determination for California's Commercial Harbor Craft Regulations

After a review of the information submitted by CARB and other parties to this proceeding, EPA finds that those opposing California's request have not met the burden of demonstrating that an authorization for California's commercial harbor craft regulations should be denied based on any of the three statutory criteria of section 209(e)(2). For this reason, EPA finds that an authorization for California's commercial harbor craft regulations should be granted.

III. Decision

The Administrator has delegated the authority to grant California section 209(b) waivers of preemption and section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's commercial harbor craft regulations, CARB's submissions, and the public comments from AWO and K-Sea, EPA is granting an authorization to California for its commercial harbor craft regulations.

My decision will affect not only persons in California, but also entities outside the State who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by February 13, 2012. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: December 5, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–31916 Filed 12–12–11; 8:45 am]

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[43] *See, e.g.,* 74 FR 32744, 32783 (July 8, 2009).

[44] *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (DC Cir. 1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (DC Cir. 1979).

[45] AWO and K-Sea may raise these issues in a direct challenge to California's regulations in other forums, but these issues are not relevant to EPA's limited review under section 209.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9505–6]

Proposed CERCLA Administrative Cost Recovery Settlement; North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site, located in the vicinity of Los Angeles, California, with the following settling parties: Pick-Your-Part Auto Wrecking; Hayward Associates, LLC; and PNM Properties, LLC. The settlement requires the settling parties to pay a total of $102,161 to the North Hollywood Operable Unit Special Account within the Hazardous Substance Superfund. The settlement also includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the City of Los Angeles Central Library, Science and Technology Department, 630 West 5th Street, Los Angeles, CA 90071 and at the EPA Region 9 Superfund Records Center, Mail Stop SFD–7C, 95 Hawthorne Street, Room 403, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 12, 2012.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region 9 Superfund Records Center, Mail Stop SFD–7C, 95 Hawthorne Street, Room 403, San Francisco, CA 94105. A copy of the proposed settlement may also be obtained from the EPA Region 9 Superfund Record Center, 95 Hawthorne Street, Mail Stop SFD–7C, Room 403, San Francisco, CA 94105, (415) 820–4700. Comments should reference the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site, and EPA Docket No. 9–2011–0019 and should be addressed to Michael Massey, EPA Region 9, 75 Hawthorne Street, Mail Stop ORC–3, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Kelly Manheimer, EPA Region 9, 75 Hawthorne Street, Mail Stop SFD–7–1, San Francisco, CA 94105, (415) 972–3290.

Dated: November 17, 2011.

Jane Diamond,

Director, Superfund Division.

[FR Doc. 2011–31911 Filed 12–12–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before January 12, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax (202) 395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov and to Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0888.

Title: Section 1.221, Notice of hearing; appearances; Section 1.229 Motions to enlarge, change, or delete issues; Section 1.248 Prehearing conferences; hearing conferences; Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 668 respondents; 668 responses.

Estimated Time per Response: 6.1 to 90.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303(r), and 616 of the Communications Act of 1934, as amended.

Total Annual Burden: 32,264 hours.

Total Annual Cost: $2,705,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Needs and Uses: On August 1, 2011, the Commission adopted a Second Report and Order, Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, MB Docket No. 07–42, FCC 11–119. In the Second Report and Order, the Commission took initial steps to improve the procedures for addressing program carriage complaints by: (i) Codifying in the Commission's rules what a program carriage complainant must demonstrate in its complaint to establish a prima facie case of a program carriage violation; (ii) providing the defendant with 60 days (rather than the current 30 days) to file an answer to a program carriage complaint; (iii) establishing deadlines for action by the Media Bureau and Administrative Law Judges (''ALJ'') when acting on program carriage complaints; and (iv) establishing procedures for the Media

Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.

The following rule sections contain new or revised information collection requirements that the Commission is seeking approval for from the Office of Management and Budget (OMB):

47 CFR 1.221(h) requires that, in a program carriage complaint proceeding filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to Section 76.7(g)(2) or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to Section 76.7(g)(2), within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order.

47 CFR 1.229(b)(3) requires that, in a program carriage complaint proceeding filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, a motion to enlarge, change, or delete issues shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**.

47 CFR 1.229(b)(4) provides that any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), (b)(2), and (b)(3) of 47 CFR 1.229, shall set forth the reason why it was not possible to file the motion within the prescribed period.

47 CFR 1.248(a) provides that the initial prehearing conference as directed by the Commission shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h) or within such shorter or longer period as the Commission may allow on motion or notice consistent with the public interest.

47 CFR 1.248(b) provides that the initial prehearing conference as directed by the presiding officer shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to Section 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to Section 1.221(h) or within such shorter or longer period as the presiding officer may allow on motion or notice consistent with the public interest.

47 CFR 76.7(g)(2) provides that, in a proceeding initiated pursuant to Section 76.7 that is referred to an administrative law judge, the parties may elect to resolve the dispute through alternative dispute resolution procedures, or may proceed with an adjudicatory hearing, provided that the election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

47 CFR 76.1302(c)(1) provides that a program carriage complaint filed pursuant to Section 76.1302 must contain the following: whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant.

47 CFR 76.1302(d) sets forth the evidence that a program carriage complaint filed pursuant to Section 76.1302 must contain in order to establish a prima facie case of a violation of Section 76.1301.

47 CFR 76.1302(e)(1) provides that a multichannel video programming distributor upon whom a program carriage complaint filed pursuant to Section 76.1302 is served shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

47 CFR 76.1302(k) permits a program carriage complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract.

The following rule sections are also covered in this information collection but do not require additional OMB review and approval:

47 CFR 76.7. Pleadings seeking to initiate FCC action must adhere to the requirements of Section 76.6 (general pleading requirements) and Section 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures.

47 CFR 76.9. A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the FCC must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the rule changes.

47 CFR 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (Sections 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.61(a)(1) states that whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

47 CFR 76.61(a)(2) states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

47 CFR 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.1001(b)(2) permits any multichannel video programming distributor to commence an adjudicatory proceeding by filing a complaint with the Commission alleging that a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor, has engaged in an unfair act involving terrestrially delivered, cable-affiliated programming, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Sections 76.1001(b)(2) and 76.1003. In program access cases involving terrestrially delivered, cable-affiliated programming, the defendant has 45 days from the date of service of the complaint to file an answer, unless otherwise directed by the Commission. A complainant shall have the burden of proof that the defendant's alleged conduct has the purpose or effect of hindering significantly or preventing the complainant from providing satellite cable programming or satellite broadcast programming to subscribers or consumers; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant alleging that a terrestrial cable programming vendor has engaged in discrimination shall have the burden of proof that the terrestrial cable programming vendor is wholly owned by, controlled by, or under common control with a cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant that wants a currently pending complaint involving terrestrially delivered, cable-affiliated programming considered under the rules must submit a supplemental filing alleging that the defendant has engaged in an unfair act after the effective date of the rules. In such case, the complaint and supplement will be considered pursuant to the rules and the defendant will have an opportunity to answer the supplemental filing, as set forth in the rules.

47 CFR 76.1003(a) permits any multichannel video programming distributor (MVPD) aggrieved by conduct that it believes constitutes a violation of the FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1003.

47 CFR 76.1003(b) requires any aggrieved MVPD intending to file a complaint under this section to first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Sections 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the nature of the potential complainant. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing complaint with the Commission.

47 CFR 76.1003(c) describes the required contents of a program access complaint, in addition to the requirements of Section 76.7 of this part.

47 CFR 76.1003(c)(3) requires a program access complaint to contain evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable programming or satellite broadcast programming vendor or a terrestrial cable programming vendor alleged to have engaged in conduct described in Section 76.1001(b)(1).

47 CFR 76.1003(d) states that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim.

47 CFR 76.1003(e)(1) requires a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor that expressly references and relies upon a document in asserting a defense to a program access complaint filed pursuant to Section 76.1003 or in responding to a material allegation in a program access complaint filed pursuant to Section 76.1003, to include such document or documents as part of the answer. Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint.

47 CFR 76.1003(e)(2) requires an answer to an exclusivity complaint to provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area, the defendant shall so certify in its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to Section 76.9 of this part.

47 CFR 76.1003(e)(3) requires an answer to a discrimination complaint to state the reasons for any differential in

prices, terms or conditions between the complainant and its competitor, and to specify the particular justification set forth in Section 76.1002(b) of this part relied upon in support of the differential.

47 CFR 76.1003(e)(4) requires an answer to a complaint alleging an unreasonable refusal to sell programming to state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and to specify why the defendant's actions are not discriminatory.

47 CFR 76.1003(f) provides that, within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1003(g) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three specified events occurs.

47 CFR 76.1003(h) sets forth the remedies that are available for violations of the program access rules, which include the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor, as well as sanctions available under title V or any other provision of the Communications Act.

47 CFR 76.1003(j) states in addition to the general pleading and discovery rules contained in Section 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

47 CFR 76.1003(l) permits a program access complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission.

47 CFR 76.1302(a) permits any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's regulation of carriage agreements to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1302.

47 CFR 76.1302(b) states that any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Section 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1302(c) specifies the content of carriage agreement complaints.

47 CFR 76.1302(e) states that an answer to a program carriage complaint shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised. (This subsection has been redesignated from subsection (d) to subsection (e).)

47 CFR 76.1302(f) states that within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. (This subsection has been redesignated from subsection (e) to subsection (f).)

47 CFR 76.1302(h) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs. (This subsection has been redesignated from subsection (f) to subsection (h).)

47 CFR 76.1302(j)(1) states that upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. (This subsection has been redesignated from subsection (g) to subsection (j).)

47 CFR 76.1513(a) permits any party aggrieved by conduct that it believes constitute a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1513.

47 CFR 76.1513(b) provides that an open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

47 CFR 76.1513(c) requires that any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1513(d) describes the contents of an open video system complaint.

47 CFR 76.1513(e) addresses answers to open video system complaints.

47 CFR 76.1513(f) states within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1513(g) requires that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.

47 CFR 76.1513(h) states that upon completion of the adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, the requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–31887 Filed 12–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–1930]

Mandatory Electronic Filing for Cable Special Relief Petitions and Cable Show Cause Petitions, Via the Electronic Comment Filing System

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: This document announces the implementation of electronic filing of Cable Special Relief (CSR) Petitions and Cable Show Cause (CSC) Petitions using the FCC Electronic Comment Filing System (ECFS). A description of procedures for filing is also provided.

DATES: Effective December 1, 2011, voluntary electronic filing of CSR and CSC petitions will be permitted through January 3, 2012, when electronic filing will become mandatory.

FOR FURTHER INFORMATION CONTACT: For assistance using ECFS, contact ECFS help at (202) 418–0193 or *ecfshelp@fcc.gov.* For further information, contact Pam Pusey at (202) 418–1067 or Claudia Tillery of the Media Bureau at (202) 418–1056.

SUPPLEMENTARY INFORMATION: This is a summary of the *CSR and CSC Electronic Filing Public Notice* which was released November 22, 2011. The complete text of the *CSR and CSC Electronic Filing Public Notice* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Friday in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *CSR and CSC Electronic Filing Public Notice* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or Web site *http://www.BCPIWEB.com* using document number DA 11–1930 for the *CSR and CSC Electronic Filing Public Notice.* The *CSR and CSC Electronic Filing Public Notice* is also available on the Internet at the Commission's Web site: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1930A1.doc; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1930A1.pdf;* or *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1930A1.txt.*

This change in filing procedures is made pursuant to § 1.49(f) of the Commission's rules, as recently amended in the Commission's Report and Order released on February 4, 2011. *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* Report and Order, 26 FCC Rcd 1594 (2011). The Commission revised portions of its Part 1, Practice and Procedural rules and its Part 0, Organizational rules to increase the efficiency of Commission decision-making and modernize the agency's processes in the digital age. The Commission delegated authority to the Consumer and Governmental Affairs Bureau, in consultation with relevant bureau, authority to implement the various electronic filing provisions by Public Notice. This Public Notice implements electronic filing of Cable Special Relief (CSR) petitions and Cable Show Cause (CSC) petitions, which are filed in accordance with the provisions of 47 CFR. 76.7.

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2011–31989 Filed 12–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2011–N–13]

Notice of Order: Revisions to Enterprise Public Use Database Incorporating High-Cost Single-Family Securitized Loan Data Fields and Technical Data Field Changes

AGENCY: Federal Housing Finance Agency.

ACTION: Supplementary notice.

SUMMARY: This document updates information that appeared in the Notice of Order published in the **Federal Register** on September 28, 2011.

FOR FURTHER INFORMATION CONTACT: For questions on data or methodology, contact: Ian Keith, Senior Program Analyst, (202) 408–2949, Office of Housing & Regulatory Policy, 1625 Eye Street NW., Washington, DC 20006. *mailto: Ian.Keith@fhfa.gov.* For legal questions, *contact:* Sharon Like, Managing Associate General Counsel, (202) 414–8950, Office of General Counsel, 1700 G Street NW., Fourth Floor, Washington, DC 20552. These are not toll free numbers. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Federal Housing Finance Agency (FHFA) published a Notice of Order in the **Federal Register** of September 28, 2011 at 76 FR 60031, regarding FHFA's adoption of an Order revising FHFA's Public Use Database matrices to include certain data fields for high-cost single-family loans purchased and securitized by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). The **SUPPLEMENTARY INFORMATION** in the Notice of Order stated that, based on data reported by Fannie Mae and Freddie Mac, in 2010, Freddie Mac did not purchase and securitize any first mortgages with a Home Mortgage Disclosure Act rate spread at or above 1.5 percent. (*Id.* at 60033). In reaching this determination, a multiplier factor should have been applied to the reported rate spread decimal values. Applying the multiplier factor to 2010 data, Freddie Mac purchased and securitized a total of 6,030 first mortgages (with an unpaid principal balance (UPB) of $897.6 million) with a valid Home Mortgage Disclosure Act rate spread. Of these total loans, 75 loans (with a UPB of $13.2 million) were repurchased as of year-end, and 5,955 loans (with a UPB of $884.4 million) were not repurchased as of year-end. The 75 loans repurchased represent 1.2 percent of the total loans (1.5 percent of UPB) with a validly identified rate spread that were purchased and securitized during 2010.

Based on this updated data, Freddie Mac's 2010 high-cost securitized loan data has been released in the National File C Data Set, and the rate spread field has been corrected in the Single Family Census Tract Data Set. Both files are available at *http://www.fhfa.gov/Default.aspx?Page=367.*

Dated: December 7, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–31946 Filed 12–12–11; 8:45 am]

BILLING CODE 8070–01–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 January 6, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Inspire Bancshares, Inc.,* Tomah, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank, Norwalk, Wisconsin.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Rockwall Bancshares, Inc.,* Rockwall, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Bancshares, Inc., and thereby indirectly acquire The First National Bank of Chillicothe, both in Chillicothe, Texas.

Board of Governors of the Federal Reserve System, December 8, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–31890 Filed 12–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[November 1, 2011 thru November 30, 2011]

11/01/2011		
20120012	G	Johnson & Johnson; Great Hill Equity Partners IV, LP; Johnson & Johnson.
11/02/2011		
20120039	G	Superior Energy Services, Inc.; Complete Production Services, Inc.; Superior Energy Services, Inc.
20120040	G	Carl C. Icahn; Navistar International Corporation; Carl C. Icahn.
20120044	G	AstraZeneca plc; Pfizer Inc.; AstraZeneca plc.
20120075	G	Waste Connections, Inc.; Alaska Pacific Environmental Services Anchorage, LLC; Waste Connections, Inc.
20120076	G	Iochpe-Maxion, S.A.; Grupo Galaz, S.A. de C.V.; Iochpe-Maxion, S.A.
20120078	G	GCP Fund III Corporation; AW–PAG, L.L.C.; GCP Fund III Corporation.
11/04/2011		
20110804	G	Computershare Limited; The Bank of New York Mellon Corporation; Computershare Limited.
11/07/2011		
20120082	G	Gregory A. Goodwin; Matthew J. Brewer; Gregory A. Goodwin.
20120095	G	C.R. Bard, Inc.; Medivance, Inc.; C.R. Bard, Inc.
20120097	G	Harvest DTI Acquisitions, Inc.; Quad-C Partners VII, L.P.; Harvest DTI Acquisitions, Inc.
20120102	G	George J. Pedersen; Ulysese Jefferson; George J. Pedersen.
20120107	G	Statoil ASA; Brigham Exploration Company; Statoil ASA.
20120108	G	Blackstone Capital Partners (Cayman II) VI L.P.; Socrates Privatstiftung; Blackstone Capital Partners (Cayman II) VI L.P.
20120115	G	Odyssey Investment Partners Fund IV, L.P.; TNT Group, Inc.; Odyssey Investment Partners Fund IV, L.P.
20120119	G	Oracle Corporation; Endeca Technologies, Inc.; Oracle Corporation.

EARLY TERMINATIONS GRANTED—Continued

[November 1, 2011 thru November 30, 2011]

11/08/2011		
20111422	G	Par Pharmaceutical Companies, Inc.; Chih-Ming Chen; Par Pharmaceutical Companies, Inc.
20120099	G	Sponsor Auto Finance Holdings Series; Banco Santander, S.A.; Sponsor Auto Finance Holdings Series.
20120110	G	Nationwide Mutual Insurance Company; Harleysville Mutual Insurance Company; Nationwide Mutual Insurance Company.
20120114	G	Ares Corporate Opportunities Fund III, L.P.; 99? Only Stores; Ares Corporate Opportunities Fund III, L.P.
20120117	G	Big River Resources, LLC; Western Wisconsin Renewable Energy Cooperative; Big River Resources, LLC.
20120118	G	Parsons Corporation; Cobham Plc; Parsons Corporation.
20120120	G	Cameron International Corporation; Edward L. Ganzinotti II; Cameron International Corporation.
11/10/2011		
20120036	G	Itochu Corporation; Twomey Company; Itochu Corporation.
20120037	G	National Federation of Agricultural Cooperative Associations; Twomey Company; National Federation of Agricultural Cooperative Associations.
11/14/2011		
20120116	G	The J.M. Smucker Company; Sara Lee Corporation; The J.M. Smucker Company.
20120125	G	LSI Corporation; SandForce, Inc.; LSI Corporation.
20120134	G	Entergy Corporation; NextEra Energy, Inc.; Entergy Corporation.
20120142	G	Mattel, Inc.; HiT Entertainment Scottish LP; Mattel, Inc.
20120157	G	Longitude Venture Partners, LP; Azur Pharma Public Limited Company; Longitude Venture Partners, LP.
20120161	G	Halkos Holdings, LLC; Hussey Copper Ltd.; Halkos Holdings, LLC.
11/15/2011		
20120098	G	Brockway Moran & Partners Fund III, L.P.; 2003 Riverside Capital Appreciation Fund, L.P.; Brockway Moran & Partners Fund III, L.P.
20120129	G	Roche Holding Ltd.; Anadys Pharmaceuticals, Inc.; Roche Holding Ltd.
20120136	G	CVR Energy, Inc.; Samuel Gary; CVR Energy, Inc.
20120138	G	McGladrey & Pullen, LLP; H&R Block, Inc.; McGladrey & Pullen, LLP.
20120141	G	Blackstone Capital Partners (Cayman) V–NQ L.P.; Fred Weber, Inc. Employee Stock Owner; Blackstone Capital Partners (Cayman) V–NQ L.P.
20120146	G	Lindsay Goldberg & Bessemer II L.P.; Renal CarePartners, Inc.; Lindsay Goldberg & Bessemer II L.P.
11/16/2011		
20120083	G	Apax Europe VII–B, L.P.; Ins Web Corporation; Apax Europe VII–B, L.P.
20120121	G	Pershing Square, L.P.; Canadian Pacific Railway Limited; Pershing Square, L.P.
20120122	G	Pershing Square International, Ltd.; Canadian Pacific Railway Limited; Pershing Square International, Ltd.
20120135	G	B&G Foods, Inc.; Unilever N.V.; B&G Foods, Inc.
20120137	G	TPF II, L.P.; Batesville Generation Holdings, LLC; TPF II, L.P.
20120140	G	Teachers Insurance and Annuity Association of America; ACS Actividades de Construccion y Servicios, S.A.; Teachers Insurance and Annuity Association of America.
11/17/2011		
20120148	G	American Securities Partners VI, L.P. ; GTEL Holding LLC ; American Securities Partners VI, L.P.
20120150	G	Sector Performance Fund, LP; Stonehenge Opportunity Fund II, LP; Sector Performance Fund, LP.
11/18/2011		
20120069	G	Hellman & Friedman Capital Partners; TCV IV, L.P.; Hellman & Friedman Capital Partners.
20120159	G	Cigna Corporation; HealthSpring, Inc.; Cigna Corporation.
11/21/2011		
20120090	G	American Securities Partners V, L.P.; UFX Holding I Corporation; American Securities Partners V, L.P.
20120100	G	Thomas G. Dundon; Banco Santander, S.A.; Thomas G. Dundon.
20120149	G	Liberty Interactive Corporation; HSN, Inc.; Liberty Interactive Corporation.
20120156	G	Patricia's Trust under the Kocourek 1994 Family Trust; CM Packaging Group, Inc.; Patricia's Trust under the Kocourek 1994 Family Trust.
20120162	G	Plains All American Pipeline, L.P.; Energy Spectrum Partners V, LP; Plains All American Pipeline, L.P.
20120163	G	Sinclair Broadcast Group, Inc.; Freedom Communications Holdings, Inc.; Sinclair Broadcast Group, Inc.
20120176	G	Robert David Sheehan, Jr.; OCM/GFI Power Opportunities Fund II, LP; Robert David Sheehan, Jr.
20120185	G	A.M. Castle & Co.; Paul C. Sorensen; A.M. Castle & Co.
20120186	G	A.M. Castle & Co.; Jerry W. Willeford; A.M. Castle & Co.
11/22/2011		
20120132	G	Biogen Idec Inc.; Portola Pharmaceuticals, Inc.; Biogen Idec Inc.
20120169	G	Best Buy Co., Inc.; mindSHIFT Technologies, Inc.; Best Buy Co., Inc.
20120171	G	Genstar Capital Partners V, L.P.; Reed Elsevier PLC; Genstar Capital Partners V, L.P.

EARLY TERMINATIONS GRANTED—Continued

[November 1, 2011 thru November 30, 2011]

20120172	G	Genstar Capital Partners V, L.P.; Reed Elsevier NV; Genstar Capital Partners V, L.P.
20120173	G	Sodexo S.A.; RBI Acquisition Company; Sodexo S.A.
20120175	G	Warburg Pincus Private Equity X, L.P.; Endurance International Group Holdings, LLC; Warburg Pincus Private Equity X, L.P.
20120182	G	Olympus Growth Fund V, L.P.; Bank of America Corporation; Olympus Growth Fund V, L.P.
20120183	G	The Resolute Fund II, L.P.; R. Bruce Dye; The Resolute Fund H, L.P.
20120187	G	Dr. Phillip Frost; Vector Group Ltd.; Dr. Phillip Frost.
20120195	G	Medicis Pharmaceutical Company; Graceway Pharma Holding Corp.; Medicis Pharmaceutical Company.
11/23/2011		
20120154	G	ValueAct Capital Master Fund, L.P.; Motorola Solutions, Inc.; ValueAct Capital Master Fund, L.P.
20120155	G	ValueAct Capital Master Fund, L.P.; CBRE Group, Inc.; ValueAct Capital Master Fund, L.P.
20120165	G	Eugenie Patri Sabastien EPS, SA; John D. Cresap; Eugenie Patri Sabastien EPS, SA
20120166	G	Jorge Paulo Lemann; John D. Cresap; Jorge Paulo Lemann
20120188	G	ConAgra Foods, Inc.; Brookstone Holdings, Inc.; ConAgra Foods, Inc.
20120192	G	KRG Capital Fund IV, L.P.; Enhanced Equity Fund, L.P.; KRG Capital Fund IV, L.P.
20120198	G	TransForce Inc.; Complete Production Services, Inc.; TransForce Inc.
11/29/2011		
20120196	G	L'Oreal S.A.; Pacific Bioscience Laboratories, Inc.; L'Oreal S.A.
20120197	G	PPL Corporation; LS Power Equity Partners II, L.P.; PPL Corporation.
20120199	G	Michael and Jeannie O'Neill; 101164459 Saskatchewan Ltd.; Michael and Jeannie O'Neill.
20120200	G	Carlisle Companies Incorporated; Brockway Moran & Partners Fund II, L.P.; Carlisle Companies Incorporated.
20120202	G	Gregory W. Penske; Roger S. Penske; Gregory W. Penske.
20120204	G	PTT Global Chemical Public Company; Cargill, Incorporated; PIT Global Chemical Public Company.
20120205	G	ABRY Partners VII, L.P.; American Capital, Ltd.; ABRY Partners VII, L.P.
20120206	G	Humana Inc.; HHEP–SafeMed, L.P.; Humana Inc.
20120208	G	CRH plc; M. Allen Hatfield; CRH plc.
20120211	G	QUIKRETE Holdings, Inc.; Robert J. Schlegel; QUIKRETE Holdings, Inc.
20120217	G	Douglas F. Manchester; Platinum Equity Capital Jewel Partners; Douglas F. Manchester.
20120218	G	Baker Brothers Life Sciences, L.P.; Incyte Corporation; Baker Brothers Life Sciences, L.P.
20120221	G	Tilman J. Fertitta; McCormick & Schmick's Seafood Restaurants, Inc.; Tilman J. Fertitta.

FOR FURTHER INFORMATION CONTACT: Renee Chapman, Contact Representative, or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–31686 Filed 12–12–11; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: 4040–0010; 60-day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *ed.calimag@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project

SF–424 Project/Performance Site Location(s)—OMB No. 4040–0010.

Office: Grants.gov.

Abstract

The SF–424 Project/Performance Site Location(s) form collection is an OMB approved collection (4040–0010). This form is utilized by 26 Federal grant-making agencies. The 4040–0010 collection expired on August 31, 2011. The Grants.gov Program Management Office requests a three-year clearance of this form. No changes are being made to this form.

SF–424 collections currently in use do not collect all of the FFATA required data elements from applicants. The SF–424 Project/Performance Site Location(s) form is a part of Grants.gov's mission to reduce duplication of similar or identical forms and data sets, establish consistency in data collection processes across Federal agencies, and comply with the requirements of FFATA. This information collection also implements streamlining and simplification provisions of PL 106–107 and provides support for the President's Management Agenda to allow applicants for Federal grants to apply

for grant funds online. A cross-agency work group developed the proposed SF–424 Project/Performance Site Location(s) form and data set that will serve as a common form for various grant programs.

This form will be mandatory for all of the 4040 collections except for 4040–0005 (Individual). The form includes the fields for the following FFATA required data elements: the primary location of performance and the unique identifier (DUNS number) of the organization performing the project. The SF–424 Individual (4040–0005) does not require a DUNS number as individual applicants are not required to have DUNS numbers.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Total responses	Average burden per response in hours	Total burden hours
Total	120,722	1	120,722	30/60	60,361

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–31848 Filed 12–12–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through November 5, 2013.

For information, contact Gwendolyn Cattledge, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, CDC, HHS, 1600 Clifton Road NE., M/S F63, Atlanta, Georgia 30333, Telephone (770) 488–4655.

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: December 6, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–31896 Filed 12–12–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9996–N2]

Early Retiree Reinsurance Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces that CMS, based on the projected availability of funding under the Early Retiree Reinsurance Program (ERRP), is exercising its authority under the ERRP regulations at 45 CFR 149.45(a) to deny ERRP reimbursement requests, in their entirety, that include claims that are incurred after December 31, 2011. Therefore, plan sponsors must not include such claims in their Claim Lists and Summary Cost Data submitted in support of a reimbursement request. Should circumstances related to the availability of ERRP funding change, CMS may issue a new notice announcing approval of ERRP reimbursement request that include claims incurred after December 31, 2011.

DATES: *Effective Date:* This notice is effective December 9, 2011.

FOR FURTHER INFORMATION CONTACT: David Mlawsky, (410) 786–6851.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act), included a provision that establishes the temporary Early Retiree Reinsurance Program (ERRP), which provides reimbursement to eligible sponsors of employment-based plans for a portion of the costs of providing health coverage to early retirees (and eligible spouses, surviving spouses, and dependents of such retirees). Section 1102(a)(1) of the Affordable Care Act required the Secretary to establish the program within 90 days of enactment of the law (by June 21, 2010). In the May 5, 2010 **Federal Register** (75 FR 24450), we published an interim final regulation with comment period, implementing the program as of June 1, 2010. Section 1102(e) of the Affordable Care Act appropriates funding of $5 billion for the temporary program. The regulation at 45 CFR 149.45(a) states that based on the projected or actual availability of program funding, the Secretary may deny applications that otherwise meet the requirements of this part, and if an application is approved, may deny all or part of a sponsor's reimbursement request. Under that authority, in the April 5, 2011 **Federal Register** (76 FR 18766), the Secretary announced that CMS would stop accepting applications for ERRP as of May 6, 2011.

II. Provisions of This Notice

CMS is exercising our authority under 45 CFR 149.45(a) to deny certain reimbursement requests based on the available amount remaining of the $5 billion in appropriated program funding, and the rate at which it is being disbursed. We are now announcing that any Claim List submitted to ERRP in support of a reimbursement request, that includes one or more claims with an incurred date identified as January 1, 2012 or after, will be rejected in its entirety. Therefore, to avoid such a consequence, a plan sponsor must not submit any Claim List or Summary Cost Data that includes any claim with an incurred date identified as January 1, 2012 or later.

As specified in 45 CFR 149.325, a claim may be submitted to ERRP only after it has been incurred, and paid. Therefore, under this notice, and consistent with current policy, if a claim is incurred on or before December 31, 2011, but paid after December 31, 2011, the sponsor may submit the claim, but not until it has been paid. Existing guidance defining the date upon which various types of claims are considered

to have been incurred, and paid, for purposes of ERRP, are detailed at *http://www.errp.gov,* by clicking on Common Questions, and then clicking on Costs and Reimbursement.

We note that our decision to deny reimbursement requests that include claims with incurred dates of January 1, 2012, or after, is based on the actual availability of remaining appropriated ERRP funds and the rate at which reimbursements have been disbursed, as opposed to the projected amounts of ERRP reimbursements that applicants listed in their ERRP applications. Should circumstances related to the availability of ERRP funding change, we may decide it is appropriate to approve reimbursement requests that include claims incurred after December 31, 2011. If this occurs, we will provide such notice in the **Federal Register**.

III. Collection of Information Requirements

This document does not impose any new 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. However, the information collection requirements associated with the ERRP are currently approved under OMB control number 0938–1087, with an expiration date of September 30, 2014.

Authority: 45 CFR 149.45(a).

Dated: December 6, 2011.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–31920 Filed 12–9–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family and Youth Services Bureau; Proposed Information Collection Activity; Comment Request

Title: Personal Responsibility Education Program (PREP) Multi-Component Evaluation.

OMB No.: 0970–0398

Description: The Family and Youth Services Bureau (FYSB) and the Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), are proposing data collection activity as part of the PREP Multi-Component Evaluation.

The goals of the PREP Multi-Component Evaluation are to document how PREP programs are operationalized in the field, collect performance measure data for PREP programs, and assess the effectiveness of selected PREP-funded programs. The PREP Multi-Component Evaluation will make a significant contribution to the teen pregnancy prevention literature and will produce useful findings for state and federal policymakers, researchers, and program administrators.

The evaluation will include the following three primary, interconnected components, or ''studies'':

1. *The Impact and Implementation Study (IS):* This study will involve impact and in-depth implementation evaluations of four to five specific PREP-funded sites. The study will consider how selected programs implemented key components of the PREP program, such as adult preparation subjects and substantial emphasis on abstinence and contraception and addressed key implementation considerations, such as adherence, dosage, quality of service delivery, and participant response. The impact of the selected PREP programs will be determined based on a random assignment (at the individual, classroom, or school level) evaluation design, which will involve baseline surveys and two follow-up surveys. This will allow short- and long-term impacts to be measured. One information collection request for a field instrument, focused on discussions with individuals involved in PREP programs (*i.e.* state-level PREP program coordinators, program directors, program staff, and school administrators) in order to inform site selection for this study, was approved on November 6, 2011.

2. *The Design and Implementation Study (DIS):* This study will be a broad descriptive analysis of how States designed and implemented PREP programs. The study will use multiple methods of information collection, including telephone interviews that will be conducted in every state operating a PREP program, to better understand the general design and implementation of PREP programs. For this study, two rounds of interviews will be conducted: The first round of interviews, known as the ''Design Survey'', will focus on how states designed programs, and the second round of interviews, known as the ''Implementation Survey'', will focus on how states and sub-awardees actually implemented their programs. An information collection request has already been submitted to OMB for the ''Design Survey'' discussion guide.

3. *The Performance Analysis Study (PAS):* This study will focus on the development and collection of performance data for the purpose of semi-annual and annual reporting on state PREP performance outcomes, in order to determine if PREP grantees (*i.e.* states and sub-awardees) are meeting performance benchmarks related to the program's mission and priorities. At present, there is only one information collection request for the PAS.

This 60 Day Notice covers (a) the baseline and administrative instruments for the Impact and Implementation Study; (b) all instruments for the Performance Analysis Study; and (c) a request for OMB to waive subsequent 60-day **Federal Register** notices pertaining to the PREP Multi-Component Evaluation.

Impact and Implementation Study Respondents: Respondents to the baseline survey will be participants in PREP-funded programs, including school students and other youth. Administrative respondents include schools and organizations that oversee PREP-funded programs or that have program and/or school participation data.

Performance Analysis Study Respondents: Performance measurement data collection instruments will be administered to individuals representing states (i.e. PREP state-level coordinators), as well as sub-awardees (i.e. program directors), program facilitators, other program staff, and program participants.

Annual Burden Estimates

The following instruments, part of the Impact and Implementation Study (IIS), were approved on November 6, 2011.

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Discussion Guide for use with Macro-Level Coordinators	10	1	1	10
Discussion Guide for Use with Program Directors	20	2	2	80
Discussion Guide for Use with Program Staff	40	1	2	80

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Discussion Guide for Use with School Administrators	70	1	1	70
Approved Annual Burden				240

The following instrument, the ''Design Survey'' discussion guide for the the Design and Implementation Study (DIS), is currently under review at OMB.

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Discussion Guide for Use with PREP State-Level Coordinators and State-Level Staff	46	1	1	46
Total Annual Burden				46

The following instruments, part of the Impact and Implementation Study, are proposed for public comment under this 60-Day **Federal Register** Notice.

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Baseline instrument	2,000	1	.7	1,400
Administrative data collection instrument for schools and organizations	34	2	4	272
Total Annual Burden				1,672

The following instruments, part of the Performance Analysis Study, are proposed for public comment under this 60-Day **Federal Register** Notice.

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Measures of Demographics, Behaviors, Intentions, Perceived Impacts				
Program entrance survey	90,000	1	.33	29,700
Program exit survey	60,300	1	.33	19,899
Demographics, behaviors, intentions, and perceived impacts data collection	350	2	4	2,800
Measures of Attendance, Reach, Dosage				
Participant attendance log	1,400	2	4	11,200
Participant attendance log	1,400	2	4	11,200
Program session log	1,400	2	4	11,200
Attendance, reach, and dosage data collection	350	2	4	2,800
Measures of Fidelity				
Session observation instrument	1,400	2	8	22,400
Fidelity data collection	350	2	4	2,800
Measures of Cost, Partners, Training				
Program director survey	350	2	4	2,800
State PREP coordinator survey	49	2	4	392
State Submission of Data				
Data collection from sub-awardees on demographics, behaviors, intentions, perceived impacts, attendance, reach, dosage, fidelity, cost, partners, and training	49	2	16	1,568

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated Total Annual Burden				107,559

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 6, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–31703 Filed 12–12–11; 8:45 am]

BILLING CODE 4184–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

Proposed Information Collection Activities; Comment Request

Proposed Projects

Title: 45 CFR 1301 Head Start Grant Administration.

OMB No.: 0980–0243.

Description: The Office of Head Start is proposing to renew without changes authority to collect information pursuant to 45 CFR part 1301. These provisions are applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance and bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicable to personnel management.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 1301	2700	1	2	5400

Estimated Total Annual Burden Hours: 5400

In compliance with the requirements of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comments on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All Requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–31876 Filed 12–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ORR—2 Quarterly Report on Expenditures and Obligations.

OMB No.: New Collection.

Description: The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses for the administration the refugee resettlement program at the State level. States (and Wilson/Fish projects; *i.e.,* alternative projects for the administration of the refugee resettlement program) currently

submit the SF–425 Federal Financial Report, which provides aggregate expenditure and obligation data. This proposed new data collection would replace the current requirement for the SF–425 with a report form that would collect the same expenditures and obligations data separately for each of the four CMA program components: refugee cash assistance, refugee medical assistance, cash and medical assistance administration, and services for unaccompanied minors. This breakdown of financial status data will allow ORR to track program expenditures in greater detail to anticipate any funding issues and to meet the requirements of ORR regulations at CFR 400.211 to collect these data for use in estimating future costs of the refugee resettlement program. ORR must implement the methodology at CFR 400.211 each year after receipt of its annual appropriation to ensure that appropriated funds will be adequate for reimbursement to States of the costs for assistance provided to entering refugees. The estimating methodology prescribed in the regulations requires the use of actual past costs by program component. In the event that the methodology indicates that appropriated funds are inadequate, ORR must take steps to reduce federal expenses, such as by limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance. This proposed single-page financial report will allow ORR to collect the necessary data to ensure that funds are adequate for the projected need and thereby meet the requirements of both the Refugee Act and ORR regulations, as well as provide the data currently required in aggregate by the SF–425.

Respondents: State governments, Wilson/Fish Alternative Projects.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR Financial Status Report	58	4	0.50	116

Estimated Total Annual Burden Hours: 116

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–31872 Filed 12–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Annual Survey of Refugees (Form ORR–9).

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the social and economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States in the five years prior to the date of the survey. The survey focuses on the refugees training, labor force participation, and welfare utilization rates. Dates are segmented by region of origin, State of resettlement, and number of months since arrival. From the responses, the Office of Refugee Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations for refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents: Refugees, entrants, Amerasians, and Havana parolees.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–9 Annual Survey of Refugees	2,000	1	0.63	1,253.20
Request for Participation Letter	2,000	1	0.04	80

Estimated Total Annual Burden Hours: 1,333.20.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447,

Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–31871 Filed 12–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0847]

Draft Guidance for Industry and Food and Drug Administration Staff on Humanitarian Use Device Designations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled ''Humanitarian Use Device (HUD) Designations.'' Devices are eligible for HUD designation if they are designed to treat or diagnose a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year. Devices that receive HUD designation may be eligible for marketing approval under the Humanitarian Device Exemption (HDE) marketing pathway. This guidance document is intended to assist applicants in the preparation and submission of HUD designation requests and FDA reviewers in evaluating such requests.

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 March 12, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Orphan Products Development (OOPD), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5271, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Eric Chen, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5271, Silver Spring, MD 20993, (301) 796–8660.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''Humanitarian Use Device (HUD) Designations.'' Devices are eligible for HUD designation if they are designed to treat or diagnose a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year. (See section 520(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(m)); 21 CFR 814.102). This guidance document is intended to assist applicants in the preparation and submission of HUD designation requests to FDA, OOPD. This guidance is also intended to assist FDA reviewers in the evaluation and analysis of HUD designation requests.

Topics addressed in this guidance include: (1) Demonstrating in HUD requests that the device is designed to treat or diagnose a disease or condition that affects or is manifested in fewer than 4,000 individuals in the United States per year; (2) how this demonstration varies, depending on whether the device is intended for therapeutic or diagnostic purposes; (3) how properties of the device may affect this demonstration; and (4) delineating a medically plausible subset of persons with a given disease or condition.

Devices that receive HUD designation may be eligible for marketing approval under an HDE application. An HDE application is a premarketing application that is similar to a premarket approval (PMA) application in that the applicant must demonstrate a reasonable assurance of safety, but in an HDE application, the applicant seeks an exemption from the PMA requirement to demonstrate a reasonable assurance of effectiveness. A device is eligible for HDE approval if, among other criteria, the probable benefit to health from use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment. (See section 520(m) of the FD&C Act; 21 CFR 814.104(b)(2)). Although a HUD designation is a prerequisite to submitting an HDE application, it is only one of many required elements of the application (21 CFR 814.104). Receipt of a HUD designation does not guarantee that the HDE marketing application will be approved.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on humanitarian use device designations. 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. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division

of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Regulatory Information/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: December 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–31867 Filed 12–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0813]

Quantitative Summary of the Benefits and Risks of Prescription Drugs: A Literature Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft report entitled ''Quantitative Summary of the Benefits and Risks of Prescription Drugs: A Literature Review'' (literature review report). A literature review was conducted to address a requirement of the Patient Protection and Affordable Care Act (Affordable Care Act). FDA is publishing the literature review report to allow the public to provide comment on the report as it relates to the Affordable Care Act.

DATES: Submit either electronic or written comments on the literature review report by February 13, 2012.

ADDRESSES: You may submit comments, identified by Docket No. 2011–N–0813, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* (301) 827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Helen Sullivan, Office of Prescription Drug Promotion, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3263, Silver Spring, MD 20993–0002, (301) 796–1200, email: *helen.sullivan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft report entitled ''Quantitative Summary of the Benefits and Risks of Prescription Drugs: A Literature Review.'' A literature review was conducted to address section 3507 [1] of the Affordable Care Act (see *http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf*). Section 3507(a) requires the Secretary of Health and Human Services (HHS), acting through the Commissioner of Food and Drugs, to determine whether the addition of quantitative summaries of the benefits and risks of prescription drugs in standardized format (*e.g.,* similar to ''Drug Facts'' on over-the-counter products) to the promotional labeling or print advertising of such drugs would ''improve health care decisionmaking by clinicians and patients and consumers'' (section 3507(a), Pub. L. 111–148, 124 Stat. 530). In making this determination, the law directs FDA to ''review all available scientific evidence and research on decisionmaking and social and cognitive psychology'' (section 3507(b), Pub. L. 111–148, 124 Stat. 530), and to consult manufacturers and consumers, experts in health literacy, representatives of racial and ethnic minorities, and experts in women's and pediatric health.

To fulfill this requirement, FDA has commissioned an objective review of science-based studies related to the communication of quantitative benefit and risk information. FDA is making available the literature review report and is providing a comment period for interested parties to comment on the literature review report as it relates to section 3507 of the Affordable Care Act.

II. Electronic Access

Persons with access to the Internet may obtain the literature review report at *http://www.regulations.gov.*

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the literature review report. 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 and labeled ''ATTN: Literature Review.'' Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

All submissions received must include the agency name and docket number. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided.

Dated: December 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–31931 Filed 12–12–11; 8:45 am]

BILLING CODE 4160–01–P

[1] Public Law, 111–148, 124 Stat. 119, 530 (codified at note following 21 U.S.C. 352).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: January 30, 2012.

Time: 10 a.m. to 1:15 p.m.

Agenda: To review the 2012 Clinical Center Strategic and Annual Operating Plan and provide updates on selected organizational initiatives.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Closed: 1:15 p.m. to 2 p.m.

Agenda: To review and evaluate to discuss personnel matters.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Mark O. Hatfield

Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31929 Filed 12–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 31, 2012.

Open: 8:30 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to the Council's business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Laura K. Moen, Ph.D, Director, Division of Extramural Research Activities, NIAMS/NIH, 6701 Democracy Blvd., Ste 800, Bethesda, MD 20892, (301) 451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31927 Filed 12–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Registration is required since space is limited and will begin at 8 a.m. Please visit the conference Web site for information on meeting logistics and to register for the meeting *http://www.cvent.com/d/xcq841.* Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: January 24, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: The NCS will receive an update on Vanguard Study activities and an additional update on plans for the Main Study.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kate Winseck, MSW, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892, (703) 902–1339, *ncs@circlesolutions.com.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. For additional information about the Federal Advisory Committee meeting, please contact Circle Solutions at *ncs@circlesolutions.com.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31926 Filed 12–12–11; 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, PAR Panel:

Technologies for Healthy Independent Living.

Date: January 9, 2012.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Skeletal Muscle.

Date: January 10–11, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.

Date: January 11–12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Periodental Disease and Salivary Gland Injury.

Date: January 11, 2012.

Time: 2 p.m. to 4 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: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, (301) 435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing and Related Clinical Sciences Overflow.

Date: January 12, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Long Beach Hotel, 111 East Ocean Blvd., Long Beach, CA 90802.

Contact Person: Katherine Bent, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *bentkn@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: December 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31925 Filed 12–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Bioengineering Sciences and Technologies.

Date: January 5, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 996–7702, *jacobsonrh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Tumor Development.

Date: January 5, 2012.

Time: 3 p.m. to 4 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:* Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Development and Regeneration.

Date: January 6, 2012.

Time: 3 p.m. to 5 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: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, (301) 435–5575, *hamannkj@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: December 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31923 Filed 12–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Fistula Maturation Ancillary Studies.

Date: December 21, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

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: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Repositories Non-Renewable Sample Access (X01)—Hepatocelluar Carcinoma.

Date: January 4, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Major Ongoing Clinical Studies CKD.

Date: January 9, 2012.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Biomarkers Ancillary Studies.

Date: January 11, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK–PA11–260–Stem Cells and Diabetic Skin Wounds.

Date: January 12, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Diagnostic Test.

Date: January 19, 2012.

Time: 2 p.m. to 4 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Nutrition Obesity Research Centers (P30).

Date: March 12–13, 2012.

Time: 8 a.m. to 1 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: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31922 Filed 12–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, Development of Dose-Optimized CT Imaging Protocols (2012–05).

Date: February 15, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Room 959, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Dated: December 7, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31921 Filed 12–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1114]

Merchant Mariner Medical Advisory Committee; Vacancy

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Merchant Mariner Medical Advisory Committee. This Committee provides advice to the Coast Guard on matters related to medical certification determinations for issuance of merchant mariner credentials; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research.

DATES: Applicants must send a cover letter describing their interest, reasons for application, and qualifications, and should enclose a complete professional biography or resume to LT Dylan McCall, the Alternate Designated Federal Officer (ADFO), on or before January 20, 2012.

ADDRESSES: Applicants must send their cover letter and resume to the following

address: USCG Headquarters, CG–543 Office of Vessel Activities, 2100 2nd St. SW., Washington, DC 20593; or by faxing (202) 372–1128; or by emailing to *Dylan.k.mccall@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Dylan McCall, ADFO of MMMAC at telephone (202) 372–1128 or email *Dylan.k.mccall@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Merchant Mariner Medical Advisory Committee (MMMAC) is an advisory committee chartered under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The MMMAC is authorized by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281) and the Committee's purpose is to advise the Secretary on matters related to medical certification determinations for issuance of merchant mariner credentials; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research.

The Committee is expected to meet at least twice a year at various locations around the country. It may also meet for additional purposes. Working groups may also meet to consider specific problems.

We will consider applications for one position.

We are seeking one member who represents the professional mariners with knowledge and experience in mariners' occupational requirements.

The member appointed will serve a term of office of 2 years. The member may be considered to serve consecutive terms. All members serve without compensation from the Federal Government; however members may be reimbursed for travel and per diem.

Members of MMMAC will be appointed and serve as Special Government Employees (SGEs) as defined in section 202(a) of title 18 United States Code. As candidates for appointment as SGEs, applicants are required to complete Confidential Financial Disclosure Reports (OGE Form 450). The Coast Guard may not release the reports or information in them to the public except under an order issued by the Federal court or otherwise provided under the *Privacy Act* (5 U.S.C. 552(a)). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*http://www.oge.gov*), or by contacting the ADFO. Applications which are not accompanied by a completed OGE Form 450 will not be considered.

Registered lobbyists are not eligible to serve on federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the *Lobbying Disclosure Act of 1995* (Pub. L. 104–65 as amended).

In support of the Coast Guard policy on gender and ethnic nondiscrimination, we encourage qualified men and women of all racial and ethnic groups to apply. The Coast Guard values diversity; all different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to the following address: Lieutenant Dylan McCall, ADFO of MMMAC at Commandant (CG–543), ATTN: MMMAC, U.S. Coast Guard, 2100 2nd St. SW., STOP 7581, Washington, DC 20593–7581; or by faxing (202) 372–1128; or by emailing to *Dylan.k.mccall@uscg.mil.*

This notice is available in our online docket, USCG–2011–1114, at *http://www.regulations.gov* by inserting USCG–2011–1114 in the ''Keyword'' box, and then clicking ''Search''. Please do not post your resume on this site.

Dated: December 7, 2011.

P.F. Thomas,

Captain, U.S. Coast Guard, Acting Director, Prevention Policy.

[FR Doc. 2011–31869 Filed 12–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0039; OMB No. 1660–0124]

Agency Information Collection Activities: Proposed Collection; Comment Request, FEMA Preparedness Grants: Emergency Operations Center (EOC) Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Emergency Operations Center (EOC) Grant Program.

DATES: Comments must be submitted on or before February 13, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0039. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA-POLICY@dhs.gov*. Include Docket ID FEMA–2011–0039 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov* .

FOR FURTHER INFORMATION CONTACT: Sebastian Heath, Branch Chief, Grant Programs Directorate, Program Development Branch, (202) 786–9482 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Emergency Operations Center (EOC) Grant Program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable EOCs with a focus on addressing identified deficiencies and needs. Fully capable emergency operations facilities at the State, territory, local and/or Tribal levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard. Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c), as amended by Section 202, Title II of the

Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053), states, ''The Administrator of the Federal Emergency Management Agency may make grants to States under this title for equipping, upgrading, and constructing State and local emergency operations centers.''

Collection of Information

Title: FEMA Preparedness Grants: Emergency Operations Center (EOC) Grant Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0124.

Form Titles and Numbers: FEMA Form 089–0–0–3, EOC Grant Program Investment Justification; FEMA Form 089–0–0–18, EOC Prioritization of Investment Justifications Template; FEMA Form 089–0–0–3A, EOC Investment Justification Scoring Worksheet.

Abstract: The Emergency Operations Center (EOC) Grant Program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable EOCs with a focus on addressing identified deficiencies and needs. Fully capable emergency operations facilities at the State, Territory, Local and/or Tribal levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 6,258 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	EOC Grant Program Investment Justification FEMA Form 089–0–0–3.	700	1	700	8 hrs.	5,600	$30.96	$173,376.00
State, Local or Tribal Government.	EOC Prioritization of Investment Justifications Template/FEMA Form 089–0–0–18.	56	1	56	5.5 hrs. (5 hours 30 minutes).	308	33.45	10,302.60
State, Local or Tribal Government.	EOC Investment Justification Scoring Worksheet/FEMA Form 089–0–0–3A.	700	1	700	.5 hr. (30 minutes)	350	33.45	11,707.50
Total		1,456		1,456		6,258		195,386.10

Note: The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $195,386.10. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $380,762.85.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

John G. Jenkins, Jr.,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–31945 Filed 12–12–11; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–120]

Notice of Submission of Proposed Information Collection to OMB Self-Help Homeownership Opportunity Program (SHOP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

SHOP provides for funds to purchase home sites and develop/improve infrastructure to support sweat equity and volunteer-based homeownership programs for low-income persons and families. This information collection is to measure performance goals and demonstrate the success of the program.

DATES: *Comments Due Date:* January 12, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0157) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Self-Help Homeownership Opportunity Program (SHOP).

OMB Approval Number: 2506–0157.

Form Numbers: HUD–40215, HUD–40216, HUD–40217, HUD–40218, HUD–40219, HUD–40220.

Description of the Need for the Information and Its Proposed Use: SHOP provides for funds to purchase home sites and develop/improve infrastructure to support sweat equity and volunteer-based homeownership programs for low-income persons and families. This information collection is to measure performance goals and demonstrate the success of the program.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	Burden hours
Reporting Burden	933	4.138		2.246	8,675

Total Estimated Burden Hours: 8,675.

Status: Extension without change of a currently previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 7, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–31980 Filed 12–12–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colorado River Indian Tribes—Amendment to Health & Safety Code, Article 2. Liquor

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to the Colorado River Tribal Health and Safety Code, Article 2. Liquor, Section 2–403(12). The Code regulates and controls the possession, sale and consumption of liquor within the Colorado River Indian Tribes' Reservation. The land is located on trust land and this Code allows for the possession and sale of alcoholic beverages within the Colorado River Indian Tribes' Reservation. This Code will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective as of January 12, 2012.

FOR FURTHER INFORMATION CONTACT: Sharlot Johnson, Tribal Government Services Officer, Western Regional Office, Bureau of Indian Affairs, 2600 North Central Avenue, Phoenix, AZ 85004, *Telephone:* (602) 379–6786; *Fax:* (602) 379–4100; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513 MIB, Washington, DC 20240; Telephone (202) 513–7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Colorado River Indian Tribal Council adopted this amendment to the Colorado River Tribal Health and Safety Code, Article 2, Liquor by Ordinance No. 10–03 on December 13, 2010.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council duly adopted this amendment to the Colorado River Indian Tribes'—Health and Safety Code, Article 2—Liquor on December 13, 2010.

Dated: December 5, 2011.

Jodi Gillette,

Deputy Assistant Secretary—Indian Affairs.

The amendment to Colorado River Indian Tribes'—Health and Safety Code, Article 2—Liquor, Section 2–403(12) reads as follows:

(12) for a Class 1, Class 2, Class 3, Class 4 licensee, or his employee, to sell or give any liquor to any person on the licensed premises between the hours of two o'clock a.m. and six o'clock a.m., on the Arizona side of the Reservation, or between the hours of two o'clock a.m. and six o'clock a.m., Pacific Standard or Daylight time, whichever is then generally in effect in California, on the California side of the Reservation, or permit the consumption of liquor on the licensed premises in those places during those hours and those days;

[FR Doc. 2011–31875 Filed 12–12–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lummi Nation—Title 20—Code of Laws—Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to Lummi Nation's Title 20—Code of Laws—Liquor Code. The Code regulates and controls the possession, sale and consumption of liquor within the Lummi Nation's Reservation and Indian country. The land is located on trust land and this Code allows for the possession and sale of alcoholic beverages within the Lummi Nation's Reservation and Indian country. The Code will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation and Indian country, and at the same time

will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective as of December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Betty Scissions, Tribal Government Officer, Northwest Regional Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, OR 97232, Telephone: (503) 231–6723; Fax: (503) 231–6731; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513 MIB, Washington, DC 20240; Telephone (202) 513–7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Lummi Indian Business Council adopted this amendment to Title 20—Lummi Nation Code of Laws—Liquor Code by Resolution 2011–038 on March 1, 2011.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Lummi Indian Business Council duly adopted this amendment to Title 20—Lummi Nation Code of Laws—Liquor Code by Resolution 2011–038 on March 1, 2011.

Dated: December 5, 2011.

Jodi Gillette,

Deputy Assistant Secretary—Indian Affairs.

The amendment to Title 20—Lummi Nation Code of Laws—Liquor Code reads as follows:

20.01.020 Prior Legislation

Beginning with the Treaty of Point Elliott, Article X, to which the ancestors of the Lummi Indian Tribe were parties, the Federal Government has respected this tribe's determinations regarding liquor related transactions and activities on the Lummi Indian Reservation. At treaty time, the Lummi Tribe's ancestors desired to exclude ''ardent spirits'' from their reservation. This desire was honored by Congress in the enactment of 18 U.S.C. 1154 and 18 U.S.C. 1161, which prohibit the introduction of liquor into the Lummi Indian Reservation unless and until the Lummi Indian Tribe has decided when and to what extent liquor transactions shall be permitted. The Lummi Tribe has decided to open the Lummi Indian Reservation to the possession, consumption, and sale of liquor by enacting Resolution L–33 on March 14, 1972. Subsequent circumstances have made it clear that it now necessary for the Lummi Indian Tribe to exert strict tribal regulation and control over all aspects of liquor sale, distribution, and use on the Lummi Indian Reservation and on lands held in trust by the United States for the benefit of the Lummi Indian Tribe.

20.01.030 Control Desired

The enactment of the tribal ordinance governing liquor sales on the Lummi Indian Reservation and on lands held in trust for the benefit of the Lummi Indian Tribe and providing for exclusive purchase and sale through tribally owned and operated establishments will increase the ability of the Tribal Government to control reservation liquor distribution and possession, and, at the same time, will provide an important source of revenue for the continued operation of essential tribal social services.

20.01.040 Goals of Regulation

Tribal regulation of the sale, possession, and consumption of liquor on the Lummi Indian Reservation and on land held in trust by the United States for the benefit of the Lummi Indian Tribe is necessary to protect the health, security, and general welfare of the Lummi Indian Tribe. In order to further these goals and to provide for an urgently needed additional source of governmental revenue, the Lummi Indian Business Council adopts this liquor ordinance to be known as the ''Lummi Liquor Ordinance.'' This ordinance shall be liberally construed to fulfill the purposes for which it has been adopted.

[FR Doc. 2011–31895 Filed 12–12–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL WO31000.L13100000.PB0000.24 1E]

Extension of Approved Information Collection; OMB Control No. 1004–0162

AGENCY: Bureau of Land Management, Interior

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests that the Office of Management and Budget (OMB) extend an existing approval to collect information from entities which conduct geophysical operations on lands managed by the BLM or by the U.S. Forest Service (FS). The Office of Management and Budget (OMB) has assigned control number 1004–0162 to this information collection.

DATES: Please submit your comments to the BLM at the address below on or before February 13, 2012.

ADDRESSES: You may submit comments by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at (202) 245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0162'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Division of Fluid Minerals, at (202) 912–7148 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1 (800) 877–8330 to leave a message for Ms. Gamble.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521) require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the

public comments will accompany our submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Onshore Oil and Gas Geophysical Exploration (43 CFR Part 3150 and 36 CFR Parts 228 and 251).

Forms:

• BLM Form 3110–4/FS Form 2800–16, Notice of Intent and Authorization to Conduct Oil and Gas Geophysical Exploration Operations; and

• BLM Form 3110–5/FS Form 2800–16a, Notice of Completion of Oil and Gas Geophysical Exploration Operations.

OMB Control Number: 1004–0162.

Abstract: The BLM and FS collect this information in order to ensure that geophysical exploration is conducted in a manner consistent with statutes, regulations, land use plans, and environmental documents.

Frequency of Collection: On occasion.

Estimated Number and Description of Respondents: 1353 entities undertaking oil and gas geophysical exploration, i.e., activity relating to the search for evidence of oil and gas on lands managed by the BLM or the FS.

Estimated Reporting and Recordkeeping ''Hour'' Burden: 836 hours.

The following table details the individual components and respective hour burdens of this information collection request:

A. Type of response	B. Number of responses	C. Time per response	D. Total hours (Column B × Column C)
Notice of Intent and Request to Conduct Geophysical Exploration Operations 43 CFR 3151.1 and 3152.1 BLM Form 3150–4/FS Form 2800–16	625	1 hour	625
Notice of Completion of Geophysical Exploration Operations 43 CFR 3151.2 and 3152.7 BLM Form 3150–5/FS Form 2800–16a	625	20 minutes	208
Data and Information Obtained in Carrying Out Exploration Plan 43 CFR 3152.6	3	1 hour	3
Totals	1353		836

Before including your address, telephone number, email address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2011–31991 Filed 12–12–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, representing the dependent resurvey and survey, in Township 18 North, Range 1 East–1 West, of the New Mexico Principal Meridian, accepted November 2, 2011, for Group 1118 NM.

The plat, in five sheets, representing the dependent resurvey and survey, in Township 19 North, Range 9 East, of the New Mexico Principal Meridian, accepted November 2, 2011, for Group 1120 NM.

Indian Meridian, Oklahoma (OK)

The plat, representing the dependent resurvey and survey in Township 21 North, Range 22 East, of the Indian Meridian, accepted November 21, 2011, for Group 203 OK.

The plat, representing the dependent resurvey and survey in Township 24 North, Range 9 East, of the Indian Meridian, accepted October 28, 2011, for Group 201 OK. The plat, representing the dependent resurvey and survey in Township 7 North, Range 13 West, of the Indian Meridian, accepted November 17, 2011, for Group 205 OK. The plat, representing the dependent resurvey and survey in Township 2 North, Range 13 West, of the Indian Meridian, accepted November 10, 2011, for Group 209 OK.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at (505) 954–2097, or by email at *Marcella_Montoya@nm.blm.gov,* for assistance.

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.

These plats are to be scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State

Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2011–31899 Filed 12–12–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COF000–LLCOF00000–L19900000–XZ0000]

Notice of Meeting, Front Range Resource Advisory Council

AGENCY: Bureau of Land Management, 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) Front Range Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held on January 18, 2012, from 9 a.m. to 4:15 p.m.

ADDRESSES: BLM Royal Gorge Field Office, 3028 East Main Street, Cañon City, CO.

FOR FURTHER INFORMATION CONTACT: Denise Adamic, Front Range RAC Coordinator (see address above). Phone: (719) 269–8553. Email: *dadamic@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Front Range District, which includes the Royal Gorge Field Office (RGFO) and the San Luis Valley Field Office, (SLVFO), Colorado. Planned topics of discussion and agenda items include: introducing new RAC members and discussing fee proposals at Zapata Falls Campground, Penitente Canyon Campground and Shelf Road Recreation Area Campgrounds.

The meeting at the RGFO is open to the public. The public is encouraged to make oral comments to the Council at 2:30 p.m. or written statements may be submitted for the Council's consideration. Summary minutes for the RAC meetings will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Previous meeting minutes, the fee proposals and an agenda are available at: *http://www.blm.gov/co/st/en/BLM_Resources/racs/frrac/co_rac_minutes_front.html.*

Dated: December 6, 2011.

Helen M. Hankins,

State Director.

[FR Doc. 2011–31889 Filed 12–12–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[4400–SZM]

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of two meetings to be held on April 19, 2012 and September 6, 2012.

SUMMARY: This notice sets forth the dates of April 19, 2012 and September 6, 2012 of the Gettysburg National Military Park Advisory Commission.

DATES: The public meetings will be held on April 19, 2012 and September 6, 2012 from 7 p.m. to 9 p.m.

Location: The meetings will be held at the Ford Education Center in the Gettysburg National Military Park Museum and Visitor Center, 1195 Baltimore Pike, Gettysburg, Pennsylvania 17325.

Agenda: The April 19, 2012 and September 6, 2012 meetings will consist of the Election of the Chair and Vice-Chair, Operational Updates on Park Activities which will consist of Historic Landscape Rehabilitation, Park Projects, FY12 Appropriations and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: Bob Kirby, Superintendent, Gettysburg National Military Park, 1195 Baltimore Pike, Suite 100, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 1195 Baltimore Pike, Suite 100, Gettysburg, Pennsylvania 17325. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 28, 2011.

Bob Kirby,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 2011–31701 Filed 12–12–11; 8:45 am]

BILLING CODE 4310–JT–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–798]

Certain Light-Emitting Diodes and Products Containing Same; Determination Not To Review an Initial Determination Granting-in-Part Complainants' Motion To Amend the Complaint; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 15) granting-in-part the motion of complainants Samsung LED Co., Ltd. of Suwon City, South Korea and Samsung LED America, Inc. of Atlanta, Georgia (collectively ''SLED'') to amend the Complaint and Notice of Investigation (NOI).

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2011, based on a

complaint filed by SLED. 76 FR 51396–97 (Aug. 18, 2011). A corrected Notice of Investigation was issued on August 16, 2011, indicating that the Office of Unfair Import Investigations will not participate as a party in this investigation. 76 FR 52348–49 (Aug. 22, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,268,372; 7,282,741; 7,771,081; 7,893,443; 7,838,315; 7,959,312; and 7,964,881. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents OSRAM GmbH of Munich, Germany (''OSRAM GmbH''); OSRAM Opto Semiconductors GmbH of Regensburg, Germany; OSRAM Opto Semiconductors Inc. of Sunnyvale, California; and OSRAM Sylvania Inc. of Danvers, Massachusetts (collectively ''OSRAM'').

On October 18, 2011, SLED filed a motion to amend the Complaint and NOI to: (1) Change the name of respondent OSRAM GmbH to OSRAM AG to reflect its recent change in corporate form; (2) add Siemens AG, Siemens Corporation, and Siemens Industry, Inc. (collectively ''Siemens'') as respondents; and (3) add Hella KGaA Hueck & Co., Hella Electronics Corporation, Hella Corporate Center USA, Inc., and Hella Inc. (collectively ''Hella'') as respondents. On October 28, 2011, OSRAM and proposed respondents Siemens and Hella filed oppositions to the motion with respect to adding Siemens and Hella as respondents.

On November 21, 2011, the ALJ issued the subject ID, granting-in-part SLED's motion with respect to changing the name of respondent OSRAM GmbH to OSRAM AG. The ALJ denied the remainder of the motion. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: December 7, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–31856 Filed 12–12–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–038]

Government in the Sunshine Act Meeting Notice

AGENCY: *Agency Holding the Meeting:* United States International Trade Commission.

DATES: *Time and Date:* December 16, 2011 at 11 a.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–638 (Third Review) (Stainless Steel Wire Rod from India). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 4, 2012.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 6, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–32028 Filed 12–9–11; 11:15 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6),'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 12, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Employee Retirement Income Security Act of 1974 (ERISA) section 104(a)(6) and related regulations at 29 CFR 2520.104a-8 require the administrator of an employee benefit plan covered by ERISA Title I to furnish certain documents relating to the plan on request to the Secretary of Labor. This information collection is subject to the PRA.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0112. The current OMB approval is scheduled to expire on

December 31, 2011; however, it should be noted that existing information collection requirements covered by a submission to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 24, 2011 (76 FR 30199).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1210–0112. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6).

OMB Control Number: 1210–0112.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 300.

Total Estimated Number of Responses: 300.

Total Estimated Annual Burden Hours: 22.

Total Estimated Annual Other Costs Burden: $1300.

Dated: December 7, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–31917 Filed 12–12–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Growing America Through Entrepreneurship II Evaluation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) proposed information collection request (ICR) titled, ''Growing America Through Entrepreneurship II Evaluation,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 12, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Project Growing America Through Entrepreneurship (GATE) was an experimental design demonstration that investigated the impact of providing entrepreneurship training services to individuals interested in starting or growing a business. The cornerstone of the evaluation was random assignment. A total of 4198 applicants to Project GATE were randomly assigned to either a program group or a control group. The project was implemented in both rural and urban locations in Maine, Pennsylvania, and Minnesota from 2002 to 2009. In Project GATE, treatment group members were offered an assessment of their business needs, classroom training, one-on-one technical assistance, and assistance in applying for business financing. A telephone survey of participants and control group members was conducted to collect three waves of data at approximately six months after random assignment, 18 months after random assignment, and 60 months after random assignment. A process evaluation as well as an impact evaluation of the effectiveness of the GATE model were conducted utilizing site visits, surveys, and administrative data.

The proposed evaluation of Project GATE II grants is necessary for policymakers and program developers to determine whether the model can be successfully implemented for dislocated workers. This follow-up survey is the only way to collect information on self-employment experiences, receipt of microenterprise services, and household income.

Project GATE II will be evaluated using an experimental design. Individuals that submitted an application for GATE II in each site and who met minimal eligibility criteria are being randomly assigned to either a program group or a control group. Members of the program group are eligible to receive GATE II services, while members of the control group are not eligible to receive GATE II services, although they will not be prohibited from receiving self-employment services from other sources.

As already noted, unlike the first Project GATE demonstration, which was available to all applicants, services under GATE II are targeted towards Workforce Investment Act dislocated workers. In June 2008, grants were awarded to implement GATE II in four states—Alabama, Minnesota, North Carolina, and Virginia. Two states, Alabama and North Carolina, were selected to target services to dislocated workers in rural areas, while the two other States, Minnesota and Virginia, were selected to target dislocated workers 45 years old and older.

This information collection needed to conduct the evaluation is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of

law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on May 5, 2011 (76 FR 25723).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should identify the ICR Reference Number, 201108–1205–006. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Growing America Through Entrepreneurship II Evaluation.

OMB ICR Reference Number: 201108–1205–006.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1584.

Total Estimated Number of Responses: 1584.

Total Estimated Annual Burden Hours: 792.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 7, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–31878 Filed 12–12–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of November 28, 2011 through December 2, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of businessby the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,306	Jem Sportswear, Inc., Affordable Staffing	San Fernando, CA	July 19, 2010.
80,365	Lineal Veneer & Components, LLC., SOS Staffing	Caldwell, ID	August 10, 2010.
80,460	Briggs & Stratton Corporation, Engine Group Division, Staffmark and Express Personnel.	Poplar Bluff, MO	September 22, 2010.
80,468	WSC Acquisitions, LLC (Formerly MISA Metals, Inc.), Including Workers whose UI were reported through Misa Metals, Inc.	Middletown, OH	September 26, 2010.
80,468A	WSC Acquisitions, LLC (Formerly MISA Metals, Inc.), Including Workers whose UI were reported through Misa Metals, Inc.	West Chester, OH	September 26, 2010.
80,468B	WSC Acquisitions, LLC (Formerly MISA Metals, Inc.), Including Workers whose UI were reported through Misa Metals, Inc.	Lawrenceburg, TN	September 26, 2010.
80,475	VRTX, Inc., Fairlane Division	Gibsonville, NC	September 26, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,313	MBTM LTD., Inc.	El Paso, TX	July 12, 2010.
80,336	Dell Inc., Dell Financial Services (DFS), Small and Medium Resolutions (SMBR) Specialty Functions Group.	Austin, TX	July 18, 2010.
80,342	Motorola Mobility, Inc., Mobile Devices, Product Development Operations, etc., Motorola, Kelly OCG.	Libertyville, IL	August 1, 2010.
80,399	Calamp Products, Inc., Satellite Products Division, Select Staffing	Oxnard, CA	August 18, 2010.
80,466	InterMetro Industries Corporation, Emerson, Coatesville Facility, People Share and Aerotek.	Coatesville, PA	September 23, 2010.
80,470	Precision Valve Corporation, South Carolina Division, Plant 2	Greenville, SC	September 26, 2010.
80,471	Precision Valve Corporation, South Carolina Division, Plant 1	Travelers Rest, SC	September 26, 2010.
80,506	JVC Americas Corp., Service & Engineering Division, Product Return Center, Staff Force, etc..	McAllen, TX	October 11, 2010.
80,507	Kerry, Inc., Cereal Systems and Flavours Division, including on-site leased workers from Manpower.	Turtle Lake, WI	October 12, 2010.
80,516	The Travelers Indemnity Company	Elmira, NY	October 13, 2010.
80,532	Advanced Energy Industries, Including Adecco, ResourceMFG, and Volt Workforce Solutions.	Fort Collins, CO	October 29, 2010.
80,532A	Aerotek Commercial Staffing, Working On-Site at Advanced Energy Industries, Inc..	Fort Collins, CO	October 18, 2010.
80,532B	Advanced Energy Industries, Including On-Site Leased Workers of Mid Oregon Personnel.	Bend, OR	October 18, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
80,411	Bank of America, N.A. Treasury-GPS–MIS Initiatives Interface Division.	Concord, CA.	
80,534	United Auto Workers (UAW) Local 2166	Shreveport, LA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
80,477	Allstate Insurance Company, Allstate Technology & Operations Department.	Northbrook, IL.	

I hereby certify that the aforementioned determinations were issued during the period of November 28, 2011 through December 2, 2011. These determinations are available on the Department's Web site at *http://doleta.gov/tradeact/taa/taa/search* form.cfm under searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 7, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31879 Filed 12–12–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 23, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 23, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 5th day of December 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[9 TAA petitions instituted between 11/21/11 and 11/25/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81102	Samsung Information Systems America, Inc. (Company)	Irvine, CA	11/21/11	11/18/11
81103	Kerry Ingredients and Flavours (Union)	Kent, WA	11/21/11	11/17/11
81104	Fortis Plastics LLC. (Company)	Poplar Bluff, MO	11/22/11	11/21/11
81105	WellPoint, Inc. (Company)	Denver, CO	11/22/11	11/21/11
81106	International Business Machines (State/One-Stop)	San Francisco, CA	11/22/11	10/27/11
81107	New United Motor Mfg. Inc. (NUMMI) (State/One-Stop)	Fremont, CA	11/22/11	11/21/11
81108	Mayville Products (Union)	Mayville, WI	11/23/11	11/17/11

APPENDIX—Continued

[9 TAA petitions instituted between 11/21/11 and 11/25/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81109	Resolute Forest Products (formerly AbitibiBowater) (Company).	Greenville, SC	11/23/11	11/21/11
81110	Meggitt Aircraft Braking System (Union)	Akron, OH	11/23/11	11/17/11

[FR Doc. 2011–31880 Filed 12–12–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued.

TA–W–80,027; William Kelly & Sons Plumbing, El Cajon, CA

TA–W–80,052; Lancaster Eagle-Gazette, Lancaster, OH

TA–W–80,113; PSC Industrial Outsourcing LP, Kelso, WA

TA–W–80,197; EMH Amherst Hospital, Amherst, OH

TA–W–80,257; Liz Claiborne, Inc., West Chester, OH

I hereby certify that the aforementioned negative determinations on reconsideration were issued on November 30, 2011 through December 1, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 5, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31882 Filed 12–12–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

TA–W–80,006; Mitel (Delaware),Inc., Chandler, AZ: January 17, 2011.

TA–W–80,050; Marelco Power Systems, Howell, MI: March 15, 2010.

TA–W–80,086; Eastman Kodak Co., Rochester, NY: April 1, 2010.

TA–W–80,156; Bank of America, N.A., Dallas, TX: May 4, 2010.

TA–W–80,278; Wells Fargo Bank, N.A., Costa Mesa, CA: July 6, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on November 30, 2011 through December 1, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: December 5, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31881 Filed 12–12–11; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

DATES: *Date and Time:* The Legal Services Corporation's Operations & Regulations Committee will meet December 16, 2011. The meeting will commence at 4 p.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

Location: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street NW., Washington, DC 20007.

Public Observation: Members of the public who are unable to attend but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1 (866) 451–4981;

• When prompted, enter the following numeric pass code: 5907707348;

• When connected to the call, please immediately ''mute'' your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on changes to LSC Bylaws necessitated by the DC Nonprofit Corporation Act of 2010.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: December 7, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011–31995 Filed 12–9–11; 11:15 am]

BILLING CODE 7050–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The purpose of this Humanities Panel meeting is to advise the Endowment on its EDISTEment program, specifically the creation of content on the topic of world history for the EDSITEment Web site. EDSITEment is an on-line educational partnership between the Endowment and the Verizon Foundation, Thinkfinity.org, and can be accessed at *http://edsitement.neh.gov/.* The morning session of the meeting will be open to the public. A ten-minute time slot at the end of the public session of the meeting is reserved for public comments. The afternoon session of the meeting will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code because that portion of the proposed meeting will consider information that is likely to disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993.

Date: January 10, 2012.

Time: 9 a.m. to 2 p.m.

Room: 421.

Program: This meeting will provide advice about the creation of content for world history on the Endowment's EDSITEment Web site.

Agenda: 9 a.m. to 12 p.m.—Open session.

12:30 p.m. to 2 p.m.—Closed session.

Lisette Voyatzis,

Advisory Committee, Management Officer.

[FR Doc. 2011–31846 Filed 12–12–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 75 FR 61757, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions f the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 - 17 Street NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (703) 292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Evaluation of the Robert Noyce Teacher Scholarship Program.

OMB Control No.: 3145–0217.

Abstract: The National Science Foundation (NSF) received clearance for the evaluation of the Robert Noyce Teacher Scholarship Program on June

13, 2011 through OMB Control Number: 3145–0217. This included collecting primary data via surveys and interviews with Principal Investigators, Faculty, Noyce Recipients, and K–12 Principals.

The Noyce program operates within NSF's Division of Undergraduate Education, and bridges the higher education and the K–12 system. The Noyce Program encourages talented science, technology, engineering, and mathematics (STEM) majors and professionals to become K–12 mathematics and science teachers. The program provides funds to institutions of higher education (IHEs) to support scholarships, stipends, and academic programs for undergraduate STEM majors and post-baccalaureate STEM students who commit to teaching in high-need K–12 school districts as a condition of receiving financial support. Additionally, the program provides support to undergraduate freshmen and sophomores who serve as summer interns in STEM educational settings as an introduction to a possible career in teaching.

Under the NSF Teaching Fellowship and Master Teaching Fellowship track, the Noyce program supports STEM professionals who enroll as NSF Teaching Fellows (TFs) in master's degree programs leading to teacher certification by providing academic courses, professional development, and salary supplements as the Teaching Fellows fulfill a four-year teaching commitment in a high need school district. This track also supports exemplary math and science teachers, who have master's degrees, to become Master Teaching Fellows (MTFs) in high need school districts by providing professional development and salary supplements.

Since TFs are supported by the Noyce program in preparing for teacher certification and their early years of teaching, they will take the same survey that will be given to other recipients previously approved by OMB.

NSF has developed a new survey as part of the overall evaluation for the MTFs. The MTF survey will be similar to the other recipient surveys for recipients who are teaching. However, it will focus more on the leadership activities expected of these more experienced teachers. Since MTFs were not supported by the Noyce Program in preparing for certification or their early teaching years, there are no questions in this survey about their teacher preparation program or support during early teaching.

Respondents: Individuals, Federal Government, State, Local or Tribal Government and not-for-profit institutions.

Estimated Number of Respondents: 104.

Burden on the Public: 52 hours.

Dated: December 8, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–31904 Filed 12–12–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0250]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget and solicitation of public comment; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on November 28, 2011 (76 FR 72983). This action is necessary to correct an erroneous NRC Web site for submission of public comments.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, Office of Information Services, Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 415–6258; *email: Tremaine.Donnell@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 72984, in the second column, the NRC Web site is changed from *http://www.nrc.gov/public-involve/doc-omment/omb/index.html* to read *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.*

Dated at Rockville, Maryland, this 6th day of December 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–31849 Filed 12–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0181]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 23, 2011 (76 FR 52698).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 483, Registration Certificate—*In Vitro* Testing with Byproduct Material Under General License.

3. *Current OMB approval number:* 3150–0038.

4. *The form number if applicable:* NRC Form 483.

5. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the NRC within 30 days after the effective date of such change.

6. *Who will be required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

7. *An estimate of the number of annual responses:* 87 (7 NRC licensees + 80 Agreement State licensees).

8. *The estimated number of annual respondents:* 87 (7 NRC licensees + 80 Agreement State licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12.87 hours (1

hour for NRC licensees + 10.7 hours for Agreement State licensees + 1.17 hours recordkeeping).

10. *Abstract:* Title 10 of the Code of Federal Regulations (10 CFR) 31.11 establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation there from to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

The public may examine and have copied for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20874. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 12, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0038), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *CWhiteman@omb.eop.gov* or submitted by telephone at (202) 395–4718.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 6th day of December 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–31850 Filed 12–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–029–COL, 52–030–COL; ASLBP No. 09–879–04–COL–BD01]

Atomic Safety and Licensing Board; In the Matter of Progress Energy Florida, Inc.; (Levy County Nuclear Power Plant, Units 1 and 2)

December 7, 2011.

Before Administrative Judges: Alex S. Karlin, Chairman, Dr. Anthony J. Baratta, Dr. William M. Murphy.

Notice

(Opportunity To Make Oral or Written Limited Appearance Statements)

This Atomic Safety and Licensing Board hereby gives notice that it will accept oral or written limited appearance statements from members of the public regarding the application of Progress Energy Florida, Inc. (PEF) to the United States Nuclear Regulatory Commission (NRC) for a license to construct and operate two nuclear power plants in Levy County, Florida. Two sessions to hear oral limited appearance statements will be held on January 12, 2012, in Crystal River, Florida.

I. Background and Scope of Proceeding

On December 8, 2008, the NRC published a notice in the **Federal Register** that any interested person could file a challenge to PEF's application to construct and operate two proposed nuclear power plants in Levy County, Florida and could request an adjudicatory hearing thereon. 73 FR 74,532 (Dec. 8, 2008) (ADAMS Accession No. ML083430114). On February 6, 2009, the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (Intervenors) filed such a challenge and request.[1] On February 23, 2009, this Board was established to handle the matter and to preside over any contested adjudicatory proceeding relating to the PEF application.[2] On July 8, 2009, this Board granted the Intervenors' request, ruling that they had shown standing and had raised at least one admissible contention. *See* LBP–09–10, 70 NRC 51, 147 (2009) (ADAMS Accession No. ML091890822).

The scope of this contested adjudicatory proceeding, and thus the appropriate scope of any limited appearance statements, is defined by the contentions that have been raised by the Intervenors and that have been admitted, *i.e.,* have been ruled to satisfy the requirements set forth in the relevant NRC regulation, 10 CFR 2.309(f)(1).[3] The Intervenors have proffered several contentions, but at this point only one such admitted contention remains in litigation—Contention 4A.[4] Contention 4A, therefore, defines the appropriate scope of any limited appearance statements.[5] Contention 4A reads as follows:

Contention 4A: The Draft Environmental Impact Statement (DEIS) fails to comply with 10 CFR part 51 and the National Environmental Policy Act because it fails to specifically and adequately address, and inappropriately characterizes as SMALL, certain direct, indirect, and cumulative impacts, onsite and offsite, of constructing and operating the proposed LNP facility:

A. Impacts to wetlands, floodplains, special aquatic sites, and other waters, associated with dewatering, specifically:

1. Impacts resulting from active and passive dewatering;

2. Impacts resulting from the connection of the site to the underlying Floridan aquifer system;

3. Impacts on Outstanding Florida Waters such as the Withlacoochee and Waccasassa Rivers;

4. Impacts on water quality and the aquatic environment due to alterations and increases in nutrient concentrations caused by the removal of water; and

5. Impacts on water quality and the aquatic environment due to increased nutrients resulting from destructive wildfires resulting from dewatering.

B. Impacts to wetlands, floodplains, special aquatic sites, and other waters, associated with salt drift and salt deposition resulting from cooling towers (that use salt water) being situated in an inland, freshwater wetland area of the LNP site.

[1] Petition to Intervene and Request for Hearing by the Green Party of Florida, the Ecology Party of Florida and Nuclear Information and Resource Service (Feb. 6, 2009) (ADAMS Accession No. ML090371107).

[2] Progress Energy Florida, Inc.; Establishment of Atomic Safety and Licensing Board, 74 FR 9113 (Mar. 2, 2009) (ADAMS Accession No. ML090540936).

[3] In addition to the contested adjudicatory proceeding being conducted by this Board, there will be an uncontested adjudicatory proceeding concerning PEF's application to construct and operate the two proposed nuclear power plants in Levy County. *See* 42 U.S.C. 2239(a)(i)(A). The content of the uncontested proceeding is not within the scope of this adjudication. *See* ''Conduct of Mandatory Hearings on Applications for Combined Licenses,'' Internal Commission Procedures at IV–12—IV–21 (ADAMS Accession No. ML11269A125).

[4] Licensing Board Memorandum and Order (Admitting Contention 4A) (February 2, 2011) at 20 (unpublished) (ADAMS Accession No. ML110330394).

[5] If additional contentions are subsequently admitted, or if Contention 4A is subsequently settled, dismissed, or revised, then the scope of this proceeding will change accordingly.

C. As a result of the omissions and inadequacies described above, the Draft Environmental Impact Statement also failed to adequately identify, and inappropriately characterizes as SMALL, the proposed project's zone of:

1. Environmental impacts;
2. Impact on Federally listed species;
3. Irreversible and irretrievable environmental impacts; and
4. Appropriate mitigation measures.

As specified below, members of the public are invited to submit oral or written statements, referred to as ''limited appearance statements'' related to Contention 4A.

II. Notice of Oral Limited Appearance Statement Sessions

A. Date, Time, and Location of Oral Limited Appearance Statement Sessions

The oral limited appearance statement sessions will be held on the following dates, at the specified location and times:

Date: Thursday, January 12, 2012.

Time: 1 p.m. to 4 p.m. and 7 p.m. to 10 p.m.

Location: Plantation Inn Resort, 9301 West Fort Island Trail, Crystal River, Florida.

B. Participation Guidelines for Oral Limited Appearance Statements

The purpose of the limited appearance statements is to allow members of the public who are not parties to the adjudication to provide the Board with statements setting forth their positions or concerns on matters relating to the admitted contentions.[6] Such statements may be presented orally during the limited appearance sessions specified above or may be submitted in writing. Speakers should be aware, however, that the jurisdiction of this Board and the scope of this proceeding are limited to the PEF application, and, more particularly, to Contention 4A. Limited appearance statements enable members of the public to alert the Board to areas relating to the PEF application and the admitted contention where evidence may need to be adduced, and to assist the Board in its consideration of these issues. Oral limited appearance statements will be transcribed but are not under oath or affirmation and do not constitute formal testimony or evidence.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be sufficient to accommodate the speakers who are present. If all scheduled and unscheduled speakers present at a session have made a presentation, the Board reserves the right to terminate the session before the ending times listed above.

In order to allow all interested persons an opportunity to address the Board, the time allotted for each oral limited appearance statement will be no more than five minutes, and may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section C below and/or the number of persons present at the designated times. At the outset of each statement, the speaker should identify himself or herself.

Members of the public who plan to attend the limited appearance sessions are advised that security measures may be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks. Signs no larger than 18″ by 18″ will be permitted during the limited appearance sessions, but may not be attached to sticks, held up, or moved about in the room. Cf. Policy Statement on Enhancing Public Participation in NRC Meetings, 67 FR 36,920, 36,923 (May 28, 2002).

C. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by email so as to be received by the Board by 5 p.m. EST on Thursday, January 5, 2011. The request should specify the session (afternoon or evening) during which the requester wishes to make an oral statement. Based on its review of the requests received by the deadline, the Board reserves the right to cancel or shorten either of the sessions due to a lack of public interest.

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

Email: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Alex S. Karlin, Chairman, c/o: Matthew E. Flyntz, Law Clerk, Atomic Safety and Licensing Board Panel, Mail Stop T–3 E2C, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–7405).

Email: Matthew.Flyntz@nrc.gov and Sara.Culler@nrc.gov.

D. Written Limited Appearance Statements

A written limited appearance statement may be submitted to the Board in addition to, or in lieu of, an oral limited appearance statement. The Board encourages early submissions, however, so that Board members will be able to consider them while addressing the issues in this proceeding. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Board Chairman. A person who has already filed a written limited appearance statement in this matter is not required to resubmit it, but should notify the Board, as specified above, if he or she wishes to make an oral statement during the January sessions.

III. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR) or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible by clicking ''Begin Web-based ADAMS Search'' on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209, (301) 415–4737, or by email to *pdr@nrc.gov.*

IV. Scheduling Information Updates

Any updated/revised scheduling information regarding the limited appearance sessions can be found on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

December 7, 2011.

It is so ordered.

[6] The parties to the adjudication (acting via their officers, directors, lawyers, pro-se representatives, experts, and other witnesses) have the opportunity to file formal motions and other pleadings, and to submit testimony and other evidence in the adjudication. Thus, the parties are not entitled to make limited appearance statements. 10 CFR 2.315(a). In contrast, limited appearance statements are the opportunity for the public to provide input.

For the Atomic Safety and Licensing Board.

Alex S. Karlin,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. 2011–31903 Filed 12–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335; NRC–2011–0194]

Florida Power & Light Company; St. Lucie Plant, Unit No. 1; Exemption

1.0 Background

The Florida Power & Light Company (FPL, the licensee) is the holder of Renewed Facility Operating License No. DPR–67, which authorizes operation of St. Lucie Plant, Unit No. 1 (St. Lucie, Unit 1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, or the Commission) now or hereafter in effect. The facility consists of two pressurized-water reactors located in Jensen Beach, Florida. However, this exemption is applicable only to St. Lucie, Unit 1.

By letter dated December 15, 2010, FPL submitted a License Amendment Request (LAR) to increase the licensed core power level for St. Lucie, Unit 1, from 2700 megawatts thermal (MWt) to 3020 MWt. As part of the LAR, the licensee also proposed a revision of the pressure-temperature (P–T) operating limits for St. Lucie, Unit 1.

The above LAR referenced a topical report that stated that the proposed methodology for the P–T curves did not meet some of the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Appendix G, thus requiring an exemption pursuant to 10 CFR 50.12. By letter dated March 3, 2011, the licensee responded to a request for additional information to the above LAR and also submitted a request for the subject exemption.

2.0 Request/Action

Part 50 of 10 CFR, Appendix G, ''Fracture Toughness Requirements,'' which is invoked by 10 CFR 50.60, requires that P–T limits be established for the reactor coolant pressure boundary during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, Section IV.A.2, states that ''[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions,'' and ''[t]he pressure-temperature limits identified as 'ASME [American Society for Mechanical Engineers] Appendix G limits' in Table 3 require that the limits must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code [Boiler and Pressure Vessel Code].'' The regulations in 10 CFR part 50, Appendix G also specify the use of the applicable editions and addenda of the ASME Code, Section XI, which are incorporated by reference in 10 CFR 50.55a. In the 2009 Edition of 10 CFR, the 1977 Edition through the 2004 Edition of the ASME Code, Section XI are incorporated by reference in 10 CFR 50.55a. Finally, 10 CFR 50.60(b) states that, ''[p]roposed alternatives to the described requirements in Append[ix] G of this part or portions thereof may be used when an exemption is granted by the Commission under [10 CFR] 50.12.''

In conjunction with the LAR for an extended power uprate (EPU), the licensee proposed to revise the P–T limits but did not propose to relocate the P–T limits from the Technical Specifications to a Pressure-Temperature Limits Report (PTLR). However, in Section 2.1.2 of the Licensing Report for the St. Lucie, Unit 1, EPU (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103560429), the licensee referenced the basis document for the revised P–T limits. The basis document, included as Appendix G to the Licensing Report, is Westinghouse Commercial Atomic Power report WCAP–17197–NP Revision 0, ''St. Lucie Unit 1 RCS [reactor coolant system] Pressure and Temperature Limits and Low-Temperature Overpressure Protection Report [LTOP] for 54 Effective Full-Power Years'' (ADAMS Accession No. ML103560511), which references Combustion Engineering (CE) Owners Group Topical Report CE NPSD–683–A, Revision 6, ''Development of a RCS Pressure and Temperature Limits Report for the Removal of P–T Limits and LTOP Requirements from the Technical Specifications'' (ADAMS Accession No. ML011350387), as the methodology for determining the P–T limits.

By letter dated March 3, 2011 (ADAMS Accession No. ML110660300), the licensee submitted a request for exemption from 10 CFR part 50, Appendix G, regarding the P–T limits calculation. The licensee requested an exemption from the requirements of 10 CFR 50, Appendix G, to use the methodology of CE NPSD–683–A, Revision 6 as the basis for the developing the P–T limits. Specifically, the licensee requested an exemption from the requirements of 10 CFR 50, Appendix G, Section IV.A.2, because the P–T limits developed for St. Lucie, Unit 1, use a finite element method to determine the K_{Im} factors.

The NRC staff evaluated the specific PTLR methodology in CE NPSD–683, Revision 6. This evaluation was documented in the NRC safety evaluation (SE) of March 16, 2001 (ADAMS Accession No. ML010780017), which specified additional licensee actions that are necessary to support a licensee's adoption of CE NPSD–683, Revision 6. The final approved version of this report was reissued as CE NPSD–683–A, Revision 6, which included the NRC SE and the required additional action items as an attachment to the report. One of the additional specified actions (#21) stated, ''(applicable only if the CE NSSS [nuclear steam supply system] methods for calculating K_{Im} and K_{It} factors, as stated in Section 5.4 of CE NPSD–683, Revision 6, are being used as the basis for generating the P–T limits for their facilities) apply for an exemption against requirements of Section IV.A.2.of Appendix G to part 50 to apply the CE NSSS methods to their P–T curves.'' The action item further stated that, ''This is consistent with the 'note' on page 5–15 of CE NPSD–683, Revision 6. Exemption requests to apply the CE NSSS to the generation of P–T limit curves should be submitted pursuant to the provision of 10 CFR 50.60(b) and will be evaluated on a case-by-case basis against the exemption request acceptance criteria of 10 CFR 50.12.''

An exemption to use the methodology of CE NPSD–683–A to calculate the K_{It} factors is no longer necessary because editions and addenda of the ASME Code, Section XI, that have been incorporated by reference into 10 CFR 50.55a subsequent to the issuance of the final SE of CE NPSD–683–A, allow methods for determining the K_{It} factors that are equivalent to the methods described in CE NPSD–683–A.

If a licensee proposes to use the methodology in CE NPSD–683–A, Revision 6, for the calculation of K_{Im}, an exemption is required, since the methodology for the calculation of K_{Im} values in CE NPSD–683–A, Revision 6, cannot be shown to be equally or more conservative than the methodology for the determination of K_{Im} provided in editions and addenda of the ASME Code, Section XI, Appendix G, through the 2004 Edition. Therefore, the licensee submitted an exemption request, consistent with the requirements of 10 CFR 50.12 and 50.60, to apply the K_{Im} calculational methodology of CE NPSD–

683–A, Revision 6 in the development of the St. Lucie, Unit 1, P–T limits. During the NRC staff's review of CE NPSD–683, Revision 6, the NRC staff evaluated the K_{Im} calculational methodology of that report versus the methodologies for the calculation of K_{Im} given in the ASME Code, Section XI, Appendix G. In the NRC's March 16, 2001, SE the staff noted, ''[t]he CE NSSS methodology does not invoke the methods in the 1995 edition of Appendix G to the Code for calculating K_{Im} factors, and instead applies FEM [finite element modeling] methods for estimating the K_{Im} factors for the RPV [reactor pressure vessel] shell * * * the staff has determined that the K_{Im} calculation methods apply FEM modeling that is similar to that used for the determination of the K_{It} factors [as codified in the ASME Code, Section XI, Appendix G]. The staff has also determined that there is only a slight nonconservative difference between the P–T limits generated from the 1989 edition of the ASME Code, Section XI, Appendix G, and those generated from CE NSSS methodology as documented in CE/ABB Evaluation 063–PENG–ER–096, Revision 00, 'Technical Methodology Paper Comparing ABB/CE PT Curve to ASME Section III, Appendix G,' dated January 22, 1998 (ADAMS Accession No. ML100500514, nonproprietary version). The staff considers that this difference is reasonable and that it will be consistent with the expected improvements in P–T generation methods that have been incorporated into the 1995 edition of Appendix G to the Code.'' This conclusion regarding the comparison between the CE NSSS methodology and the 1995 Edition of the ASME Code, Section XI, Appendix G, methodology also applies to the 2004 Edition of the ASME Code, Section XI, Appendix G, methodology because there were no significant changes in the method of calculating the K_{Im} factors required by the ASME Code, Section XI, Appendix G, between the 1995 edition (through 1996 addenda) and the 2004 editions of the ASME Code. In summary, the staff concluded in its March 16, 2001, SE that the calculation of K_{Im} using the CE NPSD–683, Revision 6 methodology would lead to the development of P–T limit curves that may be slightly nonconservative with respect to those that would be calculated using the ASME Code, Section XI, Appendix G, methods, and that such a difference was to be expected with the development of more refined calculational techniques. Furthermore, the staff concluded in its March 16, 2001, SE that P–T limit curves that would be developed using the methodology of CE NPSD–683, Revision 6, would be adequate for protecting the RPV from brittle fracture under all normal operating and hydrostatic/leak test conditions.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

This exemption allows the use of an alternative methodology for calculating flaw stress intensity factors in the RPV due to membrane stress from pressure loadings in lieu of meeting the requirements in 10 CFR 50.60 and 10 CFR Part 50, Appendix G. As stated above, 10 CFR 50.12 allows NRC to grant exemptions from the requirements of 10 CFR Part 50. In addition, the granting of the exemption will not result in violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime. Appropriate P–T limits are necessary to achieve this underlying purpose. The licensee's alternative methodology for establishing the P–T limits and the LTOP setpoints is described in CE NPSD–683–A, Revision 6, which has been approved by the NRC staff. Based on the above, no new accident precursors are created by using the alternative methodology. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. In addition, the licensee used an NRC-approved methodology for establishing P–T limits and minimum permissible temperatures for the RPV. Therefore, there is no undue risk to the public health and safety.

Consistent With Common Defense and Security

The exemption results in changes to the plant by allowing an alternative methodology for calculating flaw stress intensity factors in the RPV. This change to the calculation of stress intensity factors in the RPV material has no negative implications for security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of St. Lucie, Unit 1, with P–T limit curves developed in accordance with the ASME Code, Section XI, Appendix G, is not necessary to achieve the underlying purpose of 10 CFR Part 50, Appendix G. Application of the K_{Im} calculational methodology of CE NPSD–683–A, Revision 6, in lieu of the calculational methodology specified in the ASME Code, Section XI, Appendix G, provides an acceptable alternative evaluation procedure that will continue to meet the underlying purpose of 10 CFR Part 50, Appendix G. The underlying purpose of the regulations in 10 CFR Part 50, Appendix G, is to provide an acceptable margin of safety against brittle failure of the reactor coolant system during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime. Based on the staff's March 16, 2001, SE regarding CE NPSD–683, Revision 6, and the licensee's rationale to support the exemption request, the staff determined that an exemption is required to approve the use of the K_{Im} calculational methodology of CE NPSD–683–A, Revision 6. The staff concludes that the application of the K_{Im} calculational methodology of CE NPSD–683–A, Revision 6, for St. Lucie, Unit 1, provides sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations (10 CFR Part 50, Appendix G) continues to be met. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' Based upon a consideration of the conservatism that is incorporated into the methodologies of 10 CFR Part 50, Appendix G, and ASME Code, Section XI, Appendix G, the staff concludes that application of the K_{Im}

calculational methodology of CE NPSD–683–A, Revision 6, as described, would provide an adequate margin of safety against brittle failure of the RPV. Therefore, the staff concludes that the exemption is appropriate under the special circumstances of 10 CFR 50.12(a)(2)(ii), and that the application of the K_{Im} calculational methodology of CE NPSD–683–A, Revision 6, is acceptable for use as the basis for generating the St. Lucie, Unit 1, P–T limits.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants FPL an exemption from the requirements of 10 CFR Part 50, Appendix G, to allow application of the K_{Im} calculational methodology of CE NPSD–683–A, Revision 6, as the basis for the St. Lucie, Unit 1, P–T limits.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 53497; dated August 26, 2011). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of December 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–31902 Filed 12–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0285]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 17 to November 30, 2011. The last biweekly notice was published on November 29, 2011 (76 FR 73727).

ADDRESSES: Please include Docket ID NRC–2011–0285 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–2011–0285. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax comments to: RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are accessible electronically through ADAMS 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 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 email to *pdr.resource@nrc.gov.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0285.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it

will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20874. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions

should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20874. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: October 18, 2011.

Description of amendment request: The proposed amendment involves administrative changes. The proposed changes include correcting typographical errors, removing unwarranted formatting, clarifying symbols and pages, reformatting of previously deleted pages, incorporating a consistent abbreviation of average reactor coolant temperature, deleting notes that are no longer applicable, and replacing certain drawing figures with versions that are more clear.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No physical changes to the facility will occur as a result of this proposed amendment. The proposed changes will not alter the physical design or operational procedures associated with any plant structure, system, or component. The proposed changes are administrative in nature and have no affect on plant operation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature. The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Accordingly, the changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes [maintain compliance with the requirements contained in 10 CFR 50.36, ''Technical specifications.''] The proposed changes are administrative in nature. The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, with the NRC edits above, it

appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: August 11, 2011.

Description of amendment request: The proposed amendments would make changes to the diesel fuel oil license bases and amend technical specifications (TS) 3.7.8, ''Cooling Water (CL) System'' and 3.8.3, ''Diesel Fuel Oil.'' The proposed TS changes would revise current requirements to reflect the addition of the license bases, resolve non-conservative emergency diesel generator fuel oil supply volumes, incorporate portions of Technical Specification Task Force Traveler 501, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control,'' and provide administrative changes to the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes addition of a diesel fuel oil supply license basis and revision of the associated Technical Specifications to require an adequate emergency diesel generator and diesel driven cooling water pump fuel oil supply for mitigation of a design basis accident with a loss of offsite power. This license amendment request also proposes to: adopt provisions of Technical Specifications Task Force (TSTF) industry traveler 501 (TSTF–501) to specify diesel fuel oil supply requirements as required days for the supply and relocate the corresponding volume to the Technical Specification Bases; and, make minor wording changes to improve conformance to the content guidance of NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.''

The emergency diesel generators, diesel driven cooling water pumps and their supporting diesel fuel oil storage systems are not accident initiators and therefore the proposed diesel fuel oil supply license basis addition and proposed Technical Specification changes do not involve an increase in the probability of an accident.

The proposed change to the emergency diesel generator fuel oil supply license basis and the associated Technical Specification changes will assure that the emergency diesel generator's diesel driven cooling water pumps perform their required design basis accident mitigation safety function with a loss of offsite power. Since the emergency diesel generators will provide required electrical power as assumed in the accident analyses and the cooling water diesel will provide cooling water as assumed in the accident analyses, the results of the previous accident analyses are not changed and the license basis changes proposed in this license amendment request do not involve a significant increase in the consequences of an accident.

Specification of the diesel fuel oil supply requirements as required days supply in accordance with TSTF–501 continues to assure an adequate quantity of diesel fuel oil is required to be stored; the emergency diesel generators and diesel driven cooling water pumps will have sufficient diesel fuel oil to mitigate a design basis accident with a loss of offsite power, as assumed in the accident analyses, until the fuel supply can be replenished; and therefore, this change does not involve a significant increase in the consequences of an accident.

The proposed minor Technical Specification wording changes to improve alignment with the content guidance of NUREG–1431 are administrative and thus do not involve an increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes addition of a diesel fuel oil supply license basis and revision of the associated Technical Specifications to require an adequate emergency diesel generator and diesel driven cooling water pump fuel oil supply for mitigation of a design basis accident with a loss of offsite power. This license amendment request also proposes to: adopt provisions of Technical Specifications Task Force (TSTF) industry traveler 501 (TSTF–501) to specify diesel fuel oil supply requirements as required days for the supply and relocate the corresponding volume to the Technical Specification Bases; and, make minor wording changes to improve conformance to the content guidance of NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.''

The proposed diesel fuel oil supply license basis change and the associated Technical Specification changes assure that each emergency diesel generator and diesel driven cooling water pump has an adequate supply of diesel fuel oil, assuming an active single failure, to mitigate a design basis accident with a loss of offsite power until the fuel oil supply can be replenished. The proposed license basis change and associated Technical Specification changes do not create new failure modes or mechanisms and no new accident precursors are generated. The proposed specification of the diesel fuel oil supply requirements as required days supply in accordance with TSTF–501 does not create new failure modes or mechanisms and does not generate new accident[s]. These proposed changes do not challenge the performance or integrity of any safety-related system. Surveillance requirements for the emergency diesel generator and diesel driven cooling water pump fuel oil supplies will continue to demonstrate that the Limiting Conditions for Operation are met and the emergency diesel generators and diesel driven cooling water pumps have adequate supplies of diesel fuel oil to perform their safety functions.

The proposed minor Technical Specification wording changes to improve alignment with the content guidance of NUREG–1431 are administrative and thus do not create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes addition of a diesel fuel oil supply license basis and revision of the associated Technical Specifications to require an adequate emergency diesel generator and diesel driven cooling water pump fuel oil supply for mitigation of a design basis accident with a loss of offsite power. This license amendment request also proposes to: adopt provisions of Technical Specifications Task Force (TSTF) industry traveler 501 (TSTF–501) to specify diesel fuel oil supply requirements as required days for the supply and relocate the corresponding volume to the Technical Specification Bases; and, make minor wording changes to improve conformance to the content guidance of NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.''

The proposed diesel fuel oil supply licensing basis addition and the associated Technical Specification changes involve the addition of a new requirement to assure that each emergency diesel generator and diesel driven cooling water pump has an adequate supply of diesel fuel oil, assuming an active single failure, to mitigate a design basis accident with a loss of offsite power until the fuel oil supply can be replenished. The current license basis for mitigation of an external flood without a single failure will be maintained. Therefore, margins of safety are increased and thus no margin of safety is reduced due to these changes.

Specification of the diesel fuel oil supply requirements as required days supply in accordance with TSTF–501 continues to assure an adequate quantity of diesel fuel oil is required to be stored and thus does not reduce a margin of safety.

The proposed minor Technical Specification wording changes to improve alignment with the content guidance of NUREG–1431 are administrative and thus do not involve a significant reduction in a margin of safety.

The proposed Technical Specification changes do not adversely affect the availability, operability, or performance of safety-related systems and components: the emergency diesel generators [and] diesel driven cooling water pumps will continue to perform their safety functions. The ability of operable structures, systems, and components to perform their designated safety functions are unaffected by these proposed changes. The operability requirements of the proposed Technical Specifications are consistent with the initial condition assumptions of the safety analyses, and the Surveillance requirements for the emergency diesel generator and diesel driven cooling water pump fuel oil supplies will assure that the Limiting Conditions for Operation are met and the emergency diesel generator's diesel driven cooling water pumps have adequate supplies of diesel fuel oil to perform their safety functions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Acting Branch Chief: Terry A. Beltz.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit 1 and 2, San Luis Obispo County, California

Date of amendment request: June 1, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.5, ''Auxiliary Feedwater (AFW) System,'' TS 3.6.6, ''Containment Spray and Cooling Systems,'' TS 3.8.1, ''AC [Alternating Current] Sources—Operating,'' TS 3.8.9, ''Distribution Systems—Operating,'' and TS 1.3, ''Completion Times,'' Example 1.3–3. These changes are consistent with Technical Specification Task Force (TSTF) Change Travelers TSTF–245, Revision 1, ''AFW Train Operable when in Service,'' TSTF–340, Revision 3, ''Allow 7 day Completion Time for a Turbine-driven AFW Pump Inoperable,'' TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW [Emergency Feedwater] Pump Inoperable,'' and TSTF–439, Revision 2, ''Eliminate Second Completion Times Limiting Time From Discovery of Failure to Meet an LCO [Limiting Condition for Operation].''

Specifically, the changes consistent with TSTF–245, Revision 1, and TSTF–340, Revision 3, would revise TS 3.7.5 to clarify the operability of an AFW train during alternate alignments and provide added flexibility in Mode 3 to repair and test the turbine-driven AFW (TDAFW) pump following a refueling outage. The changes consistent with TSTF–412, Revision 3, would revise TS 3.7.5 to establish conditions, required actions, and completion times for the condition where one steam supply to the TDAFW is inoperable concurrent with an inoperable motor-driven AFW (MDAFW) train. The TSTF–412, Revision 3, Notice of Availability was published in the **Federal Register** on July 17, 2007 (72 FR 39089), using the consolidated line item improvement process (CLIIP). The changes consistent with TSTF–439, Revision 2, would remove second completion times from TS Example 1.3–3; TS 3.6.6 Required Actions A.1, A.2, and C.1; TS 3.7.5 Required Actions A.1 and B.1; TS 3.8.1 Required Actions A.2 and B.4; and TS 3.8.9 Required Actions A.1, B.1, and C.1. In addition, the amendment would add a new Condition B, required actions, and completion times to TS 3.7.5 to provide specific actions to be taken when automatic control of the MDAFW level control valves is not functional.

Basis for proposed no significant hazards consideration determination: For the proposed changes related to TSTF–245, Revision 1, TSTF–340, Revision 3, and new TS 3.7.5 Condition B, as required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the requirements in Technical Specification (TS) 3.7.5, ''Auxiliary Feedwater (AFW) System,'' to clarify the OPERABILITY of an AFW train during alternate alignments, to provide added flexibility in MODE 3 to repair and test the turbine driven AFW pump following a refueling outage, and to clarify the OPERABILITY of the turbine driven AFW train with one steam supply inoperable. The AFW System is not an initiator of any design basis accident or event, and therefore the proposed change does not increase the probability of any accident previously evaluated. The AFW System is used to respond to accidents previously evaluated. The proposed change affects only the actions taken when portions of the AFW System are unavailable and does not affect the design of the AFW System. The change to TS 3.7.5 adding actions for inoperable automatic control of level control valves does not change any of the assumptions in accidents previously evaluated and would not have an impact on accident consequences. No physical changes are made to the plant. The proposed change does not significantly change how the plant would mitigate an accident previously evaluated.

Therefore, the proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in a change in the manner in which the AFW System provides plant protection. The AFW System will continue to supply water to the steam generators to remove decay heat and other residual heat by delivering at least the minimum required flow rate to the steam generators. There are no design changes associated with the proposed changes. The changes to the Conditions and Required Actions do not change any existing accident scenarios, nor create any new or different accident scenarios.

The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Manual control of AFW level control valves is not an accident initiator.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside the design basis.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

For the proposed changes related to TSTF–412, Revision 3, in its application dated June 1, 2011, the licensee has affirmed the applicability of the model no significant hazards consideration published in the **Federal Register** as part of the CLIIP (72 FR 39093; July 17, 2007). As required by 10 CFR 50.91(a), an analysis of the issue of no significant

hazards consideration, from the model application, is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Auxiliary/Emergency Feedwater (AFW/EFW) System is not an initiator of any design basis accident or event, and therefore the proposed changes do not increase the probability of any accident previously evaluated. The proposed changes to address the condition of one or two motor driven AFW/EFW trains inoperable and the turbine driven AFW/EFW train inoperable due to one steam supply inoperable do not change the response of the plant to any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the AFW/EFW System provides plant protection. The AFW/EFW System will continue to supply water to the steam generators to remove decay heat and other residual heat by delivering at least the minimum required flow rate to the steam generators. There are no design changes associated with the proposed changes. The changes to the Conditions and Required Actions do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements.

The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

For the proposed changes related to TSTF–439, Revision 2, as required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes eliminate certain Completion Times from the Technical Specifications. Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident during the revised Completion Time are no different than the consequences of the same accident during the existing Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The changes do not alter any assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to delete the second Completion Time does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit 1, Fairfield County, South Carolina

Date of amendment request: October 12, 2011.

Description of amendment request: The amendment requests authorization to update the facility's Final Safety Analysis Report to exempt five Unit 1 high-head safety injection system (HHSI) containment isolation valves (CIVs) from the VCSNS, Unit No. 1 Local Leak Rate Testing (LLRT) Program requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with changes in brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident that has previously been evaluated?

Response: No.

The amendment request is to remove five Containment Isolation Valves (XVG08801A, XVG08801B, XVG08884, XVG08885, and XVG08886) from the Local Leak Rate Test (LLRT) program. These valves were originally included in the LLRT under 10 CFR [part] 50, Appendix J, in what is now Option A. VCSNS has been approved for 10 CFR [Part] 50, Appendix J, Option B under License Amendment No. 135. Under Option B, valves

may be excluded from LLRT Type C testing if they are not a potential containment atmosphere leakage path. Based on the design and operation of the Safety Injection System, the valves do not constitute a containment atmospheric leakage path as covered in the Safety Evaluation. Since the valves are not a leakage path, there is no impact on the consequence of an accident. Moreover, the valves are not a part of the Reactor Coolant Pressure Boundary and are normally closed during plant operation, thus they do not affect the probability of an accident in any way. [The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.]

2. Does the proposed change create the possibility of a new or different kind of accident of malfunction that has not previously been evaluated?

Response: No.

The system design and operation are not changing. This test [* * *] [change] does not change the way the valves are used as a part of the Safety Injection System. A detailed Failure Modes and Effects Analysis were completed to confirm the system operation would meet the containment isolation design function. [The change does not add new or change existing plant equipment or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.]

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The test [* * *] [change] is within existing regulatory requirements. The application of a closed loop outside of containment is appropriate and consistent with regulatory positions. The closed loop is applied to cold leg recirculation alignment of less than 8 hours when a run failure of a charging pump or RHR [residual heat removal] pump occurs. The probability of an HHSI\Charging Pump failure to run is 7.025E–06 per hour and for a LHSI [low-head safety injection]\RHR Pump is 7.689E–06 per hour. With containment integrity maintained within the allowable regulatory framework, there is no reduction in the margin of safety. [The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Gloria Kulesa.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1 (VCSNS), Fairfield County, South Carolina

Date of amendment request: October 12, 2011.

Description of amendment request: The amendment request proposes changes to allow for a one time extension to the 10-year frequency of the VCSNS containment leakage rate test (e.g., integrated leak rate test (ILRT) or ''Type A test'') required by Technical Specification (TS) 6.8.4(g). The proposed change would permit the existing ILRT frequency to be extended from 10 years to approximately 10.9 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with changes in brackets.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident that has previously been evaluated?

Response: No.

The proposed [* * *] [change] involves a one-time extension to the current interval for Type A containment testing. The current test interval of 120 months (10 years) would be extended on a one-time basis to no longer than approximately 130 months from the last Type A test. The proposed extension does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident.

Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated nor does it create the possibility of a new or different kind of accident.

The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) Activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment itself combined with the containment inspections performed in accordance with the [American Society of Mechanical Engineers (ASME), Section Xl, Boiler and Pressure Vessel Code,] the Maintenance Rule, and Licensing commitments serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by a Type A test. Based on the above, the proposed extension does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to the TS involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed TS change does not involve a physical change to the plant or the manner in which the plant is operated or controlled.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the TS involves a one-time extension to the current interval for Type A containment testing. The proposed TS change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Primary Containment Leak Rate Testing Program, as defined in the TS, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained. The proposed change involves only the extension of the interval between Type A containment leak rate tests. The proposed surveillance interval extension is bounded by the 15 month extension currently authorized within [Nuclear Energy Institute] NEI 94–01, Revision 0. Type B and C containment leak rate tests will continue to be performed at the frequency currently required by TS. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME, Section Xl and the Maintenance Rule serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety that is in plant safety analysis is maintained. The design, operation, testing methods and

acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards will continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A test interval.

Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Gloria Kulesa.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: September 2, 2011.

Description of amendment request: The amendments would revise a number of Technical Specification (TS) requirements, to impose similar restrictions on the movement of non-irradiated fuel assemblies to those currently in place for movement of irradiated fuel assemblies. The additional restrictions will limit the movement of all fuel assemblies over irradiated fuel assemblies in containment or in the fuel storage pool.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Technical Specifications applicability wording regarding the movement of fuel assemblies in containment and the fuel storage pool at the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to include the movement of both irradiated and non-irradiated fuel assemblies. The proposed applicability is more comprehensive than the current applicability.

Expanding the applicability of the relevant Technical Specifications is necessary to account for updated fuel drop analyses which demonstrate that impacted spent fuel assemblies may be damaged. Consequently, movement of nonirradiated fuel assemblies could result in a Fuel Handling Accident that has radiological consequences. Changing the applicability of the relevant Technical Specifications does not affect the probability of a Fuel Handling Accident. The expanded applicability provides assurance that equipment designed to mitigate a Fuel Handling Accident is capable of performing its specified safety function.

The dose consequences due to failure of two assemblies remain within the Regulatory Guide 1.183 and 10 CFR 50.67 acceptance criteria limits. The Exclusion Area Boundary (EAB), Low Population Zone (LPZ) and Control Room dose results and associated limits are presented below:

FHA inside fuel handing building	New analysis FHA–FHB (rem TEDE)	Regulatory guide 1.183 limit (rem TEDE)	10 CFR 50.67 limit (rem TEDE)
EAB	1.7	≤6.3	25
LPZ	<0.1	6.3	≤25
Control Room	0.6	≤5	≤5

FHA inside containment	New analysis FHA–IC (rem TEDE)	Regulatory guide 1.183 limit (rem TEDE)	10 CFR 50.67 Limit (rem TEDE)
EAB	1.7	≤6.3	≤25
LPZ	<0.1	≤6.3	≤25
Control Room	0.6	≤5	≤5

Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The updated fuel assembly drop analysis demonstrates that impacted fuel assemblies may be damaged as the result of a dropped fuel assembly. The existing SONGS Technical Specifications regarding movement of fuel assemblies are not applicable for movement of non-irradiated fuel assemblies. A drop of a non-irradiated fuel assembly that has radiological consequences could occur during periods when equipment that would be required to mitigate those consequences is not required to be OPERABLE in accordance with the existing Technical Specifications.

The proposed change to the Technical Specifications applicability language regarding the movement of fuel assemblies in containment and the fuel storage pool at SONGS Units 2 and 3 ensure that Limiting Conditions for Operation and appropriate Required Actions for required equipment are in effect during fuel movement. This provides assurance that any Fuel Handling Accident that may occur will remain within the initial assumptions of accident analyses.

Consequently, there is no possibility of a new or different kind of accident due to the proposed change.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not affect protection criterion for plant equipment and will not reduce the margin of safety. By extending the Technical Specification applicability to the movement of non-irradiated fuel assemblies, the current margin of safety is maintained.

Consequently, there is no significant reduction in a margin of safety due to the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc. (SNC), Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: September 9, 2011.

Description of amendment request: The proposed change would add Surveillance Requirement (SR) 3.3.1.14 to FNP TS Table 3.3.1–1, ''Reactor Trip System [RTS] Instrumentation,'' Function 3, ''Power Range Neutron Flux High Positive Rate'' to the Technical Specifications. SR 3.3.1.14 requires verification that the RTS Response Time is within limits every 18 months on a Staggered Test Basis. Function 3 is the Power Range Neutron Flux High Positive Rate Trip (PFRT) function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to Farley Nuclear Plant (FNP) Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' Table 3.3.1–1, ''Reactor Trip System Instrumentation,'' does not significantly increase the probability or consequences of an accident previously evaluated in the Update[d] Final Safety Analysis Report (UFSAR). The overall protection system performance will remain within the bounds of the accident analysis since there are no hardware changes. The design of the Reactor Trip System (RTS) instrumentation, specifically the power range neutron flux high positive rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards, that were applicable prior to the request, are maintained.

The proposed change imposes additional surveillance requirements to assure safety related structures, systems, and components (SSCs) are verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the PFRT function.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed change will not alter any assumptions nor change any mitigation actions in the radiological consequences evaluations in the UFSAR.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter nor prevent the ability of SSCs from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change is consistent with the safety analyses assumptions and resultant consequences.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. This change will not affect the normal method of plant operation nor change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance requirements. The additional surveillance requirements are consistent with assumptions made in the safety analyses and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety-related system as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Limits. There will be no effect on the manner in which Safety Limits or Limiting Conditions of Operations are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

The safety analyses limits assumed in the accident analysis are unchanged. The imposition of additional surveillance requirements increases the margin of safety by assuring that the affected safety analyses assumptions on equipment response time are verified on a periodic frequency.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, *Esq.,* Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Gloria J. Kulesa.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20874. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: April 11, 2011.

Brief description of amendment: The amendment modified Technical Specification (TS) 3.4.7, ''RCS [Reactor Coolant System] Leakage Detection

Instrumentation,'' to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Change Traveler TSTF–514, ''Revise BWR [Boiling-Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation,'' as part of the consolidated line item improvement process.

Date of issuance: November 21, 2011.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 172.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: June 28, 2011 (76 FR 37847).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2011.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 10, 2010, as supplemented by letter dated August 26, 2011.

Brief description of amendments: The change revised the PPL Susquehanna, LLC (PPL) Unit 1 and Unit 2 Technical Specifications (TSs) Surveillance Requirements (SRs) 3.4.3.1 ''Safety/Relief Valves (S/RVs)'' to the lower tolerances from −3% to −5%. These changes would be limited to the lower tolerances and does not affect the upper tolerances. These changes only apply to the lower as-found tolerances and not to the as-left tolerances, which will remain unchanged at ±1% of the safety lift setpoint. The as-found tolerances are used for determining past operability and to increase sample sizes for S/RV testing should the upper tolerances be exceeded. There will be no revision to the actual setpoints of the valves installed in the plant due to this change.

Date of issuance: November 17, 2011.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 257 for Unit 1 and 237 for Unit 2.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Licenses and Technical Specifications.

Date of initial notice in Federal Register: February 22, 2011 (76 FR 9828).

The supplement dated August 26, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2011.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 21, 2010.

Brief description of amendments: The amendments revised Technical Specification (TS) 5.3.1, ''FUEL ASSEMBLIES,'' by adding Optimized ZIRLO™ fuel rods to the fuel matrix in addition to Zircaloy or ZIRLO™ fuel rods that are currently in use. The amendments also added a reference to an NRC-approved Westinghouse Electric Company, LLC topical report regarding Optimized ZIRLO™ to Section 6.9.1.6, ''Core Operating Limits Report (COLR).''

Date of issuance: November 17, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—198; Unit 2—186.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: April 5, 2011 (76 FR 18804).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2011.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: August 10, 2011.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8.1 ''AC [Alternating Current] Sources—Operating.'' The change modified Surveillance Requirement (SR) Notes associated with SR 3.8.1, SR 3.8.1.9, SR 3.8.1.10, SR 3.8.1.11, SR 3.8.1.13, SR 3.8.1.16, SR 3.8.1.18, and SR 3.8.1.19. The amendment changed the WBN Unit 1 TS 3.8.1 to permit performance of the WBN Unit 2 integrated safeguards test without requiring WBN Unit 1 be shut down.

Date of issuance: November 22, 2011.

Effective date: As of the date of issuance and shall be implemented no later than 30 days from date of issuance.

Amendment No.: 89.

Facility Operating License No. NPF–90: Amendment revised the License and TSs.

Date of initial notice in Federal Register: September 20, 2011 (76 FR 58306).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of December 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–31901 Filed 12–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting Notice

AGENCY: *Agency Holding the Meetings:* Nuclear Regulatory Commission.

DATES: Weeks of December 12, 19, 26, 2011, January 2, 9, 16, 2012.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and closed.

Week of December 12, 2011

Tuesday, December 13, 2011

9 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting), (Contact: Alex Klein, (301) 415–2822.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 19, 2011—Tentative

There are no meetings scheduled for the week of December 19, 2011.

Week of December 26, 2011—Tentative

There are no meetings scheduled for the week of December 26, 2011.

Week of January 2, 2012—Tentative

There are no meetings scheduled for the week of January 2, 2012.

Week of January 9, 2012—Tentative

Wednesday, January 11, 2012

1 p.m. Briefing on Proposed Rule to Revise the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (Part 51), (Public Meeting). (Contact: Jeremy Susco, (301) 415–2927).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 16, 2012—Tentative

There are no meetings scheduled for the week of January 16, 2012.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: December 8, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–32055 Filed 12–9–11; 4:15 pm]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review; Proposed Collection of Information

AGENCY: Peace Corps.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Peace Corps invites the general public to comment on this request for approval of a new proposed information collection, Intelligence Background Questionnaire (OMB Control Number 0420—pending). This process is conducted in accordance with 5 CFR 1320.10.

DATES: Comments regarding this collection must be received on or before January 12, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: *oira_submission@omb.eop.gov* or fax to: (202) 395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692–1236, or email at *pcfr@peacecorps.gov*. Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: It has been the Peace Corps' longstanding policy to exclude from Peace Corps Volunteer service and Peace Corps employment any persons who have engaged in intelligence activity or related work or who have been employed by or connected with an intelligence Agency. It is crucial to the Peace Corps in carrying out its mission that there is a complete and total separation of Peace Corps from the intelligence activities of the United States government, both in reality and appearance. Any semblance of a connection between Peace Corps and the intelligence community would seriously compromise the ability of the Peace Corps to develop and maintain the trust and confidence of the people of the host countries. It could also put Volunteers at risk in the countries in which they serve.

Title: Intelligence Background Questionnaire.

OMB Control Number: 0420—pending.

Type of information collection: Existing collection in use without an OMB control number.

Affected public: Individuals or households.

Respondents' obligation to reply: Required to obtain or retain benefits.

Burden to the public:

(a) Estimated number of respondents: 100
(b) Frequency of response one time: one time
(c) Estimated average burden per response: 10 minutes
(d) Estimated total reporting burden: 16.67 hours
(e) Estimated annual cost to respondents: $0.00

General description of collection: Peace Corps' Office of the General Counsel uses the form to determine what kind of intelligence connection an applicant or an applicant's relative might have and how close an applicant and a relative with an intelligence connection are. The Office of the General Counsel uses the information to determine whether the intelligence connection is substantial enough to prevent the person from being employed at the Peace Corps or being a Volunteer for the Peace Corps permanently or for a set period of time from the last intelligence connection. If an applicant disagrees with the General Counsel's determination, he or she may appeal the determination to the Director of the Peace Corps.

This notice issued in Washington, DC, on December 5, 2011.

Garry W. Stanberry,

Deputy Associate Director, Management.

[FR Doc. 2011–31900 Filed 12–12–11; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Privacy Act of 1974; Report of an Altered System of Records

AGENCY: Notice to amend a system of record.

SUMMARY: The Peace Corps is revising an existing systems of record notice subject to the Privacy Act of 1974, (*5 U.S.C. 552a*), PC–21—Peace Corps Response Database. The first revision modifies the individuals covered by the system to include all applicants for Volunteer service with Peace Corps Response. The second revision modifies the purpose of the system of records which is to maintain records of individuals who apply for Peace Corps Response Volunteer service and to

record resulting actions taken on the applications and service. The third revision indicates that all of the Peace Corps' General Routine Uses apply to PC–21.

DATES: This proposed action will be effective without further notice January 27, 2012 without further action, unless adverse comment is received by Peace Corps by January 12, 2012.

ADDRESSES: You may submit comments by email to *pcfr@peacecorps.gov.* Include Privacy Act System of Records in the subject line of the message. You may also submit comments by mail to Denora Miller, Privacy Act Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526. Contact Denora Miller for copies of comments.

FOR FURTHER INFORMATION CONTACT: Denora Miller, Privacy Act Officer, (202) 692–1236, *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act, 5 U.S.C. 552a, provides that the public will be given a 30-day period in which to comment on a revised routine use. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the revision. In accordance with 5 U.S.C. 552a, Peace Corps has provided a report on this system to OMB and the Congress. Peace Corps is publishing changes which affect the public's right or need to know.

SYSTEM NAME:

PC–21—Peace Corps Response Database.

CHANGES:

* * * * *

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for Volunteer service with the Peace Corps Response.

PURPOSE:

To maintain records of individuals who apply for Peace Corps Response Volunteer service and to record resulting actions taken on the applications and service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

General routine uses A through L apply to this system.

This notice is issued in Washington, DC, on December 5, 2011.

Garry W. Stanberry,

Deputy Associate Director, Management.

[FR Doc. 2011–31898 Filed 12–12–11; 8:45 am]

BILLING CODE 6051–01–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 Thursday, December 15, 2011 at 1:15 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 15, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and

A post argument discussion.

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.

December 8, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32002 Filed 12–9–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65907; File No. SR–BATS–2011–049]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

December 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on December 1, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Options Pricing'' section of its fee schedule to change pricing with respect to orders routed to the C2 Options Exchange, Incorporated (''C2''). Effective November 1, 2011, C2 modified its transaction fees to assess fees on liquidity takers of either $0.44 or $0.45 per contract depending on the capacity associated with the order (*e.g.,* public customer, professional, firm, or market maker).[6] The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into three groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, infrastructure costs, *etc.*). The Exchange currently assesses fees of $0.30 per contract for Customer[7] orders and $0.55 per contract for Professional,[8] Firm or Market Maker[9] orders routed to C2. In order to better approximate the cost to the Exchange of routing Customer orders to C2, the Exchange proposes to place C2 in the away options exchange grouping along with the Nasdaq Options Market (''NOM'') and NYSE Arca Options (''Arca'') in Make/Take issues.[10] Accordingly, the Exchange proposes to charge a fee of $0.50 per contract for Customer orders and to continue to charge $0.55 per contract for Professional, Firm, or Market Maker orders routed to and executed at C2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes that its proposed routing rates are, on average, better than or equal to the fees a market participant would pay if routing through another market center. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Also, although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants. Finally, the Exchange believes that its proposal to modify routing fees to C2 is reasonable because the modified fee is a better approximation of the cost to the Exchange for routing Customer orders to C2.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2) thereunder,[14] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–049 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–BATS–2011–049. This file number should be included on the subject line if email 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

[6] *See* Securities Exchange Act Release No. 65668 (November 2, 2011), 76 FR 69313 (November 8, 2011) (SR–C2–2011–032).

[7] As defined on the Exchange's fee schedule, a Customer order refers to an order identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), excluding any transaction for a ''Professional'' as defined in Exchange Rule 16.1.

[8] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[9] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the OCC.

[10] As defined on the fee schedule, Make/Take pricing refers to executions at the identified exchange under which ''Post Liquidity'' or ''Maker'' rebates (''Make'') are credited by that exchange and ''Take Liquidity'' or ''Taker'' fees (''Take'') are charged by that exchange.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2011–049 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31891 Filed 12–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Brendan Technologies, Inc., CenterStaging Corp., PGMI, Inc., Thermal Energy Storage, Inc., and Trinity3 Corporation; Order of Suspension of Trading

December 9, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Brendan Technologies, 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 CenterStaging 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 PGMI, Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Thermal Energy Storage, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Trinity3 Corporation because it has not filed any periodic reports since the period ended September 30, 2006.

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. EST on December 9, 2011, through 11:59 p.m. EST on December 22, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–32031 Filed 12–9–11; 11:15 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12961 and #12962]

New Hampshire Disaster #NH–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–4049–DR), dated 12/05/2011.

Incident: Severe Storm and Snowstorm.

Incident Period: 10/29/2011 through 10/30/2011.

Effective Date: 12/05/2011.

Physical Loan Application Deadline Date: 02/03/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/05/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hillsborough, Rockingham.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12961B and for economic injury is 12962B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–31951 Filed 12–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12955 and #12956]

Oklahoma Disaster #OK–00057

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 12/07/2011.

Incident: Earthquakes.

Incident Period: 11/05/2011 and continuing.

Effective Date: 12/07/2011.

Physical Loan Application Deadline Date: 02/06/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lincoln.

Contiguous Counties:

Oklahoma: Creek, Logan, Okfuskee, Oklahoma, Payne, Pottawatomie.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 129552 and for economic injury is 129560.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 7, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–31954 Filed 12–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12953 and #12954]

Maryland Disaster #MD–00017

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maryland, dated 12/07/2011.

Incident: Remnants from Tropical Storm Lee.

Incident Period: 09/06/2011 through 09/14/2011.

DATES: *Effective Date:* 12/07/2011.

Physical Loan Application Deadline Date: 02/06/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cecil.

Contiguous Counties:

Maryland: Harford, Kent;
Delaware: New Castle;
Pennsylvania: Chester, Lancaster.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12953 6 and for economic injury is 12954 0.

The States which received an EIDL Declaration # are Maryland; Delaware; Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 7, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–31961 Filed 12–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12949 and #12950]

Indiana Disaster #IN–00039

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 12/07/2011.

Incident: Severe Storms and Tornadoes.

Incident Period: 11/14/2011.

Effective Date: 12/07/2011.

Physical Loan Application Deadline Date: 02/06/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Orange.

Contiguous Counties: Indiana: Crawford, Dubois, Lawrence, Martin, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12949B and for economic injury is 129500.

The State which received an EIDL Declaration # is Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 7, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–31958 Filed 12–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12957 and #12958]

Nevada Disaster #NV–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Nevada dated 12/07/2011.

Incident: Caughlin Fire.

Incident Period: 11/18/2011 through 11/21/2011.

Effective Date: 12/07/2011.

Physical Loan Application Deadline Date: 02/06/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Washoe.

Contiguous Counties:

Nevada: Carson City, Churchill, Humboldt, Lyon, Pershing, Storey.

California: Lassen, Modoc, Nevada Placer, Sierra.

Oregon: Harney, Lake.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12957 5 and for economic injury is 12958 0.

The States which received an EIDL Declaration # are Nevada, California, Oregon.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 7, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–31952 Filed 12–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12959]

Maryland Disaster #MD–00020 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Maryland, dated 12/07/2011.

Incident: Tropical Storm Lee.

Incident Period: 09/06/2011 through 09/14/2011.

Effective Date: 12/07/2011.

EIDL Loan Application Deadline Date: 09/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Prince George's.

Contiguous Counties:

Maryland: Anne Arundel, Calvert, Charles, Howard, Montgomery.

Virginia: Alexandria (City), Fairfax.

District of Columbia.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for economic injury is 129590.

The States which received an EIDL Declaration # are Maryland, District of Columbia, Virginia.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: December 7, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–31948 Filed 12–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0649]

Contemporary Healthcare Senior Lien Fund I, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Contemporary Healthcare Senior Lien Fund I, LP, 1040 Broad Street, Suite 103, Shrewsbury, NJ, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Contemporary Healthcare Senior Lien Fund I, LP, proposes to provide a loan to New Port Richey Real Estate, LLC, and New Port Richey Operating, LLC (Villas at Sunset Bay), 7423 Kauai Loop Road, New Port Richey, FL 34653. The financing is contemplated to refinance and discharge a portion of mezzanine financing provided by an Associate (as defined in Sec. 105.50 of the regulations) to pay accrued and capitalized interest, to pay closing costs and for working capital purposes.

The financing is brought within the purview of § 107.730(a)(4) and (d)(2) of the Regulations because Contemporary Healthcare Senior Lien Fund I, LP's

financing will be used to discharge a portion of an Associate's mezzanine financing and represents a financing with an Associate.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

December 7, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–31962 Filed 12–12–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.375 (2⅜) percent for the January–March quarter of FY 2012.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Walter C. Intlekofer,

Acting Director, Office of Financial Assistance.

[FR Doc. 2011–31965 Filed 12–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 7724]

60-Day Notice of Proposed Information Collection: Form DS–3097, Exchange Visitor Program Annual Report, and OMB Control Number 1405–0151

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Exchange Visitor Program Annual Report.
- *OMB Control Number:* 1405–0151.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, ECA/EC.
- *Form Number:* Form DS–3097.
- *Respondents:* Designated J–1 program sponsors.
- *Estimated Number of Respondents:* 1,435.
- *Estimated Number of Responses:* 1,435 annually.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 2,870 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments from the public up to 60 days from December 13, 2011.

ADDRESSES: You may submit comments by any of the following methods:

- Persons with access to the Internet may view and comment on this notice by going to the regulations.gov Web site at *http://www.regulations.gov/#!home.* You can search by selecting ''Notice'' under Document Type, enter the Public Notice number, and check ''Open for Comment''. Search, and then to view the document, select an Agency.
- *Email: JExchanges@State.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, ECA/EC/D, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505, ATTN: **Federal Register** Notice Response.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Rick A. Ruth, Deputy Assistant Secretary for Private Sector Exchange, Acting, ECA/EC, SA–5, Floor 5, Department of State, 2200 C Street NW., Washington, DC 20522–0505, who may be reached on (202) 632–2805 or at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Annual reports from designated program sponsors assist the Department in oversight and administration of the J–1 visa program. The reports provide statistical data on the number of exchange participants an organization sponsored per category of exchange. The reports also provide a summary of the activities in which exchange visitors were engaged and an evaluation of program effectiveness. Program sponsors include government agencies, academic institutions, and private sector not-for-profit and for-profit entities.

Methodology

Annual reports are completed through the Student and Exchange Visitor Information System (SEVIS) and then printed and signed by a sponsor official, and sent to the Department by mail or fax. The Department is currently working with the Department of Homeland Security to expand SEVIS functions and enable the collection of electronic signatures. Annual reports will be submitted to the Department electronically as soon as the mechanism for doing so is approved and in place during the implementation of SEVIS II.

Dated: December 6. 2011.

Rick A. Ruth,

Deputy Assistant Secretary for Private Sector Exchange, Acting, Bureau of Educational and Cultural Exchange, Department of State.

[FR Doc. 2011–31963 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7727]

Bureau of Educational and Cultural Affairs; Modifications to Grant Guidelines and Procedures

SUMMARY: The Bureau of Educational and Cultural Affairs (ECA) announces four modifications to the guidelines governing the award of program grants and cooperative agreements by the Bureau and the

procedures used to implement them, beginning on or about January 3, 2012.

Background

The guidelines governing ECA's grant program were established in 1983 and have been modified from time-to-time to comply with new directives and mandates. The four modifications outlined in this announcement will serve to further support the Department's Greening Diplomacy Initiative, help the Department adhere to new OMB guidance to all Federal agencies to streamline, standardize and simplify grants processes, allow for expanded monitoring and oversight over programs and increase opportunities for new organizations to compete for ECA programs.

The modifications are:

(1) Eliminating use of the **Federal Register** to announce ECA grant funding opportunities referred to as Request for Grant Proposals (RFGPs) and rely exclusively on the Grants.gov and ECA Web sites for this purpose.

(2) Requiring all applicants submitting proposals in response to RFGPs to utilize the grants.gov web—portal site exclusively for submission of grant proposals. Thus, eliminating the current ''hard- copy'' submission option.

(3) Increasing the ''pilot grant limit'' for awards to organizations with less than four years of experience conducting international exchanges from the current $60,000 level established in 1983 to $130,000 which reflects a comparable ceiling in today's dollars, adjusted for inflation. ECA will also update the pilot grant limit from time to time in the future, not to exceed the 1983 level adjusted for inflation.

(4) Modifying ECA's current grant renewal process to allow for Option Years for certain programs. Individual announcements for competed programs will contain information on whether a program will be renewed through additional awards or through the use of option years, pending successful performance and the availability of funds.

Additional Information

For additional information please contact Hans Posey, Program Management Division, ECA/EX/PM, U.S. Department of State, 2200 C Street NW., Washington, DC 20037, (202) 632–6385, *email: PoseyHE@state.gov.*

Dated: December 7, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–31974 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice: 7726]

Culturally Significant Objects Imported for Exhibition Determinations: ''Cindy Sherman''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Cindy Sherman,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about February 26, 2012, until on or about June 11, 2012, the San Francisco Museum of Modern Art, San Francisco, California, from on or about July 14, 2012, until on or about October 7, 2012, the Walker Art Center, Minneapolis, Minnesota, from on or about November 3, 2012, until on or about February 10, 2013, and the Dallas Museum of Art, Dallas, Texas, from on or about March 17, 2013, until on or about June 9, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 6, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–31981 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7725]

Culturally Significant Objects Imported for Exhibition Determinations: ''Beauty and Belief: Crossing Bridges With the Arts of Islamic Culture''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Beauty and Belief: Crossing Bridges with the Arts of Islamic Culture,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Brigham Young University Museum of Art, Provo, Utah, from on or about February 24, 2012, until on or about September 29, 2012, the Indianapolis Museum of Art, Indianapolis, Indiana, from on or about November 2, 2012, until on or about January 13, 2013, the Newark Museum, Newark, New Jersey, from on or about February 13, 2013, until on or about May 19, 2013, the Portland Art Museum, Portland, Oregon, from on or about June 15, 2013, until on or about September 8, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 6, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–31984 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7728]

Vantage Pipeline US LP; Notice of Intent To Prepare an Environmental Assessment and Request for Comments on Environmental Issues, and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed Vantage Pipeline Project

December 9, 2011.

The staff of the United States Department of State (DOS) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Vantage Pipeline Project involving construction, operation, and maintenance of facilities at the U.S.-Canada border by Vantage Pipeline US LP (Vantage) in Williams and Divide Counties, North Dakota. This EA will be used by the DOS in its decision-making process to determine whether the project would serve the national interest and be issued a Presidential Permit.

This notice announces the opening of the scoping process the DOS will use to gather input from the public and interested agencies on the project. Your input will help the DOS staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on January 17, 2011.

This notice is being sent to the DOS' current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may have already been or may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the DOS, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Additionally, the DOS has determined that issuance of a Presidential Permit for the Vantage Pipeline Project triggers review under Section 106 of the National Historic Preservation Act and is consequently initiating the required consultation under that statute. Consultation will be conducted with State Historic Preservation Officers, Indian tribes, and the Advisory Council on Historic Preservation, and other consulting parties, as appropriate, to determine the locations (if any) of potential sites for inclusion on the National Register of Historic Places as well as the potential eligibility and findings of effect for cultural resources identified within the Vantage Pipeline Project Area of Potential Effect.

A fact sheet prepared by the Federal Energy Regulatory Commission (FERC) entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for your review on the DOS' Web site for the project (see the Additional Information section, below). Although the proposed Vantage project involves an ethane pipeline, many of the typically asked questions addressed in the fact sheet also apply to this project. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Vantage proposes to construct and operate 77.4 miles of 10-inch-diameter ethane [1] pipeline in Williams and Divide Counties, North Dakota. The project would also include the installation of mainline valves at seven locations along the pipeline and the use of various ancillary facilities (*e.g.,* access roads, yards). According to Applicant, the Vantage Pipeline Project would serve the national interest by providing the natural gas, oil, and ethane-producing Bakken Formation region of North Dakota with access to the existing ethane infrastructure and market associated with the Alberta Ethane Gathering System in Alberta. Currently no market exists for petrochemical grade (also known as ''specification'' or ''pure grade'') ethane in North Dakota; however, the construction of the Vantage Pipeline will make it feasible to extract the ethane byproduct from North Dakota-produced natural gas and export it for use in the Canadian petrochemical industry. The Applicant contends that the pipeline will therefore enhance exports from the United States, allow U.S. natural gas producers to recognize benefits from an existing resource from which they are not presently recognizing any financial benefit, and will contribute to the national economy in terms of job creation and tax payments.

The general location of the project facilities is at *http://www.vantagepipeline.state.gov.*

Land Requirements for Construction

Construction of the proposed facilities would disturb about 700 acres of land for the aboveground facilities and the pipeline. Following construction, about 280 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the DOS take into account the environmental impacts that could result from the approval of a Presidential Permit authorizing construction, operation, and maintenance of pipeline facilities of natural gas liquids to be located at the international border of the United States and Canada. NEPA also requires the DOS to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the DOS requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA, the DOS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources and wetlands;
- Vegetation and wildlife (including endangered and threatened species);
- Land use, recreation, and visual resources;
- Socioeconomics;
- Cultural resources;
- Air quality and noise;
- Public safety; and
- Cumulative impacts.

The DOS will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

[1] According to the application, the ethane transported in the Vantage Pipeline is a flammable liquid that is non-corrosive, odorless, and colorless. It has similar characteristics to natural gas, the fuel that is used in furnaces to heat homes. Ethane is currently used as a feedstock by the Alberta petrochemical industry and is ultimately converted to plastics, anti-freeze, rubber, detergents, solvents, and like products.

The DOS' independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. The DOS will consider all comments on the EA before it issues a Presidential Permit. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section.

With this notice, the DOS is asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with DOS in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

During this scoping period, the DOS also plans to use the scoping process to help identify historic preservation issues for consideration under Section 106 of the National Historic Preservation Act and its implementing regulations (Title 36 Code of Federal Regulations Part 800).

Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about the proposed project. By becoming a commenter, your concerns will be considered by the DOS and addressed appropriately in the EA. Your comments should focus on the potential environmental impacts, reasonable alternatives (including alternative facility sites and alternative pipeline routes), and measures to avoid or lessen environmental impacts. Parties interested in being involved in Section 106 consultation should also contact the DOS. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so they will be received on or before January 17, 2011.

For your convenience, there are two methods that you can use to submit your comments to the DOS. In all instances please reference the project (*i.e.,* Vantage) with your submission. The DOS encourages electronic filing of comments.

(1) You may file a paper copy of your comments at the following address: Alexander Yuan, OES/ENV, NEPA Compliance Officer, P.O. Box 18500, Minneapolis, MN 55418, REFERENCE: VANTAGE; or

(2) You may email comments to *AlexanderYuan@merjent.com.*

Environmental Mailing List

The environmental mailing list includes Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, and anyone who submits comments on the project. The DOS will update the environmental mailing list as the analysis proceeds to ensure that it sends the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Additional Information

The application and related documents that are part of the record to be considered by the DOS in connection with this application, including environmental information and associated maps, are downloadable from a Web site that is being established for this purpose: *http://www.vantagepipeline.state.gov.*

A Vantage hosted project Web site is also available at *http://www.vantagepipeline.com.* The Vantage Pipeline Project toll free number is 1–(877) 918–6818 (United States).

Dated: December 7, 2011.

George N. Sibley,

Director, Office of Environmental Policy, Bureau of Oceans and International, Environmental and Scientific Affairs, U.S. Department of State.

[FR Doc. 2011–31964 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 7713]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Electronic Commerce

The Department of State, Office of Legal Adviser, Office of Private International Law would like to give notice of a public meeting to discuss electronic transferable records. Working Group IV (international electronic commerce) of the United Nations Commission on International Trade Law (UNCITRAL) met October 10–14, 2011, to discuss matters relating to electronic transferable records. A report from that meeting, once it is published, should be available at *http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html.*

The ACPIL public meeting will discuss relevant rules applicable to electronic transferable records, current practice involving the use of electronic transferable records, and potential areas in which work by UNCITRAL could be beneficial.

Time and Place: The public meeting will take place on Friday, January 6, 2012, from 10 a.m. to 2 p.m. EST in Room 1207 in the Department of State's Harry S. Truman Building, 2201 C Street NW., Washington, DC 20520. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled. Persons wishing to attend in person or telephonically should contact both Tricia Smeltzer (*SmeltzerTK@state.gov*) and Niesha Toms (*TomsNN@state.gov*) of the Office of the Assistant Legal Adviser for Private International Law, and provide your name, affiliation, email address, and mailing address. If you would like to participate in person, please also provide your date of birth, citizenship, and driver's license or passport number for entry in the building. Members of the public who are not pre-cleared might encounter delays with security procedures. Personal data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. A member of the public needing reasonable accommodation should advise either of the aforementioned contacts not later than December 27, 2011.

Dated: December 7, 2011.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Washington, DC.

[FR Doc. 2011–31982 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 6828]

Meeting of Advisory Committee on the Secretary of State's Strategic Dialogue With Civil Society

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), the Advisory Committee on the Secretary of State's Strategic Dialogue With Civil Society will convene in Washington, DC on January 17, 2012. The Committee provides advice on the formulation of U.S. policies, proposals, and strategies for engagement with, and protection of, civil society worldwide. The objective of this meeting is to review the progress of the Committee's five subcommittees. The meeting is open to the public and will be streamed live at *https://statedept.connectsolutions.com/csenglish.*

DATES: The meeting will be held on January 17, 2012, from 10 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of State, Room 1107, 2201 C Street NW., Washington, DC This meeting is open to public participation, though seating is limited. Entry to the building is controlled. To obtain pre-clearance for entry provide, by January 11, your name, professional affiliation, valid government-issued ID number, passport number and country of issuance, or driver's license number and state of issuance, date of birth, and citizenship to Dara Duncan via email to *civilsociety@state.gov* or facsimile to (202) 736–7961. One of the following forms of valid photo identification will be required for entry into the meeting: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the entrance on C Street. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins.

Written comments may also be submitted to Dara Duncan via the contact information above. All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the U.S. Department of State, 2201 C Street NW., Room 1317, Washington, DC 20520. Please call ahead to (202) 736–7824 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dara Duncan, Committee Executive Secretary, U.S. Department of State, 2201 C Street, NW., Room 1317, Washington, DC 20520; (202) 736–7824; fax (202) 736–7961; *civilsociety@state.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting Dara Duncan at the contact information provided above prior to January 2. Requests made after that date will be considered, but might not be possible to fulfill.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and will be streamed live at: *https://statedept.connectsolutions.com/csenglish.* Agenda items to be covered include: (1) Introductions, (2) Presentations by the Chairs of the Subcommittees, (3) Public Comment, (4) General Discussion, (5) Adjournment. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff. The agenda will allow time for people to make oral statements of two minutes or less. Individuals wishing to make an oral statement should submit this request in writing by January 2, 2012 to be scheduled on the agenda. Written comments and requests of time for oral comments must be sent to Dara Duncan, Committee Executive Secretary, at the contact information provided above.

Personal data is requested for building entry pursuant to Pub. L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Dated: December 5, 2011.

Dara Duncan,

Policy Coordinator, U.S. Department of State.

[FR Doc. 2011–31985 Filed 12–12–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice to Manufacturers of Airport Lighting and Navigation Aid Equipment

AGENCY: Federal Aviation Administration (FAA), US DOT.

ACTION: Notice to manufacturers of airport lighting and navigation aid equipment.

SUMMARY: Projects funded under the Airport Improvement Program (AIP) must meet the requirements of 49 U.S.C. 50101, Buy American Preferences. The Federal Aviation Administration (FAA) is considering issuing waivers to foreign manufacturers of certain airport lighting and navigation aid equipment that is lit with Light Emitting Diode (LED) lighting. This notice requests information from manufacturers of systems meeting the technical requirements to determine whether a waiver to the Buy American Preferences should be issued.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) manages a federal grant program for airports called the Airport Improvement Program (AIP). AIP grant recipients must follow 49 U.S.C. 50101, Buy American Preferences.

Under 49 U.S.C. 50101(b)(3), the Secretary of Transportation may waive the Buy American Preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.

The purpose of this notice is to request manufacturers of L–850A, L850B, L852K, and L852S LED airport lighting equipment, LED Runway End Identified Lighting (REIL) equipment, and LED Precision Approach Path Indicator (PAPI) equipment, both domestic and foreign, to advise FAA of the system that they manufacture and whether it can meet the FAA Advisory Circular technical requirements. The detailed instructions for submitting the qualifications statement, including

forms, may be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/at* the tab entitled, Airport Lighting and Navigation Aid Equipment Request For Qualifications. The FAA wants to determine if there is sufficient quantity of domestic manufacturers capable of meeting the FAA technical requirements. If the FAA cannot find that there are USA manufacturers, it will issue a nationwide waiver to the foreign manufacturers identified as being capable of meeting the technical requirements.

Technical Requirements: FAA Advisory Circular (AC) 150/5345–46D, Specification for Runway and Taxiway Light Fixtures provides the technical requirements for the L–850A, L–850B, L–852K and L–852S lighting equipment. FAA Advisory Circular 150/5345–51B, Specifications for Discharge-Type Flashing Light Equipment, provides the technical requirements for the REILs. FAA Advisory Circular 150/5345–28G, Precision Approach Path Indicator (PAPI) Systems, provides the technical requirements for the PAPI equipment.

After review, the FAA may issue a nationwide waiver to Buy American Preferences for foreign manufacturers or United States manufacturers that do not meet the Buy American Preference requirements. Waivers will not be issued for manufacturers that do not fully meet the technical requirements. This ''nationwide waiver'' allows equipment to be used on airport projects without having to receive separate project waivers. Having a nationwide waiver allows projects to start quickly without have to wait for the Buy American analysis to be completed for every project, while still assuring the funds used for airport projects meet the requirements of the Act.

Items that have been granted a ''nationwide waiver'' can be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/at* the tab entitled, Equipment Meeting Buy American Requirements.

Issued in Washington, DC on December 7, 2011.

Frank J. San Martin,

Manager, Airports Financial Assistance Division.

[FR Doc. 2011–31993 Filed 12–12–11; 8:45 am]

BILLING CODE;P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0126]

Agency Information Collection Activities: Notice of Request for Renewal of Two Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew two information collections, which are summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 11, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 12, 2012.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2011–0126.

SUPPLEMENTARY INFORMATION:

Title1: A Guide to Reporting Highway Statistics.

OMB Control Number: 2125–0032.

Abstract: A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling highway related data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formula that are used to distribute Federal-aid Highway Funds. The data are published annually in the FHWA's Highway Statistics. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Average Burden per Response: The estimated average reporting burden per response for the annual collection and processing of the data is 825 hours for each of the States (including local governments), the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 42,900 hours.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Erickson, (202) 366–9235, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels Division (HPPI–10), 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Title 2: Highway Performance Monitoring System (HPMS).

OMB Control Number: 2125–0028.

Abstract: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides miles, lane-miles and travel components of the Federal-aid Highway Fund apportionment formulae. The data that is required by the HPMS has recently been reassessed and streamlined by the FHWA.

Respondents: State governments of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Average Burden per Response: The estimated average burden

per response for the annual collection and processing of the HPMS data is 1,800 hours for each State, the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 93,600 hours.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rozycki, (202) 366–5059, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued on December 6, 2011.

Cynthia Thornton,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2011–31992 Filed 12–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0128]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Request for Renewal of a Previously Approved Information Collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval the renewal of a previously approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 11, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 12, 2012.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2011–0128.

FOR FURTHER INFORMATION CONTACT: Mary Huie, (202) 366–3039, Department of Transportation, Federal Highway Administration, Office of Infrastructure, 1200 New Jersey Ave. SE., E76–106, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highways for LIFE Program.

Background: Section 1502 of SAFETEA–LU established the ''Highways for LIFE'' Program. The purpose of the Highways for LIFE program is to advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges. ''Highways for LIFE'' is focused on accelerating the rate of adoption of proven technologies. The program provides funding to States to accelerate technology adoption to construct, reconstruct, or rehabilitate Federal-aid highway projects that incorporate innovative technologies that will improve safety, reduce congestion due to construction, and improve quality. Those States interested in participating in the ''Highways for LIFE'' program would submit an application for project funding. The information to be provided on the application includes a description of the project, the innovative technologies to be used and a description of how these technologies will improve safety, reduce construction congestion, and improve quality. The collected information will be used by FHWA to evaluate and select projects for ''Highways for LIFE'' funding.

Respondents: The fifty State Departments of Transportation, the District of Columbia, and Puerto Rico.

Frequency: Annually.

Estimated Number of Respondents: 1,460 for file maintenance and 52 State highway agencies for statistical reports.

Estimated Average Burden per Response: 8 hours per respondent per application.

Total Annual Burden: It is expected that the respondents will complete approximately 30 applications for an estimated 240 total annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Dated: December 6, 2011.

Cynthia Thornton,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2011–31955 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

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

transportation corridor project (Hyde Park to North Logan Transportation Corridor) in Cache County in the State of Utah. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the FHWA actions on the highway project will be barred unless the claim is filed on or before June 10, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84129; telephone (801) 955–3524; *email: Edward.Woolford@dot.gov.* The FHWA Utah Division's regular business hours are Monday through Friday, 7:30 a.m. to 4:30 p.m. MST. For UDOT: Mr. Brandon Weston, Environmental Services Director, 4501 South 2700 West, Salt Lake City, Utah 84114; *telephone:* (801) 965–4603; *email: brandonweston@utah.gov.* The UDOT's normal business hours are Monday through Friday, 8 a.m. to 5 p.m. MST.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Utah: the Hyde Park to North Logan Transportation Corridor (200 East) in Cache County, Utah, project number FHWA–UT–EIS–07–04–F. The roadway will extend from 1400 North in Logan to 3700 North in Hyde Park. The selected alternative follows 200 East between 1400 North and 2200 North, shifts west to follow 100 East between 2400 North and 2800 North, then shifts east to follow 150 East to 3700 North. The selected alternative will be five lanes (two through lanes in each direction and a center turn lane) from 1400 North to 2200 North and three lanes (one through lane in each direction and a center turn lane) from 2200 North to 3700 North. Portions of the project will be constructed on new alignment and will likely be implemented using a phased approach, which is described in the Final Environmental Impact Statement (FEIS). These actions will improve regional connectivity and mobility and provide transportation infrastructure that supports economic development within the cities of Hyde Park, Logan, and North Logan in Utah.

The actions by the FHWA, and the laws under which such actions were taken, are described in the FEIS for the project, approved on June 22, 2011, in the FHWA Record of Decision (ROD) issued on October 14, 2011, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record are available by contacting the FHWA or the UDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.cachempo.org* or viewed at public libraries in the project area.

This notice applies to all FHWA 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 [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 [49 U.S.C. 303];

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712];

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.];

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209];

7. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; 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: November 29, 2011.

James C. Christian,

Division Administrator, Salt Lake City.

[FR Doc. 2011–31802 Filed 12–12–11; 8:45 am]

BILLING CODE 4910–RY–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 December 28, 2011.

ADDRESSES: *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://www.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); 1.53(b)).

Issued in Washington, DC, on December 6, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
		MODIFICATION SPECIAL PERMITS		
7945–M		Pacific Scientific, Duarte, CA.	49 CFR 173.304(a)(1); 175.3	To modify the special permit to authorize additional 2.2 hazardous materials in non-DOT secification cylinders.
13381–M		Carleton Technologies, Pressure Technology Division, Westminster, MD.	49 CFR 173.302(a)(1); 173.304(a), 175.3 and 180.205.	To modify the special permit to authorize an extended testing time period for cylinders which are past their retest date but are not empty.
14616–M		Chlorine Service Company, Kingwood, TX.	49 CFR 178.245–1(a)	To modify the special permit to correct pressure ranges to bring it in line with other special permits issued.
15258–M		Air Products and Chemicals, Inc, Tamaqua, PA.	49 CFR 180.205 and 173.302a	To modify the special permit to authorize additional cylinders which may be tested by the untrasonic test method.

[FR Doc. 2011–31700 Filed 12–12–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for 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 application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 12, 2012.

ADDRESSES: *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://www.regulations.gov.*

This notice of receipt of applications for 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 December 2, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
15497–N		U.S. Department of Energy Washington, DC.	49 CFR 173.417(a)(l)(i)	To authorize the transportation in commerce of radioactive materials without being subject to the requirements in 49 CFR 173.417(a)(1)(i)(mode 1).
15503–N		Garden City Co-op, Inc. Garden City, KS.	49 CFR 173.315(m)(l)(iv)	To authorize the transportation in commerce of certain cargo tanks used as an implementation of husbandry with a capacity of 5,000 gallons containing anhydrous ammonia. (mode 1).
15504–N		FIBA Technologies, Inc. Millbury, MA.	49 CFR 173.302a	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4).
15507–N		Yiwu Jinyu Machinery Factory Jiangwan Town, Yiwu City.	49 CFR 173.304(d)	To authorize the manufacture, marking, sale and Yiwu City use of a non-refillable, non-DOT specification inside metal container similar to a DOT 2Q for the transportation in commerce of certain Division 2.1 and 2.2 gases. (modes 1, 2, 3, 4).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15509–N	.....	The Virginia Commercial Space Flight Authority Norfolk, VA.	49 CFR 173.301 and 173.302a	To authorize the transportation in commerce of Helium in a non-DOT specification packaging for a short distance by motor vehicle. (mode 1).
15514–N	.....	Shesam DBA Wilson Supply Cumberland, MD.	49 CFR 173.301(f)	To authorize the transportation in commerce of certain cylinders without pressure relief devices. (modes 1, 2, 3).
15515–N	.....	National Aeronautics and Space Administration (NASA) Houston, TX.	49 CFR 173.302a, 173.301(f)(l), 173.301(h)(3), 173.302(f)(2) and 173.302(f)(4).	To authorize the transportation in commerce of a non-DOT specification cylinder further packed in an ATA–300 Category 1 outer packaging. (modes 1, 2, 3, 4).
15516–N	.....	Moog Inc. East Auroroa, NY.	49 CFR Part 172, Subpart C	To authorize the transportation in commerce of certain waste hazardous materials between Moog plants without shipping paper documentation for less than one half mile by private motor vehicle. (mode 1).
15517–N	.....	Mountain West Helicopters, LLC Alpine, UT.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, and 172.300 and 172.400.	To authorize the transportation in commerce of certain hazardous materials by external load in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4).

[FR Doc. 2011–31697 Filed 12–12–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 8, 2011.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 12, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or online at *http://www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *http://www.reginfo.gov.*

Community Development Financial Instutitions (CDFI) Fund

OMB Number: 1559–0040.

Type of Review: Reinstatement with change of a previously approved collection.

Title: Healthy Food Financing Initiative (HFFI).

Abstract: The questionnaire will be used by CDFI Program applicants to apply for additional funding under the Healthy Food Financing Initiative (HFFI). The questions that the supplemental questionnaire contains, and the information generated thereby, will enable the Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a CDFI HFFI–FA award. The information collected will be used to select awardees, based on a merit-based selection process. The requested information is required by the CDFI Program Regulations (12 CFR Part 1805) and the respective Notice of Funds Availability.

Affected Public: Private Sector: Businesses or other for-profits; not for-profit institutions.

Estimated Total Annual Burden Hours: 600.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–31932 Filed 12–12–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Request for Payment of Federal Benefit by Check, EFT Waiver Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, ''Request for Payment of Federal Benefit by Check, EFT Waiver Form.''

DATES: Written comments should be received on or before February 13, 2012.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Walt Henderson; EFT Strategy Division; 401 14th Street SW., Room 303, Washington, DC 20227, (202) 874–6624.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments

on the collection of information described below:

Title: Request for Payment of Federal Benefit by Check, EFT Waiver Form.

OMB Number: 1510–0NEW (OMB to affix number).

Form Number: DRAFT—FMS Form 1201–W.

Abstract: 31 CFR part 208 requires that all Federal non-tax payments be made by electronic funds transfer (EFT). This form is used to collect information from individuals requesting a waiver from the EFT requirement because of a mental impairment and/or who live in a remote geographic location that does not support the use of EFT. These individuals may continue to receive payment by check. However, 31 CFR part 208 requires individuals requesting one of these waiver conditions to submit a written justification that is notarized by a notary public. In order to assist individuals with this submission, Treasury is preparing a waiver form so that all necessary information is collected.

Current Actions: New Information Collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 400,000.

Estimated Time per Respondent: 1.2 Hours.

Estimated Total Annual Burden Hours: 80,000 Hours.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility; and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 6, 2011.

Sheryl R. Morrow,

Assistant Commissioner, Payment Management.

[FR Doc. 2011–31801 Filed 12–12–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Aspen American Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Aspen American Insurance Company (NAIC # 43460). *Business Address:* 175 Capital Boulevard, Suite 300, Rocky Hill, CT 06067. *Phone:* (860) 258–3500.

Underwriting Limitation b/: $6,797,000.

Surety Licenses c/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.

Incorporated in: Texas

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2011 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: December 1, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2011–31799 Filed 12–12–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–MA, Mortgage Assistance Payments.

DATES: Written comments should be received on or before February 13, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Assistance Payments.

OMB Number: 1545–2221.

Form Number: Form 1099–MA.

Abstract: This form is a statement reported to the IRS and to taxpayers. It will be filed and furnished by State Housing Finance Agencies (HFAs) and HUD to report the total amounts of mortgage assistance payments and homeowner mortgage payments made to mortgage servicers. The requirement for the statement are authorized by Notice 2011–14, supported by Public Law 111–203, section 1496, and Public Law 110–343, Division A, section 109.

Current Actions: There were no changes made to the document that

resulted in any change to the burden previously reported to OMB. We are making this submission to renew the OMB approval.

Type of Review: Extension to previously approved IC.

Affected Public: Individuals, Federal Government, State, Local, or Tribal Governments, and other Not-for-profit organizations.

Estimated Number of Respondents: 52.

Estimated Time per Respondent: 2 hours 50 minutes.

Estimated Total Annual Burden Hours: 170,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 5, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–31851 Filed 12–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14242

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14242, Reporting Abusive Tax Promotions or Preparers.

DATES: Written comments should be received on or before February 13, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Abusive Tax Promotions or Preparers.

OMB Number: 1545–2219.

Form Number: Form 14242.

Abstract: The IC form is used to report an abusive tax avoidance scheme and tax return preparers who promote such schemes. IC is collected to combat abusive tax promoters. Respondents can be individuals, businesses and tax return preparers.

Current Actions: There were no changes made to the document that resulted in any change to the burden previously reported to OMB. We are making this submission to renew the OMB approval.

Type of Review: Extension to previously approved IC.

Affected Public: Individuals or Households, Farms, Businesses and other for-profit or not-for-profit organizations.

Estimated Number of Respondents: 360.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 3,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 5, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–31852 Filed 12–12–11; 8:45 am]

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Part II

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11517, JPMorgan Chase & Co. and its Current and Future Affiliates and Subsidiaries (JPMorgan Chase); D–11579, Delaware Charter Guarantee & Trust Co. d\b\a\ Principle Trust Company (Principle Trust); D–11628, Aztec Well Servicing Company and Related Companies Medical Plan Trust Fund (the Plan); D–11669, Genzyme Corporation 401(k) Plan (the Plan or the Applicant); and Retirement Program for Employees of EnPro Industries (the Plan), D–11662 *et al.*

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. *Attention:* Application No.____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or fax. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

JPMorgan Chase & Co. and Its Current and Future Affiliates and Subsidiaries (JPMorgan Chase), Located in New York, New York

Application Number D–11517

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Sales of Auction Rate Securities From Plans to JPMorgan Chase: Unrelated to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to JPMorgan Chase, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in section II have been met.

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by JPMorgan Chase;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by JPMorgan Chase for its own employees (a JPMorgan Chase Plan), the Unrelated Sale is made pursuant to a written offer by JPMorgan Chase (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to the most recent rate information for the Auction Rate Security (if reliable information is available). Either the Offer or other materials available to the Plan provide the identity and par value of the Auction Rate Security. Notwithstanding the foregoing, in the case of a pooled

[1] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

fund maintained or advised by JPMorgan Chase, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a JPMorgan Chase Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale, including, but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends; [2]

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in section V(d)) of JPMorgan Chase. Notwithstanding the foregoing: (1) In the case of an individual retirement account (an IRA, as described in section V(e) below) which is beneficially owned by an employee, officer, director or partner of JPMorgan Chase, or a relative of any such persons, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director, partner, or relative; or (2) in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, the decision to accept the Offer may be made by JPMorgan Chase after JPMorgan Chase has determined that such purchase is in the best interest of the JPMorgan Chase Plan or pooled fund; [3]

(h) Except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, neither JPMorgan Chase nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) JPMorgan Chase and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that—

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than JPMorgan Chase and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of JPMorgan Chase or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (l)(1)(B)–(C) shall be authorized to examine trade secrets of JPMorgan Chase, or commercial or financial information which is privileged or confidential; and

(3) Should JPMorgan Chase refuse to disclose information on the basis that such information is exempt from disclosure, JPMorgan Chase shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request.

Section III. Sales of Auction Rate Securities From Plans to JPMorgan Chase: Related to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to JPMorgan Chase, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery and timing of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with JPMorgan Chase, the purchase dates for the Auction Rate Securities, and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The number of shares and par value of the Auction Rate Securities available for purchase under the Offer;

(3) The background of the Offer;

(4) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(5) The methods and timing by which Plans may accept the Offer;

(6) The purchase dates, or the manner of determining the purchase dates, for

[2] This proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and III at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

[3] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to JPMorgan Chase for the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by JPMorgan Chase of all relevant information.

Auction Rate Securities tendered pursuant to the Offer;

(7) The timing for acceptance by JPMorgan Chase of tendered Auction Rate Securities;

(8) The timing of payment for Auction Rate Securities accepted by JPMorgan Chase for payment;

(9) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(10) The expiration date of the Offer;

(11) The fact that JPMorgan Chase may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(12) A description of the risk factors relating to the Offer as JPMorgan Chase deems appropriate;

(13) How to obtain additional information concerning the Offer; and

(14) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met with respect to the Settlement Sale.

Section V. Definitions

For purposes of this proposed exemption:

(a) The term ''affiliate'' means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''control'' means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term ''Auction Rate Security'' means a security that:

(1) Is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) Has an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is ''independent'' of JPMorgan Chase if the person is:

(1) Not JPMorgan Chase or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term ''Plan'' means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by ERISA section 3(42); and

(f) The term ''Settlement Agreement'' means: A legal settlement involving JPMorgan Chase and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by JPMorgan Chase from a Plan.

Effective Date: If granted, this proposed exemption will be effective as of February 1, 2008.

Summary of Facts and Representations

1. The applicant is JPMorgan Chase & Co. (hereinafter, either JPMorgan Chase or the Applicant), a financial holding company incorporated under Delaware law in 1968. JPMorgan Chase is a leading global financial services firm, with $2.0 trillion in assets, $165.4 billion in stockholders' equity, and operations in more than 60 countries as of December 31, 2009.

2. The Applicant describes Auction Rate Securities (ARS) and the arrangement by which ARS are bought and sold as follows. ARS are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that, under a typical Dutch Auction process, JPMorgan Chase is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. JPMorgan Chase may place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (a) A failed auction (*i.e.,* an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate, resulting in no ARS being sold through the auction process); or (b) an auction from clearing at a rate that JPMorgan Chase believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, JPMorgan Chase has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. JPMorgan Chase is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and JPMorgan Chase. That agreement provides that JPMorgan Chase will receive from the issuer auction dealer fees based on the principal amount of the securities placed through JPMorgan Chase.

5. The Applicant states further that JPMorgan Chase may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through JPMorgan Chase, for those orders that JPMorgan Chase successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than JPMorgan Chase act as dealer, such other broker-dealers may share auction dealer fees with JPMorgan Chase for orders submitted by JPMorgan Chase.

6. The Applicant represents that since February, 2008, a significant majority of auctions have been unsuccessful. According to the Applicant, the current state of the ARS market remains illiquid. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.[4]

7. The Applicant represents further that, in certain instances, JPMorgan Chase may have previously advised or otherwise caused a Plan to acquire and hold an ARS.[5] In connection with JPMorgan Chase's role in the acquisition and holding of ARS by various JPMorgan Chase clients, including the

[4] The Department notes that Class Exemption 80–26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only— (1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

[5] The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

Plans, JPMorgan Chase entered into Settlement Agreements with certain U.S. states and federal authorities. Pursuant to these Settlement Agreements, among other things, JPMorgan Chase was required to send a written offer to certain Plans that held ARS in connection with the advice and/or brokerage services provided by JPMorgan Chase. As described in further detail below, eligible Plans that accepted the written offer were permitted to sell the ARS to JPMorgan Chase for cash equal to the par value of such securities, plus any accrued interest and/or dividends. According to the Applicant, in connection with an offer issued by JPMorgan Chase pursuant to a Settlement Agreement, JPMorgan Chase has purchased approximately $2 billion dollars in ARS. The Applicant states that, prospectively, additional shares of ARS may be tendered by Plans to JPMorgan Chase pursuant to an offer issued by JPMorgan Chase pursuant to a Settlement Agreement. Accordingly, the Applicant is requesting retroactive and prospective relief for the Settlement Sales. With respect to Unrelated Sales, the Applicant states that to the best of its knowledge, as of January 1, 2011, no Unrelated Sale has occurred. However, the Applicant is requesting retroactive relief (and prospective relief) for Unrelated Sales in the event that a sale of ARS by a Plan to JPMorgan Chase has occurred outside the Settlement process. If granted, the exemption would be effective as of February 1, 2008.

8. Specifically, the Applicant is requesting exemptive relief for the sale of ARS under two different circumstances: (a) Where JPMorgan Chase initiates the sale by sending to a Plan a written offer to acquire the ARS, notwithstanding that such offer is not required under a Settlement Agreement (*i.e.,* an Unrelated Sale); and (b) where JPMorgan Chase is required under a Settlement Agreement to send to Plans a written offer to acquire the ARS (*i.e.,* a Settlement Sale). The Applicant states that the Unrelated Sales and Settlement Sales (hereinafter, either, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales would permit Plans to normalize Plan investments. The Applicant represents that each Covered Sale will be for no consideration other than cash payment against prompt delivery of the ARS, and such cash will equal the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans will not pay any commissions or transaction costs with respect to any Covered Sale.

9. The Applicant represents that the proposed exemption is protective of the Plans. The Applicant states that, except in the case of a Plan sponsored by JPMorgan Chase for its own employees (a JPMorgan Chase Plan), each Covered Sale will be made pursuant to a written offer (an Offer); and the decision to accept the Offer or retain the ARS will be made by a Plan fiduciary or Plan participant or IRA owner who is independent of JPMorgan Chase. Additionally, each Offer will be delivered in a manner designed to alert a Plan fiduciary that JPMorgan Chase intends to purchase ARS from the Plan. In connection with an Unrelated Sale, the Offer will describe the material terms of the Unrelated Sale, including the most recent rate information for the ARS (if reliable information is available). Either the Offer or other materials available to the Plan will provide the identity and par value of the ARS. Offers made in connection with a Settlement Agreement will specifically include, among other things: The background of the Offer; the method and timing by which a Plan may accept the Offer; the expiration date of the Offer; a description of certain risk factors relating to the Offer; how to obtain additional information concerning the Offer; and the manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans. The Applicant states that, except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, neither JPMorgan Chase nor any affiliate will exercise investment discretion or render investment advice with respect to a Plan's decision to accept the Offer or retain the ARS.[6] In the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, the decision to engage in a Covered Sale may be made by JPMorgan Chase after JPMorgan Chase has determined that such purchase is in the best interest of the JPMorgan Chase Plan or pooled fund. The Applicant represents further that Plans will not waive any rights or claims in connection with any Covered Sale.

10. The Applicant represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale will occur at the par value of the affected ARS, plus any accrued but unpaid interest or dividends, and such value is readily ascertainable. The Applicant represents further that JPMorgan Chase will maintain the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

11. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) Except in the case of a JPMorgan Chase Plan, each Covered Sale shall be made pursuant to a written Offer;

(b) Each Covered Sale shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

(d) Plans will not waive any rights or claims in connection with any Covered Sale;

(e) Except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase:

(1) The decision to accept an Offer or retain the ARS shall be made by a Plan fiduciary or Plan participant or IRA owner who is independent of JPMorgan Chase; and

(2) Neither JPMorgan Chase nor any affiliate shall exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the ARS;

(f) Plans shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan;

(h) With respect to any Settlement Sale, the terms and delivery and timing of the Offer, and the terms of Settlement Sale, shall be consistent with the requirements set forth in the Settlement Agreement;

(i) JPMorgan Chase shall make available in connection with an Unrelated Sale the material terms of the Unrelated Sale, including the most recent rate information for the ARS (if reliable information is available), and the identity and par value of the ARS;

(j) Each Offer made in connection with a Settlement Agreement shall describe the material terms of the Settlement Sale, including the following:

(1) Information regarding how the Plan can determine: The ARS held by

[6] The Applicant states that while there may be communication between a Plan and JP Morgan Chase subsequent to an Offer, such communication will not involve advice regarding whether the Plan should accept the Offer.

the Plan with JPMorgan Chase, the number of shares and par value of the ARS, purchase dates for such ARS, and (if reliable information is available) the most recent rate information for the ARS;

(2) The background of the Offer;

(3) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which the Plan may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for ARS pursuant to the Offer;

(6) The timing for acceptance by JPMorgan Chase of tendered ARS;

(7) The timing of payment for ARS accepted by JPMorgan Chase for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered ARS from the Offer;

(9) The expiration date of the Offer;

(10) The fact that JPMorgan Chase may make purchases of ARS outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the ARS;

(11) A description of the risk factors relating to the Offer as JPMorgan Chase deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**.

Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Chris Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Delaware Charter Guarantee & Trust Co. d\b\a\ Principal Trust Company (Principal Trust); Principal Life Insurance Company (Principal Life) and Any Affiliates, Thereof (Collectively, Principal or the Applicants), Located in Wilmington, Delaware and in Des Moines, Iowa

[Application No. D–11579].

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act and the taxes resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code, [7] shall not apply, as of the effective date of this proposed exemption, to:

(a) The receipt of a fee by Principal, as Principal is defined, below, in Section IV(a), from an open-end investment company or open-end investment companies (Affiliated Fund(s)), as defined, below, in Section IV(e), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)), as defined, below, in Section IV(b), where Principal serves as a fiduciary with respect to such Client Plan, and where Principal:

(1) Provides investment advisory services, or similar services to any such Affiliated Fund; and

(2) Provides to any such Affiliated Fund other services (Secondary Service(s)), as defined, below, in Section IV(i); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)),[8] as defined, below, in Section IV(j), where Principal serves as a fiduciary with respect to such Client Plan, the receipt of fees by Principal from:

(1) An Affiliated Fund for the provision of investment advisory services, or similar services by Principal to any such Affiliated Fund; and

(2) an Affiliated Fund for the provision of Secondary Services by Principal to any such Affiliated Fund; provided that the conditions, as set forth, below, in Section II and Section III, are satisfied, as of the effective date of this proposed exemption and thereafter.

Section II—Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund either:

(i) Does not pay to Principal for the entire period of such investment any investment management fee, or any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined, below, in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; or

(ii) pays to Principal a Plan-Level Management Fee, based on total assets of such Client Plan under management by Principal at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any investment advisory fee and any similar fee (the Affiliated Fund-Level Advisory Fee), as defined, below, in Section IV(o), paid by such Affiliated Fund to Principal.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan-Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee

[7] For purposes of this proposed exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[8] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of the Applicants on the relief provided by section 408(b)(8) of the Act with regard to the purchase and with regard to the sale by a Client Plan of an interest in a Collective Fund and the receipt by Principal, thereby, of any investment management fee, any investment advisory fee, and any similar fee (a Collective Fund-Level Management Fee), as defined, below, in Section IV(n), where Principal serves as an investment manager or investment adviser with respect to such Collective Fund and also serves as a fiduciary with respect to such Client Plan, nor is the Department offering any view as to whether the Applicants satisfy the conditions, as set forth in section 408(b)(8) of the Act.

at the time of the payment of such fee; or

(B) is returned to such Client Plan, no later than during the immediately following fee period; or

(C) is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are not invested in shares of an Affiliated Fund:

(i) Does not pay to Principal for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Principal, based on the assets of such Client Plan invested in such Collective Fund; or

(ii) does not pay to Principal for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Principal, based on total assets of such Client Plan under management by Principal at the plan-level; or

(iii) such Client Plan pays to Principal a Plan-Level Management Fee, based on total assets of such Client Plan under management by Principal at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the ''Net'' Plan-Level Management Fee), where the amount subtracted represents such Client Plan's *pro rata share* of any Collective Fund-Level Management Fee paid by such Collective Fund to Principal.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Principal, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Principal for the entire period of such investment any a Plan-Level Management Fee (including any ''Net'' Plan-Level Management Fee, as described, above, in Section II(a)(2)(iii)), and does not pay to Principal for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; or

(ii) pays to Principal a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i), above, based on the total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Principal by such Affiliated Fund; and does not pay to Principal for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iii) pays to Principal a Plan-Level Management Fee, in accordance with Section II(a)(2)(iii), above, based on the total assets of such Client Plan under management by Principal at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Principal by such Affiliated Fund; and does not pay to Principal for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iv) pays to Principal a ''Net'' Plan-Level Management Fee, in accordance with Section II(a)(2)(iii), above, from which a further credit has been subtracted from such ''Net'' Plan-Level Management Fee, where the amount of such further credit which is subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Principal by such Affiliated Fund.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i), (ii), and Section II(a)(3)(i)–(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Principal under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)–(ii), and Section II(a)(3)(i)–(iv) do not preclude the payment of a fee by an Affiliated Fund to Principal for the provision by Principal of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Principal and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii), and Section II(a)(3)(ii)–(iv), in calculating a Client Plan's *pro rata share* of an Affiliated Fund-Level Advisory Fee, Principal must use an amount representing the ''gross'' advisory fee paid to Principal by such Affiliated Fund. For purposes of this paragraph, the ''gross'' advisory fee is the amount paid to Principal by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined, below, in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.[9]

(c) Principal, including any officer and any director of Principal, does not purchase any shares of an Affiliated Fund from and does not sell any shares of an Affiliated Fund to any Client Plan which invests directly in such Affiliated Fund, and Principal, including any officer and director of Principal, does not purchase any shares of any Affiliated Fund from and does not sell any shares of an Affiliated Fund to any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase and in connection with any sale of shares in an Affiliated Fund by a Client Plan indirectly through such

[9] The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act. In this proposed exemption, the Department is not providing any relief for any fiduciary violations, pursuant to section 404 of the Act, or violations of the prohibited transaction provisions, as set forth in section 406 of the Act that may arise from the selection of one class of shares of an Affiliated Fund over another class of shares.

Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Principal is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Principal to each Client Plan;

(2) By Principal to each Collective Fund in which a Client Plan invests; and

(3) By Principal to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund, and

(4) By Principal to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Principal does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Principal.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined, below, in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) of information concerning such Affiliated Fund, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Principal by each Affiliated Fund;

(B) Secondary Services to be paid to Principal by each such Affiliated Fund; and

(C) All other fees to be charged by Principal to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Principal by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Principal may consider investment directly in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Principal with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund after such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Principal by each Affiliated Fund;

(B) Secondary Services to be paid to Principal by each such Affiliated Fund; and

(C) All other fees to be charged by Principal to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Principal by such Client Plan, by such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Principal may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Principal with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund before such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) of information, concerning such Collective Fund, including but not limited to the items listed, below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Principal to such Client Plan and to such Collective Fund and all other fees to be paid to Principal by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information described, above, in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective

Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing; as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Principal for investment advisory services and similar services provided by Principal to such Affiliated Fund;

(ii) The fee received by Principal for Secondary Services provided by Principal to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Principal for investment management, investment advisory, and similar services provided by Principal to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Principal for investment management and similar services provided by Principal to such Client Plan at the plan-level; and

(v) The selection by Principal of the applicable fee method, as described, above, in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary, pursuant to this Section II(i), must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described, above, in Section II(i), and any authorization made pursuant to negative consent, as described, below, in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan, upon receipt by Principal via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization.

(2) A form (the Termination Form) expressly providing an election to terminate any authorization, described, above, in Section II(i), or to terminate any authorization made pursuant to negative consent, as described, below, in Section II(k) and in Section II(l), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below). However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), until at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described, above, in Section II(i), and any authorization made pursuant to negative consent, as described, below, in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Principal via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) Within 30 days from the date the Termination Form is sent to such Second Fiduciary by Principal, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described, below, in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described, above, in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described, below, in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Principal within one (1) Business day of the date that Principal receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a *pro rata share* of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Principal by such Affiliated Fund;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective Fund, and such withdrawal will be implemented by Principal within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Principal more than five business (5) days after the day Principal receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund; and

(B) Principal will pay to such withdrawing Client Plan interest on the settlement amount calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Principal receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, to the date Principal pays such settlement amount in cash, with interest thereon, to such withdrawing Client Plan;

(C) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests in a Collective Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a *pro rata* share of any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other changes to the portfolio of such Collective Fund, including a *pro rata* share of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Principal, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined, below, in Section IV(l), must provide, in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in

accordance with Section II(q), as set forth, below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described, above, in Section II(j)(3);

(2) For each Client Plan affected by a Fee Increase, Principal may implement such Fee Increase without waiting for the expiration of the 30-day period, described, above, in Section II(k)(1), provided Principal does not begin implementation of such Fee Increase before the first day of the 30-day period, described, above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Principal delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described, above, in Section II(j)(3);

(ii) Each affected Client Plan receives from Principal a credit in cash equal to each such Client Plan's *pro rata* share of such Fee Increase to be received by Principal for the period from the date of the implementation of such Fee Increase to the earlier of:

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described, above, in Section II(i), or, terminates any negative consent authorization, as described, in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Principal delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described, above, in Section II(j)(3).

(iii) Principal pays to each affected Client Plan the cash credit, described, above, in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the earlier of:

(A) the date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described, above, in Section II(i), or terminates, any negative consent authorization, as described, in Section II(k) or in Section II(l); or

(B) the 30th day after the day that Principal delivers to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described, above, in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Principal first implements the Fee Increase to the date Principal pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Principal to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) Within 30 days from the date Principal sends to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described, in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective on the date the final exemption is granted, in the case of a Client Plan which has received the disclosures, as set forth, above, in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), II(h)(2)(v), and II(h)(2)(vi), and has authorized the investment by a Client Plan in a Collective Fund, in accordance with Section II(i)(1)(ii), above; and, as applicable, effective on the date the final exemption is granted, in the case of a Client Plan which has received the disclosures, as set forth, above, in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and has authorized the investment by a Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii), above, then, the authorization, pursuant to negative consent, in accordance with this Section II(l), applies to:

(1) the proposed purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized, pursuant to Section II(i)(1)(ii) or, as applicable, Section II(i)(1)(iii), above, and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Principal provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below), to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Principal's intent to add a New Affiliated Fund to the portfolio of such Collective Fund. Such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Principal's intent to add a New Affiliated Fund to the portfolio of such Collective Fund shall be accompanied by the information, as described, above, in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be added to the portfolio of such Collective Fund; and

(C) A Termination Form, and instructions on the use of such

Termination Form, as described, above, in Section II(j)(3); and

(2) Within 30 days from the date Principal sends to the Second Fiduciary of each affected Client Plan, the information described, above, in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described, in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Principal to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Principal is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Principal to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Principal, Principal will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars of brokerage commissions that are paid to Principal by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Principal;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Principal by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Principal.

(p)(1) Principal provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund, with the disclosures, as set forth, below, and at the times set forth below, in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Principal;

(iii) With regard to any Fee Increase received by Principal, pursuant to Section II(k)(2), above, a copy of the audit report referred to in Section II(k)(2)(v), above, within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), above, then a Termination Form need not be provided again, pursuant to this Section II(p)(1)(v), until at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided.

(2) Principal provides to the Second Fiduciary of each Client Plan invested in a Collective Fund, with the disclosures, as set forth, below, and at the times set forth below, in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund thorough each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund thorough each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Principal;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Principal by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Principal, pursuant to Section II(k)(2), above, a copy of the audit report referred to in Section II(k)(2)(v), above, within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), above, then a Termination Form need not be provided again, pursuant to this Section II(p)(2)(viii), until at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided.

(q) Any disclosure required, herein, to be made by Principal to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed,

which are maintained on a Web site by Principal, provided:

(1) Principal obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Principal a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Principal in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b–1(c) (substituting the word, ''Principal,'' for the word, ''administrator,'' as set forth therein, and substituting the phrase, ''Second Fiduciary,'' for the phrase, ''the participant, beneficiary or other individual,'' as set forth therein).

Section III—General Conditions

(a) Principal maintains for a period of six (6) years the records necessary to enable the persons described, below, in Section III(b) to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of Principal, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than Principal shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by Section III(b); below.

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Principal, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) The term, ''Principal,'' means Principal Trust, Principal Life, and any affiliate thereof, as defined, below, in Section IV(c).

(b) The term, ''Client Plan(s),'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Principal, as defined, above, in Section IV(a).

(c) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, ''Affiliated Fund(s),'' means Principal Funds, Inc., a series of mutual funds managed by Principal Management Corporation (PMC), an affiliate of Principal, as defined, above in Section IV(c), and any other diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act and operated in accordance with Rule 2a–7 under the Investment Company Act, as amended, established and maintained by Principal now or in the future for which Principal serves as an investment adviser.

(f) The term, ''net asset value per share,'' and the term, ''NAV,'' means the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

(g) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term, ''Second Fiduciary,'' means the fiduciary of a Client Plan who is independent of and unrelated to Principal. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Principal if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Principal;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Principal (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Principal (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan's investment adviser; then Section IV(h)(2), above, shall not apply.

(i) The term, ''Secondary Service(s),'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by

Principal to an Affiliated Fund, including but not limited to custodial, accounting, administrative services, and brokerage services. Principal may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined, in this Section IV(i).

(j) The term, ''Collective Fund(s),'' means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department's plan assets regulations,[10] maintained by Principal, and a bank-maintained common or collective investment trust maintained by Principal.

(k) The term, ''business day,'' means any day that

(1) Principal is open for conducting all or substantially all of its business; and

(2) The New York Stock Exchange (or any successor exchange is open for trading.

(l) The term, ''Fee Increase(s),'' includes any increase by Principal in a rate of a fee, previously authorized in writing by the Second Fiduciary of each affected Client Plan, pursuant to Section II(i)(2)(i)–(iv), above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Principal for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv), above; and

(3) any increase in any fee that results from Principal changing from one of the fee methods, as described, above, in Section II(a)(1)–(3), to using another of the fee methods, as described, above, in Section II(a)(1)–(3).

(m) The term, ''Plan-Level Management Fee,'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Principal for any investment management services, investment advisory services, and similar services provided by Principal to such Client Plan at the plan-level. The term, ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to Principal for asset allocation service(s) (Asset Allocation Service(s)), as defined, below, in Section IV(p), provided by Principal to such Client Plan at the plan-level.[11]

(n) The term, ''Collective Fund-Level Management Fee,'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Principal for any investment management services, investment advisory services, and any similar services provided by Principal to such Collective Fund at the collective fund level.

(o) The term, ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Principal under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term, ''Asset Allocation Service(s),'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath,'' the selection of specific Collective Funds, and the selection of specific Affiliated Funds (subject to the required consent of the Second Fiduciary) to ''populate'' the selected asset classes (including rebalancing), and the allocation of the assets of a Client Plan among the selected funds. Such services do not include the management of the underlying assets of a Client Plan, or the selected Affiliated Funds or Collective Funds.

Effective Date: If granted, this proposed exemption will be effective as of the publication of the final exemption in the **Federal Register**.

Summary of Facts and Representations

1. Principal Life was originally established in 1879. Principal's Affiliates have been founded or acquired from time to time thereafter. Principal offers a variety of financial products and services to businesses, individuals, and institutional clients. Principal has approximately $236.6 billion in assets under management and serves 18.8 million customers worldwide from offices in twelve (12) countries.

2. The Principal Financial Group is a trade name/registered trademark under which various Principal affiliated companies operate. Affiliated companies include Principal Financial Group, Inc., a public (holding) company (NYSE: PFG); numerous direct or indirect subsidiaries including Principal Life, Delaware Charter Guarantee & Trust Company d\b\a Principal Trust Company; PMC, Princor Financial Services Corporation, Principal Financial Services, Inc., Principal Global Investors, LLC, and many other affiliated entities.

3. It is represented that certain Affiliates within Principal make investments available, either directly or indirectly through Collective Funds to Client Plans. Principal has requested that the proposed exemption apply to any Client Plan for which Principal serves as investment fiduciary and for which Principal causes such Client Plan to invest in shares of Affiliated Funds, either directly or indirectly through a Collective Fund. It is represented that Principal places no limits on the minimum or maximum portion of the total assets of each Client Plan that may be invested directly in shares of an Affiliated Fund or invested indirectly in an Affiliated Fund through a Collective Fund.

4. Section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan.

Sections 3(14)(A) and (B) of the Act define the term, ''party in interest,'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan to the extent such person exercises authority or control with respect to the management or disposition of the assets of a plan. Under section 3(21)(A)(ii) a person is a fiduciary with respect to a plan to the extent such person renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Under section 406(b) of the Act, a fiduciary with respect to a plan may not: (1) Deal with the assets of a plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his

[10] 51 FR 41262 (November 13, 1986).

[11] For the receipt by Principal from a Client Plan of a fee for Asset Allocation Services provided by Principal to such Client Plan at the plan-level, Principal relies on the relief provided by the statutory exemption, as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b–2. The Department is offering no view, herein, as to whether the receipt by Principal of such an asset allocation fee is covered by such statutory exemption, nor is the Department, herein, offering any view as to whether Principal satisfies the conditions set forth in such statutory exemption.

own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

Principal entities may currently serve, and may in the future serve, as investment advisors, investment managers, trustees, or other fiduciaries with respect to Client Plans. Accordingly, the Applicants and various other Principal affiliates may currently be, or may in the future be, parties in interest with respect to a Client Plan which engage in the proposed transactions. In this regard, where Principal now or in the future is a fiduciary with respect to a Client Plan, the investment of the assets of such Client Plan in a Collective Fund and/or in an Affiliated Fund advised by Principal may raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2), and 406(b)(3) of the Act, and the corresponding provisions of the Code, unless an exemption is available.

5. Principal's collective investment vehicles currently include various pooled separate accounts. In this regard, Principal Life manages several insurance company separate accounts (the Separate Accounts). Principal Life is a fiduciary with respect to any Separate Accounts that hold plan assets. It is represented that none of the Separate Accounts currently invests in any Affiliated Fund in a manner that requires exemptive relief, hereunder. However, it is represented that existing Separate Accounts or Separate Accounts to be established in the future may do so. Accordingly, the Applicants request that the proposed exemption apply, as of the effective date of this proposed exemption, to Separate Accounts that hold ''plan assets'' of investor Client Plans.

6. Principal's collective investment vehicles also currently include various bank-maintained collective investment trusts. Any or all of Principal's collective investment vehicles may rely upon one or more statutory or class exemptions in connection with their activities. Principal represents that the proposed exemption, if granted, will apply to Collective Funds, as defined, above, in Section IV(j).

7. It is represented that in 2009, Principal Trust established certain target date collective funds (the Target Date Funds). The Target Date Funds are used as investment options in participant-directed Client Plans. The Target Date Funds are deemed to hold ''plan assets'' of such investing Client Plans. It is represented that although a Second Fiduciary, as defined, above, in Section IV(h), will select the Target Date Funds as designated investment options, the actual decision to invest in any Target Date Funds is made by individual plan participants, unless such fund is selected by a Second Fiduciary as a qualified default investment option.

The Target Date Funds are bank-maintained collective investment trusts. The Target Date Funds are currently comprised of eleven (11) portfolios. Principal Trust acts as trustee and investment manager for the Target Date Funds. As such, Principal Trust has discretion over the investment of the assets of the Target Date Funds. Principal Trust manages the portfolios of the Target Date Funds in accordance with its own investment objectives and strategies. In this regard, Principal Trust invests the assets of such Target Date Funds in Affiliated Funds and other investments including other Collective Funds. Principal Trust selects the underlying investments and allocates the assets of each of the Target Date Funds among the underlying investments based on the time horizon of each such Target Date Fund and the expected risk tolerance of those investors who have chosen that time horizon. It is represented that the underlying investments include investment in Principal Funds Inc., a series of Affiliated Funds managed by PMC, or may include other Affiliated Funds to be formed in the future. It is represented that the Target Date Funds are the only Principal Collective Funds currently invested in Affiliated Funds.

8. The Affiliated Funds are a series of mutual funds managed by PMC, an affiliate of Principal, and may include other Affiliated Funds to be established in the future by Principal. The Affiliated Funds are open-end investment companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended and operated in accordance with Rule 2a–7 under the Investment Company Act. PMC or Principal serves as an investment adviser with respect to the Affiliated Funds. Principal may also serve as custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Services, including brokerage services, to an Affiliated Fund.

Prohibited Transaction Exemption 77–4 (PTE 77–4)

9. It is represented that all of the Principal entities to which the proposed exemption, if granted, would apply are currently part of the same controlled group. In this regard, the Applicants maintain that such Principal entities can rely on the relief provided pursuant to PTE 77–4.[12]

PTE 77–4 provides an exemption from section 406 of the Act and section 4975 of the Code for the purchase and for the sale by a plan of shares of a registered, open-ended investment company where the investment adviser of such fund: (1) Is a plan fiduciary or affiliated with a plan fiduciary; and (2) is not an employer of employees covered by the plan. The conditions of PTE 77–4 prohibit the payment of commissions by a plan, limit the payment of redemption fees by such plan, require prior disclosures (*e.g.,* fee information and a current prospectus) to a second fiduciary and written authorization from such second fiduciary who is generally the sponsor or other named fiduciary or trustee of such plan, and prohibit the payment of double investment advisory fees and similar fees with respect to plan assets invested in such shares for the entire period of such investment. In addition, PTE 77–4 requires advance written approval from a second fiduciary for any changes in the fund fee rates.

10. The Applicants represent that the requested relief is essentially the same as that afforded by PTE 77–4, except for the use of a ''negative consent'' procedure, as discussed in the paragraphs, below, for:

(1) Approving Fee Increases received by Principal, and

(2) approving in advance the addition of Affiliated Funds (not previously authorized) as investments ''inside'' a Principal Collective Fund, subject to notice and a right to terminate the original approval at the time a new Affiliated Fund is proposed to be added.

Principal maintains that obtaining advance written approval from a Second Fiduciary can be difficult, particularly in the case of a Collective Fund, such as a Target Date Fund, where a Second Fiduciary from every investing Client Plan must provide written approval before fees payable to Principal by an Affiliated Fund in which such Client Plans invest indirectly via a Collective Fund can be increased, or before a new investment in an Affiliated Fund that was not previously authorized can be made. If advance written approval is not obtained from the Second Fiduciary of each affected Client Plan, then PTE 77–4 may not apply and Principal may violate the restrictions of section 406(a) and 406(b) of the Act.

[12] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of the Applicants on the relief provided by PTE 77–4, nor is the Department offering any view as to whether the Applicants satisfy the conditions, as set forth in PTE 77–4.

Negative Consent for Fee Increases

11. In order to avoid the administrative burden of obtaining advance written approval from a Second Fiduciary of each affected Client Plan, the Applicants request an individual administrative exemption which would allow for a negative consent procedure for obtaining the approval from a Second Fiduciary for Fee Increases payable to Principal. Fee Increases are defined in Section IV(l) and include: (1) Any increase in the rate of a fee previously authorized in writing by the Second Fiduciary of an affected Client Plan, (2) any increase in any fee that results from an addition of services for which a fee is charged, (3) any increase in any fee that results from a decrease in the number or kind of services performed for such fee over an existing rate for such service previously authorized by the Second Fiduciary, and (3) any increase in a fee that results from Principal changing from one of the fee methods, as described, above, in Section II(a)(1)–(3), to using another of the fee methods, as described, above, in Section II(a)(1)–(3).

In order to obtain the negative consent authorization from the Second Fiduciary of each affected Client Plan with regard to a Fee Increase, Principal will have to comply with the provisions, set forth in Section II(k). In this regard, the proposed exemption would require Principal to provide to the Second Fiduciary of a Client Plan invested directly in shares of an Affiliated Fund or indirectly through a Collective Fund certain disclosures in writing thirty (30) days in advance of any proposed Fee Increase, including but not limited to any Fee Increase for Secondary Services, as such services are described, below. The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Notwithstanding the requirement for thirty (30) days advance notice of a Fee Increase, the proposed exemption would permit Principal to implement a Fee Increase, without waiting until the expiration of the 30 day period; provided that implementation of such Fee Increase does not start before Principal delivers to each affected Client Plan the Notice of Intent of Change of Fees, as described in Section II(k), and provided further that any affected Client Plan receives a cash credit equal to its *pro rata share* of such Fee Increase, for the period from the date of the implementation of such Fee Increase to the *earlier of* the date of the termination of the investment or the thirtieth (30th) day after the date Principal delivers the Notice of Change of Fee to the Second Fiduciary of each affected Client Plan. In addition, Principal must pay to each affected Client Plan interest on such cash credit. An Auditor on at least an annual basis will verify the proper crediting of the *pro rata share* of each such Fee Increase and interest. An audit report shall be completed by such Auditor no later than six (6) months after the period to which it relates.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the proposed Fee Increase, including but not limited to an increase in the fee for Secondary Services.

Negative Consent for New Affiliated Funds

12. Principal further requests that the proposed exemption permit a Principal Collective Fund holding the assets of a Client Plan, such as a Target Date Fund, to purchase shares of an Affiliated Fund not previously affirmatively authorized by the Second Fiduciary of such Client Plan; provided: (1) The organizational document of such Collective Fund expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund and such organizational document is disclosed initially to such Client Plan; and (2) Principal satisfies the requirements of the negative consent procedure for obtaining the approval of the Second Fiduciary for each Client Plan invested in such Collective Fund at the time Principal proposes to add an Affiliated Fund to such Collective Fund's portfolio.

Specifically, the negative consent procedure would entail that the Second Fiduciary of each Client Plan invested in such Collective Fund receives in advance: (i) A notice of Principal's intent to add an Affiliated Fund to the portfolio of such Collective Fund; and (ii) certain disclosures in writing, including a summary prospectus of such Affiliated Fund. The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the investment by such Collective Fund in such Affiliated Fund.

13. Principal represents that the negative consent procedures, described in the paragraphs, above, are more efficient, cost effective, and administratively feasible than the advance written approval from the Second Fiduciary, as described in PTE 77–4. It is represented that the negative consent procedure avoids the administrative delays that would result if advance written approval from the Second Fiduciary were required.

It is further represented that because the Second Fiduciary of each Client Plan will receive all of the necessary disclosures and will have an opportunity to terminate the investment in any Affiliated Fund without penalty, such Client Plan and its participants and beneficiaries are adequately protected. Further, to the extent that Principal may find it desirable from time to time to create an Affiliated Fund with new investment goals, the negative consent procedure will facilitate the addition of an Affiliated Fund into the portfolios of Principal's Collective Funds.

Electronic Disclosures

14. Principal intends to utilize electronic mail with hyperlinks to documents required to be disclosed by this proposed exemption. Principal agrees that it will ''actively'' satisfy the various disclosure requirements of this proposed exemption by transmitting emails, rather than relying on ''passive'' postings on a Web site. It is represented that this method of disclosure will be consistent with the Department's regulations at 29 CFR section 2520.104b–1. Client Plans which do not authorize electronic delivery will receive in advance hard copies of the documents required to be disclosed, and hard copies of documents will also be available on request.

Termination

15. A Client Plan invested directly in shares of an Affiliated Fund or invested indirectly through a Collective Fund will have an opportunity to terminate and withdraw from investment in such Affiliated Fund, and, as applicable, to terminate and withdraw from investment in such Collective Fund in the event of a Fee Increase and in the event of the addition of an Affiliated Fund to the portfolio of a Collective Fund.

In this regard, a Second Fiduciary will be provided with a Termination Form at least annually and may terminate the authorization to invest directly in shares of an Affiliated Fund or indirectly

through a Collective Fund, at will, without penalty to a Client Plan. Termination of the authorization by the Second Fiduciary of a Client Plan investing directly in shares of an Affiliated Fund will result in such Client Plan withdrawing from such Affiliated Fund. Termination of the authorization by the Second Fiduciary of a Client Plan investing indirectly in shares of an Affiliated Fund through a Collective Fund will result in such Client Plan withdrawing from such Collective Fund.

Generally, Principal will process timely requests for withdrawal from an Affiliated Fund within one (1) Business day. Withdrawal from a Collective Fund will generally be processed within the same time frame, subject to rules designed to ensure orderly withdrawals and fairness for the withdrawing Client Plans and non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Principal more than five business (5) days after receipt by Principal of a termination form or other written notification of intent to terminate investment in such Collective Fund from the Second Fiduciary acting on behalf of the withdrawing Client Plan. Principal will pay interest on the settlement amount for the period from receipt by Principal of a termination form or other written notification of intent to terminate from the Second Fiduciary, acting on behalf of the withdrawing Client Plan, to the date Principal pays the settlement amount, plus interest thereon.

From the date a Client Plan terminates its investment in an Affiliated Fund, such Client Plan will not be subject to pay a *pro rata share* of the fees received by Principal from such Affiliated Fund. Likewise, from the date a Client Plan terminates its investment in a Collective Fund, such Client Plan will not be subject to pay a *pro rata share* of the fees received by Principal from such Collective Fund, nor will such Client Plan be subject to changes in the portfolio of such Collective Fund, including a *pro rate share* of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

Receipt of Fees Pursuant to the Fee Methods

16. The exemption, if granted, includes conditions which detail various methods which ensure that Principal complies with the prohibition against a Client Plan paying double investment management fees, investment advisory, and similar fees for the assets of Client Plans invested directly in shares of an Affiliated Fund or invested indirectly in shares of an Affiliated Fund though a Collective Fund. These methods are described in Section II(a)(1)–(3) of this proposed exemption.

Plan-Level Fees

17. It is represented that currently to the extent that Principal provides discretionary investment management services [13] to any Client Plan that invests directly in shares of an Affiliated Fund or indirectly through a Collective Fund, Principal does not charge any investment management fee, any investment advisory fee, or any similar fee directly to such Client Plan.[14] If in the future, Principal were to do so, this proposed exemption would require Principal to use the methods, as described in Section II(a) of this exemption, as applicable, so as to avoid receiving ''double'' investment management, investment advisory, and similar fees.

Also, services provided by Principal for which a fee is charged involve plan-level and participant-level recordkeeping and administrative services, custody, and other clerical and administrative functions.[15] It is represented that a Second Fiduciary typically will select Principal's Collective Funds in connection with a decision to retain Principal as a service provider to such Client Plan, usually as part of a ''bundled'' arrangement. It is also possible that a Second Fiduciary of a Client Plan that already uses Principal's products and services may wish to add additional Collective Funds to its investment line-up.

The Collective Fund-Level Management Fee

18. With regard to the Collective Fund-Level Management Fee, it is represented that the only Collective Funds over which Principal currently exercises fiduciary discretion to invest in Affiliated Funds are the Target Date Funds. Principal currently charges no investment advisory and no similar fees ''inside'' the Target Date Funds. Fees charged by the Target Date Funds presently are limited to: (i) Four (4) basis points charged by Principal Trust for non-advisory, custodial and administrative services (Collective Fund Administrative Services); [16] and (ii) depending on the specific class of units selected by a sponsor of a Client Plan, certain additional ''services fees'' [17] that the plan sponsor may direct to be paid over to other plan service providers for services such as recordkeeping, custody, and distribution.[18]

However, it is represented that in the future, Principal may decide to charge investment advisory fees or may decide to charge similar fees ''inside'' a collective investment vehicle. In that event, Principal will utilize the methods, described in Section II(a)(2) and in Section II(a)(3), as applicable so as to avoid charging ''double'' investment advisory and similar fees.

The Affiliated Fund-Level Advisory Fee

19. The Affiliated Fund-Level Advisory Fees are described in the summary prospectus for an Affiliated Fund and include fees for investment advisory services and fees for similar services which Principal receives as compensation for the provision of such services to such Affiliated Fund.

As noted, above, Principal currently waives the Plan-Level Management Fees and Collective Fund-Level Management Fees for the provision of investment management services, investment advisory services, and similar services and retains the fees paid to Principal by an Affiliated Fund with regard to a Client Plan that invests directly in shares of such Affiliated Fund or indirectly in shares of such Affiliated Fund through a Collective Fund. Notwithstanding this fact, it is represented that Principal in the future may cease to waive Plan-Level Management Fees and Collective Fund-Level Management Fees. In that event, in order to avoid receiving double fees, Principal must comply with the

[13] Investment management services do not include Asset Allocation Services, as defined, above, in Section IV(p).

[14] The Department, herein, is not providing relief for the receipt by Principal of a Plan-Level Management Fee for investment management services provided at the plan-level by Principal to a Client Plan.

[15] The Applicants have not requested and the Department, herein, is not providing any relief for the receipt by Principal at the plan-level of fees for providing recordkeeping and administrative services, custody, and other clerical and administrative functions to a Client Plan.

[16] The Department, herein, is not providing relief for the receipt by Principal of fees from a Collective Fund for providing Collective Fund Administrative Services to such Collective Fund.

[17] For example, a sponsor of a Client Plan can select a ''share'' class of a Collective Fund that is subject to a four (4) basis point trustee fee, or may elect to utilize a share class of a Collective Fund that pays (by way of example) fourteen (14) basis points, four (4) basis points of which are paid to Principal Trust and ten (10) basis points of which the sponsor of such Client Plan may direct Principal Trust to pay to such Client Plan's recordkeeper or other service providers.

[18] The Department, herein, is not providing relief for any other additional ''services fees'' received by Principal that the sponsor of a Client Plan may direct to be paid over to other service providers to such Client Plan.

conditions, as set forth in Section II(a) of this exemption, as applicable.

Receipt of Fees for Secondary Services

20. Principal also receives from an Affiliated Fund various fees and expenses for custody, transfer agency, and similar services, including brokerage services. It is represented that all such services are treated as ''Secondary Services.'' The term, ''Secondary Services,'' is defined, above, in Section IV(i), to mean a service other than an investment management service, an investment advisory service, and any similar service, which is provided by Principal to an Affiliated Fund, including but not limited to custodial, accounting, administrative, brokerage, and other services. It is represented that all fees for Secondary Services received by Principal at this time are paid to Principal directly by the Affiliated Funds. The negative consent procedure applicable for a Fee Increase for Secondary Services is discussed, above, in paragraph 11.

In addition, Principal affiliates may receive commissions for the performance of brokerage services for the mutual funds. Under the conditions of this proposed exemption, if an Affiliated Fund places brokerage transactions with Principal, Principal will provide the Second Fiduciary of each such Client Plan, at least annually with the disclosure described in Section II(o) of this proposed exemption.

21. The Applicants represent that proposed exemption is in the interest of Client Plans, because it will allow Principal to efficiently manage or advise with respect to the assets of such Client Plans invested in shares of an Affiliated Fund, either directly or indirectly through a Collective Fund, in a timely manner and on terms that might not otherwise be available without exemptive relief.

22. It is represented that the proposed exemption contains sufficient safeguards for the protection of the Client Plans invested in shares of an Affiliated Fund either directly or indirectly through a Collective Fund. Prior to any investment by a Client Plan directly or indirectly in shares of an Affiliated Fund, such investment must be authorized by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Affiliated Fund.

It is further represented that the proposed exemption is protective of the rights of Client Plans, because any Fee Increase or the addition of an Affiliated Fund to the portfolio of a Collective Fund will be on terms monitored and approved by the Second Fiduciary who will have the ability to avoid the effect of such Fee Increase and the effect of the addition of an Affiliated Fund to the portfolio of a Collective Fund. Furthermore, each investment of the assets of a Client Plan in shares of an Affiliated Fund, either directly, or indirectly through a Collective Fund, will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Affiliated Fund and to terminate the investment in such Collective Fund, without penalty to such Client Plan at any time upon written notice of termination to Principal.

In addition to the initial disclosures, Principal provides to such Second Fiduciary ongoing disclosures regarding such Affiliated Funds. Further, Principal will respond to inquiries from a Second Fiduciary and will provide any other reasonably available information to a Second Fiduciary upon request.

23. It is represented that the proposed exemption is administratively feasible, because the subject transactions will not require continued monitoring or other involvement on behalf of the Department or the Internal Revenue Service. The use of a Termination Form will provide both a record and a regular reminder to the Second Fiduciary of a Client Plan of such plan's rights vis-à-vis investing in Affiliated Funds, either directly or indirectly through a Collective Fund.

24. In summary, the Applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Affiliated Funds will provide Client Plans with effective investment vehicles;

(b) The receipt by Principal of an Affiliated Fund-Level Advisory Fee, and the receipt of a fee by Principal for Secondary Services will require an authorization in writing in advance by a Second Fiduciary for each such Client Plan after receipt of full written disclosure;

(c) Any authorization made by a Second Fiduciary, acting on behalf of a Client Plan will be terminable at will by such Second Fiduciary, without penalty to such Client Plan, following receipt by Principal of a Termination Form or any other written notice of termination from such Second Fiduciary of a Client Plan invested directly in shares of an Affiliated Fund or indirectly through a Collective Fund;

(d) The Termination Form will be supplied to such Second Fiduciary at least annually;

(e) No sales commissions will be paid by Client Plans in connection with the acquisition or in connection with the sale of shares of the Affiliated Funds either directly or through a Collective Fund, and only redemption fees disclosed in the summary prospectus of an Affiliated Fund will be paid by a Client Plan;

(f) All dealings among a Client Plan, any Affiliated Fund, and Principal will be on a basis no less favorable to such Client Plan than such dealings with the other shareholders of such Affiliated Fund;

(g) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, will be the NAV at the time of the transaction, and will be the same purchase price paid and the same sales price received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time;

(h) A Client Plan investing in shares of an Affiliated Fund, either directly or indirectly, through a Collective Fund, will not pay ''double fees'' for investment management, investment advisory, and similar fees with respect to the assets of such Client Plan so invested; and

(i) An Auditor on at least an annual basis will verify the proper crediting of any Fee Increase and interest, received by a Client Plan, pursuant to Section II(k)(2), and an audit report shall be completed by such Auditor no later than six (6) months after the period to which it relates.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include each Client Plan invested directly in shares of an Affiliated Fund, each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and each plan for which Principal provides discretionary management services, via the Target Date Funds or otherwise at the time the proposed exemption is published in the **Federal Register**.

It is represented that notification will be provided to each of these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the

Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

For further information contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

Aztec Well Servicing Company & Related Companies Medical Plan Trust Fund (the Plan), Located in Aztec, New Mexico

[Application No. D–11628]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the payment by the Plan to Basin Occupational & Urgent Care, LLC (BOUC), a party in interest with respect to the Plan, for the on-site provision to the Plan of urgent medical care and wellness services by a nurse-practitioner and a wellness coordinator employed by BOUC, provided that the following conditions are satisfied:

(a) An independent, qualified fiduciary (I/F), with expertise in plans providing health and welfare benefits under the Act and the fiduciary obligations thereunder, acting on behalf of the Plan, determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) Before the Plan enters into the proposed transaction, the I/F reviews the transaction, ensures that the terms of the transaction are at least as favorable to the Plan as an arm's length transaction with an unrelated party, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this proposed exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) The I/F monitors compliance with the terms of the written license agreement (the License) between the Plan and AWS, and takes any and all steps necessary to ensure that the Plan is protected, including, but not limited to, exercising its authority to terminate the License on 10 days' written notice; and

(e) The subject transaction is, in fact, on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party.

Section II

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective July 1, 2010, to: (1) The payment by the Plan's participants to BOUC for medical services provided as a result of the inclusion of BOUC's clinic, located in Farmington, New Mexico, as a network provider in the BlueCross BlueShield of New Mexico (BCBSNM) Network of Health Care Providers; and (2) the payment by the Plan to BCBSNM of the difference between BOUC's fee and the participant's co-pay, which difference is then transmitted by BCBSNM to BOUC, provided that the following conditions are satisfied:

(a) The terms of the medical services provided by BOUC to Plan participants are at least as favorable to the participants as those they could obtain in similar transactions with an unrelated party;

(b) the Plan participants will have access to all of the providers in BCBSNM's network and will be free to choose whether or not to use BOUC's clinic;

(c) at least 99% of the providers participating in the BCBSNM are unrelated to the companies whose employees participate in the Plan, or any other party in interest with respect to the Plan;

(d) BOUC will be treated no more favorably than any other provider participating in the BCBSNM; and

(e) the transactions are not part of an agreement, arrangement or understanding designed to benefit BOUC or any other party in interest with respect to the Plan.

Summary of Facts and Representations

1. Aztec Well Servicing Company (AWS) is a family-owned business that has operated in San Juan County, in northwestern New Mexico, near the Four Corners, since 1963. In 2007, AWS decided to self-insure its medical benefits and established the Aztec Well Servicing Company & Related Companies Medical Plan Trust Fund (the Plan). The Plan covers the employees of six companies (together, the Companies) with common ownership: Totah Rental and Equipment Company, Inc., Triple S Trucking Company, Inc., Double M Mud Company, Inc., Basin Disposal, Inc., and Roadrunner Fuels, as well as AWS. All six of these companies operate in the well drilling and servicing industry in and around San Juan County. As of May 31, 2011, there were approximately 344 participants in the Plan. The Plan and its related trust fund are governed by a three-member Board of Trustees (the Trustees) that consists of Jerry Sandel, the President of the Companies, his son Jason Sandel, Vice-President and Treasurer, and Stewart Peterson, Vice-President.

2. The Trustees contract with BCBSNM for access to the BCBSNM network of health care providers and for claims adjudication and related services. However, even with access to that network, there is a dearth of primary and urgent care providers in San Juan County. Along with many members of the community, the Trustees have been concerned about the lengthy waiting times for urgent care and the general inaccessibility of health care in this rural area.

3. In order to address this problem, Trustee Jason Sandel, along with his sister Michelle Sandel, formed a health care clinic, Basin Occupational & Urgent Care LLC (BOUC), which was organized under the laws of the State of New Mexico as a for-profit limited liability corporation. No Plan assets were used in the formation of BOUC, and its services are available to the general public. Currently, AWS has an arrangement with BOUC under which BOUC provides the services of a nurse-practitioner to the Plan participants and their dependents. The services consist of non-occupational urgent care, wellness exams, and preventive care advice and are available on AWS' campus during working hours without charge to the individual. BOUC also provides a wellness coordinator who oversees the Plan's exercise facility, which is also available without charge to the Plan's participants and their eligible dependents. BOUC has also joined the Plan as a sponsoring employer and its employees have the opportunity to participate in the Plan on the same terms as all other employees of participating employers.

4. The applicant represents that AWS set up the Plan in order to provide medical benefits. The Trustees of the

Plan consider access to the nurse-practitioner and the wellness coordinator to be an important part of such benefits. The applicant represents that it was always intended that the Plan would provide these benefits; AWS is currently furnishing them to avoid violating the prohibited transaction rules. The applicant has requested relief to permit the Plan to enter into an agreement (the Agreement) with BOUC to provide the same services, on the same terms and conditions (*i.e.,* the Plan will pay BOUC for providing the services of the nurse-practitioner and the wellness coordinator). The services would continue to be available to all Plan participants without charge. AWS represents that if the Plan were to provide medical services directly to its participants, it would have to comply with a number of state laws, including medical facility and provider licensing, as well as state and federal employment laws. It would also have to insure against medical malpractice liability. Because the Plan is so small, the Trustees have decided that it is more cost-effective to the Plan to contract out these services to an entity that can take care of the licensing, insurance, employment and legal and regulatory compliance issues in the context of a larger book of business.

5. The nurse-practitioner and the wellness coordinator, who are employees of BOUC, will be providing their services to the Plan in a building (Building) owned by AWS. AWS has entered into a licensing agreement (the License) with the Plan under which the Plan can use the Building free of charge. The Plan purchased exercise equipment from an unrelated party, The Fitness Superstore, a national chain that sells sports equipment. The equipment, which the Plan has put into the Building, includes treadmills, elliptical trainers, stationary bicycles, weight machines, exercise mats, and the like, none of which is affixed to the real property and all of which could either be moved to a new location or sold on the open market by the Plan. The License does not contain a specific number of years, but simply provides that it will remain in effect until terminated by either party (on 10 days' written notice). The License provides that the Plan will retain ownership of any alterations, remodeling, and/or improvements funded by the Plan. In the event of termination, AWS and the Plan will apply to the Department for a separate prohibited transaction exemption to permit the Plan to sell to AWS any alterations, remodeling or improvements the Plan makes to the Building.

6. An independent, qualified fiduciary has been retained by the Plan and has conducted a study regarding the proposed transaction. The independent fiduciary is Maureen Sanders, of Albuquerque, New Mexico. Ms. Sanders represents that she has been the attorney for the New Mexico Medical Insurance Pool (the Pool) since the late 1980s. The Pool was created by the legislature to ensure that health insurance is available for purchase for those with pre-existing conditions. Ms. Sanders represents that because of that affiliation, she has become very aware of the importance of preventive measures to assist individuals with their health needs. She is also aware of the costs of health care, the lack of providers in the Four Corners area, and the need for options for those working in the oil fields. Since she has left full-time teaching, Ms. Sanders has continued to teach insurance law at the University of New Mexico School of Law as an adjunct professor. She represents that she regularly represents clients who have been denied medical and other welfare benefits by their fully-insured ERISA plans and is familiar with the fiduciary obligations imposed by ERISA. She further represents that less than 1% of her annual income has been and will be derived from her role as independent fiduciary for the Plan.

7. Ms. Sanders has reviewed the proposed transaction and determined that it is appropriate for the Plan and in the best interest of its participants and beneficiaries. She states that the proposed arrangement would provide several benefits to the Plan participants, including worksite medical services and a fitness center. Under the Agreement, BOUC will furnish the worksite medical services to the Plan's participants and beneficiaries at no additional out-of-pocket costs to them. The services will include wellness services and urgent care triage and treatment. However, participants and beneficiaries will be referred to their primary care physicians for routine and on-going treatment. The services of the nurse-practitioner will be made available to all of the participants and beneficiaries, on site and free of charge. BOUC will also furnish a wellness coordinator to assist in the administration of wellness programs and activities designed to improve employee health and well-being. It is expected that the Fitness Center will support healthy lifestyles for the participants and beneficiaries.

8. Ms. Sanders further represents that she reviewed the proposed rates and fees to be paid by the Plan for the services to be rendered by BOUC, and determined that they were reasonable. In reaching that determination, Ms. Sanders reviewed compensation for non-physician providers both nationally and for the western states. She also looked at cost to customers generally and at the anticipated cost to BOUC for the non-physician providers. She additionally reviewed the actual or anticipated BOUC operating expenses for both a wellness clinic and a fitness center. In comparing that information with the proposed fees to be paid by the Plan to BOUC, she determined that the proposed fees were reasonable. She represents that her conclusion is especially true given the dearth of facilities and providers in the Four Corners area.

9. On July 1, 2010, BOUC joined the BCBSNM provider network. BCBSNM is the largest provider network in New Mexico. In order to operate competitively and establish itself financially, it had no choice economically but to join a number of preferred provider networks, including BCBSNM, the largest. The benefits to BOUC of such an arrangement are those that attract other providers; relatively fast and streamlined claims payment in exchange for lower reimbursement fees that are set by BCBSNM. BCBSNM is not affiliated with the Plan nor any of the Companies, other than as a service provider for network access, claims adjudication and related services to the Plan.

10. The Plan has contracted annually with BCBSNM for the use of its provider network and claims adjudication services since August 1, 2007. The Trustees' selection of the BCBSNM network occurred after they had an insurance broker carry out a competitive search of area provider networks before BOUC was formed or contemplated. It is anticipated that some Plan participants, as well as the participants in plans sponsored by other unrelated employers and the general public will use the BOUC clinic located in Farmington, New Mexico. The Plan would pay claims for the services that BOUC provides at the rates specified in its provider agreement with BCBSNM.[19] The Plan participants will not be required to use the BOUC clinic; they will be able to choose any health care facilities that are in the BCBSNM network. The applicant represents that there are 20,730 health care providers in

[19] For example, if a Plan participant visits a member of the BCBSNM network, including the BOUC clinic, the participant pays the co-pay, and the provider bills BCBSNM for the difference between the negotiated fee amount and the co-pay. BCBSNM would pay the provider that difference, and then bill that amount to the Plan.

the BCBSNM network, so the BOUC clinic represents less than .05% of the providers in the network from which the participants are free to choose. The applicant further represents that there are 774 providers in the BCBSNM network who are located in San Juan County.

11. BOUC is a member of the San Juan Independent Practice Association (SJIPA), which negotiates provider reimbursement rates with BCBSNM on behalf of its members. SJIPA also negotiates with most, if not all, of the other medical provider networks that operate in San Juan County, such as Presbyterian Health Plan, Aetna, Cigna, United Health Care, and Lovelace Health Plan. SJIPA credentials its members through a lengthy application process that includes site visits, verification of provider licensure, and regulatory agency standing. Providers such as BOUC then have the opportunity to enter into a written agreement directly with one of the provider networks at the negotiated master rates.

12. Providers such as BOUC pay a per-practitioner membership fee to SJIPA of $1,000 for the first year, $225 per quarter during the second year, and $100 per quarter for all subsequent years. The providers do not pay any fee to BCBSNM. The Plan pays an administrative fee to BCBSNM for access to the BCBSNM network (and thus the negotiated discounted rates for providers) and for other administrative services, such as adjudication and processing of claims, but that fee has not changed and will not change due to the presence of BOUC in the network. None of the Companies have received or will receive any direct or indirect fees as a result of BOUC joining the BCBSNM network.

13. The applicant represents that the Plan has been trying to encourage its participants to use urgent care facilities instead of more expensive emergency rooms, when medically appropriate. To that end, the Plan recently reduced its normal participant co-pay for urgent care visits to BOUC from $75 to $25, and BOUC agreed to reduce its rates by the difference. The BCBSNM reimbursement that BOUC receives remains at the negotiated BCBSNM rate for all similar services, and the Plan does not make any additional payment to BOUC; the urgent care facility simply absorbs the loss. The Plan's Trustees recently negotiated the same reduced co-pay amount with a new urgent care facility in Aztec called Aztec Urgent Care, which is unrelated to BOUC, any of the Trustees, and any of the Companies.

14. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) An independent, qualified fiduciary (I/F), acting on behalf of the Plan, has determined prior to entering into the proposed transaction that the transaction is administratively feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) The I/F has reviewed the transaction to ensure that its terms are at least as favorable to the Plan as an arm's-length transaction with an unrelated party, and has determined to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F will monitor compliance with the terms and conditions of this proposed exemption, as described herein, and ensure that such terms and conditions are at all times satisfied;

(d) The I/F will monitor compliance with the terms of the License, and take any and all steps necessary to ensure that the Plan is protected, including, but not limited to, exercising her authority to terminate the License on 10 days' written notice; and

(e) The transaction is, in fact, on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party;

(f) The terms of the medical services provided by BOUC to Plan participants at its Farmington, New Mexico clinic are at least as favorable to the participants as those they could obtain in similar transactions with an unrelated party;

(g) The Plan participants will have access to all of the providers in BCBSNM's network and will be free to choose whether or not to use BOUC's clinic;

(h) At least 99% of the providers participating in the BCBSNM are unrelated to the companies whose employees participate in the Plan, or any other party in interest with respect to the Plan;

(i) BOUC will be treated no more favorably than any other provider participating in the BCBSNM; and

(j) The transactions are not part of an agreement, arrangement or understanding designed to benefit BOUC or any other party in interest with respect to the Plan.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546 (This is not a toll-free number.)

Genzyme Corporation 401(k) Plan (the Plan or the Applicant), Located in Cambridge, MA

[Application No. D–11669]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[20] If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 4, 2011, to (1) the acquisition by the Plan of contingent value rights (CVRs) as a result of the Plan's ownership of certain common stock (Genzyme Common Stock) in Genzyme Corporation (Genzyme), the Plan sponsor, in connection with (a) The purchase of shares (Shares) of Genzyme Common Stock pursuant to an exchange offer (the Exchange Offer) and a subsequent offer to the Exchange Offer (the Subsequent Exchange Offer) by GC Merger Corp. (the Purchaser), a wholly-owned subsidiary of sanofi-aventis (Sanofi), a party in interest with respect to the Plan, and (b) the ''short-form'' merger (the Merger) of Sanofi into Genzyme (together, the Transactions); (2) the continued holding of CVRs by the Plan; and (3) the resale of the CVRs by the Plan to Sanofi, pursuant to the exercise of repurchase rights (the Repurchase Rights) available under certain circumstances specified in the Contingent Value Rights Agreement (the CVR Agreement).

This proposed exemption is subject to the following conditions:

(a) Plan participants holding Genzyme Common Stock received one CVR for each Share on the effective date of the tender or cancellation of their Shares, in connection with the Transactions.

(b) The acquisition of CVRs by the Plan occurred in connection with the Transactions on the same terms and in the same manner as the acquisition of CVRs by all other holders of Genzyme Common Stock, other than Sanofi, the Purchaser, Genzyme and dissenting shareholders.

(c) The Plan's acquisition of CVRs resulted either (1) from a decision by a

[20] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

participant or beneficiary to tender Shares allocated to his or her account or (2) following a decision by a participant or beneficiary not to tender Shares by reason of the Merger.

(d) The Plan did not pay any fees or commissions in connection with the acquisition of the CVRs, nor does it pay any fees or commissions in connection with the holding or sale of CVRs to Sanofi pursuant to an exercise of Sanofi's repurchase right under the CVR Agreement.

(e) Credit Suisse Securities (USA) LLC (Credit Suisse Securities) and Goldman Sachs & Co (Goldman Sachs) advised Genzyme that the consideration received by Genzyme shareholders (Genzyme Shareholders), including Plan participants, in exchange for their Shares was ''fair,'' from a financial point of view.

(f) The Plan does not acquire or hold CVRs other than those acquired in connection with the Transactions.

(g) Plan participants have the same rights with respect to CVRs allocated to their accounts under the Plan (including with respect to any repurchase of CVRs by Sanofi) as unrelated parties have with respect to CVRs not held under the Plan, and they may direct the Plan's trustee (the Trustee) to sell CVRs allocated to their respective accounts at any time.

(h) For so long as CVRs remain a permissible Plan investment, the retention or disposition by the Plan of CVRs allocated to a participant's or beneficiary's account is administered in accordance with the provisions of the Plan that are in effect for individually-directed investment of participant accounts.

Effective Date: If granted, this proposed exemption will be effective as of April 4, 2011.

Summary of Facts and Representations

The Plan

1. The Plan, which is sponsored and maintained by Genzyme, is an individual account plan intended to qualify under section 401(a) of the Code that includes a qualified cash or deferred arrangement described in section 401(k) of the Code. The Plan allows participants to direct the investment of their accounts under the Plan in various investment alternatives available under the Plan, including, during periods prior to the Transactions described herein, Genzyme Common Stock.

As of April 4, 2011, the Plan had 7,537 participants and assets having an aggregate fair market value of $738,806,554. As of the same date, 646,922.56 Shares were held by the Plan in accounts maintained for 2,933 participants, representing approximately 39% of the participants in the Plan. These Shares had an aggregate fair market value on April 4, 2011 of $49,366,660, or approximately 6.7% of the aggregate fair market value of the Plan's total assets, and represented approximately 0.2437% of the 265,485,712 Shares that were issued and outstanding as of that date. According to the Applicant, the Plan's Shares constituted qualifying employer securities within the meaning of section 407(d)(5) of the Act.[21]

The Plan is funded through a trust of which Prudential Bank & Trust, FSB, serves as the Trustee. The Trustee is a directed trustee. Under the Genzyme Corporation 401(k) Plan Trust Agreement (the Trust Agreement) executed between the Trustee and Genzyme, the Trustee accepted employer securities (*i.e.,* Genzyme Common Stock), as defined in the Plan, as a plan asset with Genzyme's understanding and approval that the employer securities would be held by Prudential Investment Management Services LLC.

The Plan is administered by the Genzyme Benefit Plan Committee (the Committee), which was appointed by Genzyme. The Committee is responsible for making all investment decisions related to the Plan, other than decisions made by the participants and decisions with regard to investments provided for as a design feature in the Plan document, such as investments in employer securities. Genzyme, as Plan sponsor, is responsible for decisions relating to the availability of specified investments as a feature of the Plan's design. The Committee has engaged CapTrust Advisors (CapTrust), an independent financial advisor with its primary office located in Raleigh, North Carolina, to provide financial services to the Committee and to Plan participants.

Genzyme

2. Genzyme, a Massachusetts corporation with its principal offices located in Cambridge, Massachusetts, is a global biotechnology company engaged in the research, development, manufacturing and marketing of products to address unmet medical needs. As of December 31, 2010, Genzyme had total assets of approximately $10.91 billion and total stockholders' equity of approximately $7.59 billion. As of the same date, there were approximately 261.5 million Shares outstanding.

Sanofi

3. Sanofi, a French *société anonyme*[22] with its headquarters located in Paris, France, is a global pharmaceutical group engaged in the research, development, manufacture and marketing of healthcare products. As of December 31, 2010, Sanofi had total assets of approximately €85.26 billion and total stockholders' equity of approximately €53.3 billion.

The Purchaser

4. The Purchaser, a Massachusetts corporation incorporated on July 29, 2010, is a direct wholly-owned subsidiary of Sanofi. The Purchaser was organized by Sanofi to acquire Genzyme and has not conducted any unrelated activities since its organization. All outstanding shares of the capital stock of the Purchaser are owned by Sanofi.

Acquisition of Genzyme by Sanofi

5. On April 8, 2011, Sanofi completed its acquisition of Genzyme. The acquisition occurred pursuant to an Agreement and Plan of Merger dated February 16, 2011 (the Merger Agreement) executed by Sanofi, the Purchaser and Genzyme, wherein all of the outstanding Shares of Genzyme Common Stock were acquired by the Purchaser. The Share acquisition transaction was consummated by the Purchaser through both an Exchange Offer and a Subsequent Exchange Offer for all of the outstanding Shares (together, the Exchange Offers). The Exchange Offers were followed by a ''short-form'' merger (*i.e.,* the Merger) of the Purchaser with and into Genzyme that did not require a Genzyme Shareholder vote.

As a result of the Transactions (*i.e.,* the Share acquisition transaction and the Merger), Genzyme survives as a direct wholly-owned subsidiary of Sanofi. All Shares validly tendered and not withdrawn in either the Exchange Offer or the Subsequent Exchange Offer (except for Shares held by Sanofi, Genzyme and their subsidiaries, and Shares held by shareholders who properly perfected appraisal rights under Massachusetts law) were converted into the right to receive (a) $74.00 in cash, less any applicable withholding for taxes and without

[21] Section 407(d)(5) of the Act generally defines the term ''qualifying employer security'' as an employer security which is (a) stock, (b) a marketable obligation, or (c) an interest in an existing publicly traded partnership.

[22] The Applicant states that a *société anonyme* is a stock company or limited company. The Applicant further states that the ''S.A.'' that follows the name of a French société anonyme is comparable to the ''Inc.'' that follows the name of a U.S. corporation.

interest (the Cash Consideration), per Share, and (b) one CVR per Share (together with the Cash Consideration, the Merger Consideration). All Shares not tendered were converted into the right to receive the same Merger Consideration. The Merger Consideration was paid by the Purchaser and delivered by Computershare Trust Company, N.A., the exchange agent for the Exchange Offers (the Exchange Agent), to tendering Shareholders in the Exchange Offer and the Subsequent Exchange Offer on April 4, 2011.

The terms of the Transactions were negotiated on an arm's length basis by the parties and approved by the Boards of Directors of Sanofi, the Purchaser, and Genzyme. In connection with Genzyme's consideration of the Exchange Offer and the Subsequent Exchange Offer and Merger, fairness opinions were prepared by Credit Suisse Securities and Goldman Sachs. Notice of the Transactions was provided by Genzyme to Genzyme Shareholders. Also, Plan participants were given the same consideration as all other holders of Shares.[23] More details about the Transactions are presented below.

The Exchange Offer

6. On April 4, 2011, the Purchaser accepted for exchange all Shares that were tendered and actually delivered. The exchange for such Shares was made in accordance with the terms of the Exchange Offer, which commenced on March 7, 2011 and ended on April 1, 2011 at 11:59 p.m., unless extended by the Purchaser. The Exchange Agent advised Sanofi and the Purchaser that 224,528,469 Shares were validly tendered and not properly withdrawn pursuant to the Exchange Offer by Genzyme Shareholders. The tendered Shares represented approximately 84.6% of all the outstanding Shares as of the April 1, 2011 expiration date of the Exchange Offer. However, 43,285,259 of those Shares were offered up with a guarantee by an ''eligible guarantor institution''[24] that they would be delivered within a short period of time, and the related Shares (*i.e.,* the Shares for which the guarantor guaranteed delivery of a Share certificate or book-entry confirmation) were not actually accepted for exchange at the expiration of the Exchange Offer. The number of Shares actually delivered and accepted for exchange at the end of the Exchange Offer was 181,243,210 (224,528,469 Shares minus 43,285,259 Shares). Accordingly, following the acceptance of the Shares validly tendered and not properly withdrawn in the Exchange Offer (excluding the Shares subject to guarantees of delivery), Sanofi and the Purchaser owned approximately 68.3% of the outstanding Shares or approximately 62% of the total Shares on a fully-diluted basis (*i.e.,* the number of Shares actually outstanding plus the number of additional Shares that would be outstanding if Shares were issued pursuant to all outstanding stock rights). As a result of such acceptance of Shares in the Exchange Offer, a change in control of Genzyme occurred.

Of the total Shares tendered during the Exchange Offer, 320,294 Shares were tendered by 971 Plan participants. In return for their Shares, Plan participants received cash consideration of $23,701,756 in the aggregate, and a total of 320,294 CVRs with a value of $2.35 per Share, or an aggregate value of $752,690.90, as of the close of trading on April 4, 2011.[25]

The Subsequent Exchange Offer

7. The Purchaser commenced a Subsequent Exchange Offer on April 4, 2011 for all remaining untendered Shares. The Subsequent Exchange Offer expired at 6 p.m., New York City time, on April 7, 2011, in accordance with the applicable rules and regulations of the U.S. Securities and Exchange Commission (the SEC) and the Merger Agreement. Following the close of the Subsequent Exchange Offer, the Exchange Agent advised Sanofi and the Purchaser that 56,069,616 Shares were validly tendered. The tendered Shares represented 21.1% of the issued and outstanding Shares. The Shares included both (a) Shares delivered for exchange pursuant to delivery guarantees made during the Exchange Offer, and (b) Shares newly tendered and delivered for exchange in the Subsequent Exchange Offer.[26] Together with the 181,243,210 Shares delivered and accepted for exchange in the Exchange Offer, the 56,069,616 Shares delivered and accepted in the Subsequent Exchange Offer brought the total Shares acquired by Sanofi in the two offering periods to 237,312,826, or approximately 89.4% of the issued and outstanding Shares.

Of the total Shares tendered in the Subsequent Exchange Offer, 14,567 Shares were exchanged by 66 Plan participants, who received aggregate cash consideration of $1,077,958, and a total of 14,567 CVRs with a value of $2.41 per CVR, or an aggregate value of $35,106.47, as of the close of trading on April 7, 2011, the acceptance date of the Subsequent Exchange Offer.[27]

Steps Taken by Genzyme Prior to the Transactions

8. Genzyme took certain steps prior to the Transactions in preparation for the acquisition of CVRs by the Plan. In this regard, certain provisions of the Plan and the Trust Agreement relating to employer securities were amended to accommodate the acquisition and holding of the CVRs. In addition, notice (the Notice) of the Transactions, dated March 10, 2011, was provided to Genzyme Shareholders as well as to each Plan participant and beneficiary who had invested in Shares through the Plan. The Notice explained that on the effective date of the Exchange Offer, the Plan participant or beneficiary could elect to provide instructions to the Plan Trustee to tender all or some of the Shares held on their behalf under the Plan. The Notice further explained that no action was required if a Plan participant or beneficiary did not wish to tender any of the Shares allocated to their account under the Plan in the Exchange Offer.

Plan participants and beneficiaries also had the opportunity, on a daily basis until the second day preceding the

[23] While this statement is generally accurate, the Applicant notes that Sanofi, the Purchaser and Genzyme did not receive the Merger Consideration for their Shares. Further, dissenting shareholders who perfected their appraisal rights were not entitled to receive the CVRs, but they generally received $74 in cash for each Share they owned, plus interest.

[24] The Applicant represents that ''eligible guarantor institutions,'' as defined in Rule 17Ad–15 of the Securities Exchange Act of 1934 (the 1934 Act), include banks, brokers, dealers, credit unions, national securities exchanges, registered securities associations, clearing agencies, and savings associations. The Applicant states that, typically, the delivery guarantee would have been made by a broker.

[25] The Applicant notes that the CVRs in which the Plan acquired an ownership interest on April 4, 2011 were received by the Plan on April 7, 2011. The Applicant further notes that the value of the CVRs at the close of trading on April 7, 2011 was $2.41 per CVR, or $771,908.54 for all CVRs received on that date.

[26] The Applicant notes that the Form 8–K filed by Genzyme with the SEC on April 8, 2011 does not indicate how many of the 56,069,616 Shares were Shares delivered pursuant to delivery guarantees made during the Exchange Offer and how many were Shares newly tendered and delivered for exchange. The Applicant also notes that additional Shares may have been newly offered up during the Subsequent Exchange Offer with a guarantee that they would be delivered within a short period of time, but the Form 8–K does not contain disclosure regarding such guarantees because the related Shares had not been accepted for exchange at that time.

[27] The Applicant notes that the CVRs in which the Plan acquired an ownership interest on April 7, 2011 were received by the Plan on April 8, 2011. The Applicant further notes that the value of the CVRs at the close of trading on April 8, 2011 was $2.32 per CVR or $33,795.44 for all CVRs received on that date.

closing of the Exchange Offer and the Subsequent Exchange Offer, to transfer funds held on their behalf in Genzyme Common Stock to other investment funds under the Plan if they did not wish to receive interests in CVRs under the Plan. The Notice furnished to Plan participants and beneficiaries included notice of the period of time immediately preceding the closing of the tender offer during which they would be unable to give further instructions regarding the investment of the portion of their accounts invested in Genzyme Common Stock.

Top-Up Option

9. In the Merger Agreement, Genzyme granted an irrevocable option (*i.e.,* the Top-Up Option) to the Purchaser to purchase newly-issued Shares directly from Genzyme. On April 8, 2011, subsequent to the acceptance of Shares in the Subsequent Exchange Offer, the Purchaser exercised the Top-Up Option granted to the Purchaser to purchase newly issued Shares directly from Genzyme in accordance with the Merger Agreement. The Purchaser purchased 16,245,894 newly issued Shares at a price of $76.33 per Share and paid the purchase price (a) By issuing a promissory note to Genzyme in the amount of $1,239,886,631 and (b) by paying $162,459 in cash to Genzyme. Subsequent to the exercise of the Top-Up Option, Sanofi and the Purchaser had an aggregate ownership of over 90% of the outstanding Shares.

Short-Form Merger and Cancellation of Shares

10. Sanofi completed its acquisition of Genzyme by effecting a ''short-form merger,'' which did not require a shareholder vote, pursuant to section 11.05 of the Massachusetts Business Corporation Act between the Purchaser and Genzyme. As a result of the Merger, Genzyme became a direct, wholly-owned subsidiary of Sanofi. Any Shares not tendered in the Exchange Offer or the Subsequent Exchange Offer (other than Shares held in Genzyme's treasury or owned by Sanofi, which Shares were cancelled and retired without any conversion thereof) were cancelled and converted into the right to receive the same Merger Consideration that was paid in the Exchange Offer and the Subsequent Exchange Offer. The total number of Shares outstanding on the effective date of the Merger that became eligible to be cancelled and converted into a right to receive the Merger Consideration was 28,173,190. Of the total Shares eligible to be cancelled, 308,464.81 Shares were owned by and allocated to participant accounts under the Plan, for which the Plan received the Merger Consideration shortly after the appraisal period expired on May 28, 2011 in the form of cash consideration of $22,826,395.94, in the aggregate, and a total of 308,465 CVRs. No specific action was taken by the Plan to exercise or relinquish appraisal rights.[28]

The CVRs

11. The CVRs are general, unsecured, contingent payment obligations of Sanofi that rank equally with all existing and future unsecured unsubordinated indebtedness of Sanofi and senior to all subordinated indebtedness of Sanofi. They were issued by Sanofi pursuant to a CVR Agreement that was executed on March 30, 2011 by and between Sanofi and American Stock Transfer & Trust Company, LLC (the CVR Trustee), an unrelated party. In accordance with requirements of the Trust Indenture Act of 1939, the CVRs were also issued under an indenture with the CVR Trustee, which was appointed to protect and enforce the rights of the CVR holders. The indenture trust that holds the CVRs is not a plan asset vehicle. The CVR Trustee (a) Will receive from Sanofi amounts due under the CVRs and promptly remit payment to the CVR holders, (b) may demand payment and institute legal proceedings to collect amounts due and unpaid if Sanofi fails to pay amounts due under the CVRs, (c) must transmit notice to the CVR holders of breaches under the CVR Agreement, subject to certain conditions and expectations, and (d) may institute legal proceedings to protect and enforce the rights of the CVR holders upon the occurrence of a breach under the CVR Agreement.

The CVR Trustee also performs various administrative functions that include, but are not limited to, (a) Serving as the initial Security Registrar for the purposes of registration and transfer of the CVRs, (b) notifying the CVR holders of certain amendments to the CVR Agreement, and (c) providing the CVR holders with certain reports concerning its actions and filing a copy of each such report with the Nasdaq Global Market, the SEC and Sanofi.

Under the CVR Agreement, Sanofi is required to pay to the CVR Trustee, and the CVR Trustee is required to pay to the holders of CVRs, specified amounts upon achievement of certain milestones, as described below, up to a maximum payment of $14 in the aggregate per CVR. In accordance with the CVR Agreement, Sanofi is obligated to use commercially reasonable efforts to ensure that the CVRs are publicly traded on a national securities exchange.[29]

The CVRs were registered under the Securities Act of 1933 (the 1933 Act), as required by the CVR Agreement, effective March 29, 2011. The CVRs were also registered under the 1934 Act, effective March 28, 2011. No CVRs may be issued after the initial issuance in connection with the Transactions, and no payments will be due under the CVR Agreement for any milestones achieved after the earlier of (a) December 31, 2020 or (b) the date that Product Sales Milestone #4 (as described below) is achieved.

12. The CVR Agreement provides for payments to the holders of CVRs on attainment of the following production and development milestones:

- *Production Milestone.* A payment of $1.00 per CVR will be made upon the completion, not later than December 31, 2011, of production and release of specified quantities of Cerezyme® and Fabrazyme®, two of Genzyme's enzyme replacement therapies, with payment to be made 20 business days following achievement of the milestone but not earlier than January 3, 2012.
- *Approval Milestone.* A payment of $1.00 per CVR will be made within 20 business days following the receipt, not later than March 31, 2014, of FDA approval for use of the drug alemtuzumab for treatment of multiple sclerosis (alemtuzumab MS).

In addition, the CVR Agreement provides for payments to the holders of CVRs on attainment of targets for sales of alemtuzumab MS, as follows.

- *Product Sales Milestone #1.* A payment of $2.00 per CVR will be made if sales during the four calendar quarter period that begins on the first anniversary of the major market launch of alemtuzumab MS equal or exceed $400,000,000.
- *Product Sales Milestone #2.* A payment of $3.00 per CVR will be made if sales in any period of four consecutive calendar quarters during the term of the CVR Agreement equal or exceed $1,800,000,000. If Product Sales Milestone #2 is achieved as a result of sales of alemtuzumab MS outside of the United States but the Approval Milestone is not achieved by March 31, 2014, the Product Sales Milestone #2 payment will be $4.00 per CVR rather than $3.00 per CVR.

[28] The Applicant represents that, under Massachusetts law, holders of Shares of Genzyme Common Stock that were not tendered had the opportunity to exercise appraisal rights to demand fair value for their Shares for a specified time after the Merger. The deadline for the exercise of appraisal rights was May 28, 2011. However, the Applicant notes that the Plan did not provide for appraisal rights to be passed through to participants, and the Committee did not direct the Trustee either to exercise such rights or to relinquish them before they expired. Accordingly, no participant in the Plan exercised appraisal rights affecting the disposition of Shares held by the Plan.

[29] According to the Applicant, the CVRs were listed on the Nasdaq Stock Market under the symbol ''GCVRZ'' on March 31, 2011 at an opening price of $2.20 per CVR.

- *Product Sales Milestone #3.* A payment of $4.00 per CVR will be made if sales in any period of four consecutive calendar quarters during the term of the CVR Agreement equal or exceed $2,300,000,000 (excluding any quarter in which sales were used to determine whether Product Sales Milestone #1 or #2 was achieved).
- *Product Sales Milestone #4.* A payment of $3.00 per CVR will be made if sales in any period of four consecutive calendar quarters during the term of the CVR Agreement equal or exceed $2,800,000,000 (excluding any quarter in which sales were used to determine whether Product Sales Milestone #1, #2 or #3 was achieved).

Each payment to be made on any of the Product Sales Milestones is required to be made within 20 business days following notice by Sanofi to the CVR Trustee that the applicable target was achieved in the most recently ended calendar quarter, such notice to be provided within 50 days following the end of the calendar quarter. All notices required to be filed with the CVR Trustee are required to be made available simultaneously to the holders of CVRs on Sanofi's Web site.

In the event Sanofi fails to make timely payment with respect to any of the payment milestones, interest will accrue on unpaid amounts at a rate equal to the prime rate plus three percent. The CVR Trustee is empowered to institute legal or equitable actions in order to collect amounts that are due and unpaid. The CVR Trustee can be directed to exercise its remedies by action of the holders of 30% or more of the CVRs.

13. The CVR Agreement also provides that Sanofi has the right to repurchase, and subsequently cancel, all outstanding CVRs on a date on or after the third anniversary of the launch date of alemtuzumab MS, if certain conditions indicating lack of success are present.[30]

Specifically, under the Repurchase Right, Sanofi may purchase all outstanding CVRs (but not fewer than all outstanding CVRs) upon providing notice to the CVR Trustee between 30 and 60 days following the date as of which both of the following conditions have occurred: (a) The volume weighted average trading price per CVR for all CVRs traded over the previous 45 trading days is less than fifty cents, and (b) sales of alemtuzumab MS for the four most recently ended calendar quarters are less than $1,000,000,000 in the aggregate. The price at which Sanofi would purchase each outstanding CVR pursuant to an exercise of this right is the volume weighted average price paid per CVR for all CVRs traded over the 45 trading days prior to the fifth trading day preceding the date Sanofi gives notice of its intent to exercise its Repurchase Right.

It is also possible that Sanofi may purchase CVRs on the open market in circumstances where the Plan is selling CVRs into the market. Any such purchase would be at market price.

14. The CVRs do not provide any rights that could lapse by reason of a failure on the part of the holder to take timely action. Holders of CVRs will have the right to receive payments over time upon achievement of one or more of the above milestones during the term of the CVR, without the need for the CVR holder to take action. The rights of a CVR holder will not change in any way as a result of any action or inaction on the part of the holder, but are expected to remain in effect until all payment obligations under the CVR Agreement are satisfied or have terminated. The only exception would be if the CVRs are repurchased by Sanofi pursuant to its Repurchase Right, in which case, the holders of CVRs would not see their rights lapse and become worthless but would receive value for their CVRs in accordance with the terms of the Repurchase Right. With regard to the date on which the CVRs are scheduled to terminate, if not earlier repurchased by Sanofi pursuant to the Repurchase Right, the CVR Agreement provides that if any milestone has been achieved prior to December 31, 2020 but the related payment has not been paid as of that date, the CVR Agreement and the rights of CVR holders under the Agreement will not terminate until the payment has been made in full.

Fairness Opinions

15. Credit Suisse Securities, an investment banking firm that operates in the United States and a subsidiary of Credit Suisse, advised Genzyme that the Merger Consideration to be received by Genzyme Shareholders in exchange for their Shares was ''fair,'' from a financial point of view. In arriving at its opinion, Credit Suisse Securities, among other things, (a) Reviewed the Merger Agreement, a form of the CVR Agreement and certain publicly available business and financial information relating to Genzyme; (b) reviewed certain other information relating to Genzyme, including financial forecasts, provided to or discussed with Credit Suisse Securities by Genzyme and have met with Genzyme's management to discuss the business and prospects of Genzyme; (c) considered certain financial and stock market data of Genzyme, and Credit Suisse Securities has compared that data with similar data for other publicly held companies in businesses Credit Suisse Securities has deemed similar to that of Genzyme and Credit Suisse Securities has considered, to the extent publicly available, the financial terms of certain other business combinations and other transactions which have recently been effected; and (d) considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which Credit Suisse Securities deemed relevant.

In rendering its opinion, Credit Suisse Securities did not independently verify any of the foregoing information and assumed and relied on such information being complete and accurate in all material respects. For example, with respect to the updated financial forecasts for Genzyme and the assessments as to the probability and estimated timing of achievement of the Approval Milestone, each of the Product Sales Milestones and the Production Milestone provided to Credit Suisse Securities by Genzyme, the management of Genzyme advised Credit Suisse Securities, and Credit Suisse Securities assumed, that such forecasts and assessments were reasonably prepared on bases reflecting the best currently available estimates and judgments of Genzyme's management as to the future financial performance of Genzyme and the probability and timing of achievement of the Approval Milestone, each of the Product Sales Milestones and the Production Milestone.

Furthermore, in rendering its opinion, Credit Suisse addressed only the fairness of the Merger Consideration to be received in the Transactions, from a financial point of view, to the holders of Genzyme Common Stock (other than Sanofi and its affiliates). It did not address any other aspect of the Transactions or any other agreement, arrangement or understanding entered into in connection with the Transactions, including the fairness of the amount or nature of any compensation paid to any officers, directors or employees of any party to the Transactions, or class of such persons, relative to the Merger Consideration or otherwise. In addition, Credit Suisse did not express any opinion as to the price at which the CVRs would trade at any time or as to the solvency or viability of Genzyme or Sanofi or the ability of Genzyme or Sanofi to pay its obligations, including

[30] For this purpose, the product launch date is the first day of the calendar quarter beginning one full calendar quarter after the end of the calendar quarter in which a first commercial sale occurs in the United States, the United Kingdom, France, Germany, Italy, or Spain.

in respect of the CVRs, when they come due.

Credit Suisse issued its opinion with the understanding that the opinion would be for the information of the Board of Directors of Genzyme in connection with its consideration of the Transactions and would not constitute advice or a recommendation to any holder of Genzyme Common Stock as to whether or not such holder should tender such Shares in connection with the Exchange Offers, or how such stockholder should vote or act on any matter relating to the proposed Merger or any other matter. The issuance of the opinion was approved by an authorized internal committee of Credit Suisse.

16. Goldman Sachs, a full-service global investment banking and securities firm, advised Genzyme that the Merger Consideration to be received by Genzyme Shareholders in exchange for their Shares was also ''fair,'' from a financial point of view. In connection with its opinion, Goldman Sachs reviewed, among other things, (a) The Merger Agreement, (b) annual reports to shareholders and Annual Reports on Form 10K of Genzyme for the five fiscal years ended December 31, 2009; (c) certain interim reports to shareholders and Quarterly Reports on Form 10–Q of Genzyme; (d) annual reports to shareholders and Annual Reports on Form 20–F of Sanofi for the five fiscal years ended December 31, 2009; (e) certain interim reports to shareholders and quarterly reports included in Reports on Form 6–K of Sanofi; (f) certain other communications from Genzyme and Sanofi to their respective shareholders; (g) certain publicly available research analyst reports for Genzyme and Sanofi; (h) the Tender Offer Statement on Schedule TO filed by Sanofi and the Purchaser, with the SEC on October 4, 2010, as amended through Amendment No. 14 to the Tender Offer Statement on Schedule TO filed by Sanofi and the Purchaser with the SEC on February 9, 2011; (i) The Solicitation/Recommendation Statement of Genzyme filed on Schedule 14D–9 filed by Genzyme with the SEC on January 31, 2011; (j) and certain financial analyses and forecasts for Genzyme prepared by its management, including management's updated forecasts and its assessments as to the probability and estimated timing of achievement of the Approval Milestone, the Product Sales Milestones and the Production Milestone (each as defined in the CVR Agreement) approved for Goldman Sachs' use by Genzyme (the Forecasts). Goldman Sachs also (a) Held discussions with members of the senior management of Genzyme regarding the past and current business operations, financial condition and future prospects of Genzyme; (b) reviewed the reported price and trading activity for the Shares; (c) compared certain financial and stock market information for Genzyme and Sanofi with similar information for certain other companies the securities of which are publicly traded; (d) reviewed the financial terms of certain recent business combinations in the biotechnology industry and in other industries; and (e) performed such other studies and analyses, and considered such other factors, as they deemed appropriate.

For purposes of rendering its opinion, Goldman Sachs relied upon and assumed, without assuming any responsibility for independent verification, the accuracy and completeness of all the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by, Goldman Sachs; and Goldman Sachs does not assume any responsibility for any such information. In that regard, Goldman Sachs assumed with Genzyme's consent that the forecasts were reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Genzyme. Goldman Sachs also did not make an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or other off-balance-sheet assets and liabilities) of Genzyme, Sanofi or any of their respective subsidiaries and they were not furnished with any such evaluation or appraisal. Furthermore, Goldman Sachs assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Transactions would be obtained without any adverse effect on Genzyme, Sanofi or on the expected benefits of the Transactions in any way meaningful to their analysis. Finally, Goldman Sachs assumed that the Transactions would be consummated on the terms set forth in the Merger Agreement, without the waiver or modification of any term or condition the effect of which would be in any way meaningful to its analysis.

In rendering its opinion, Goldman Sachs did not address the underlying business decision of Genzyme to engage in the Transactions, or the relative merits of the Transactions as compared to any strategic alternatives that may have been available to Genzyme. Additionally, Goldman Sachs did not address any legal, regulatory, tax or accounting matters. Instead, Goldman Sachs addressed only the fairness, from a financial point of view, of the Merger Consideration to be paid to the holders of Genzyme Common Stock (other than Sanofi and any of its affiliates) pursuant to the Merger Agreement, as of February 16, 2011, the date of its opinion.

In addition, Goldman Sachs did not express any view on, nor did its opinion address, any other term or aspect of the Merger Agreement, the CVR Agreement or the Transactions, or any term or aspect of any other agreement or instrument contemplated by the Merger Agreement, the CVR Agreement or entered into or amended in connection with the Transactions, including, without limitation, the fairness of the Transactions to, or any consideration received in connection therewith by, the holders of any other class of securities, creditors, or other constituencies of Genzyme; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of Genzyme, or class of such persons in connection with the Transactions. Further, Goldman Sachs did not express any opinion as to the price at which the CVRs would trade at any time or as to the impact of the Transactions on the solvency or viability of Genzyme or Sanofi or the ability of Genzyme or Sanofi to pay its obligations when they come due. In sum, Goldman Sachs based its opinion on economic, monetary, market and other conditions in effect on, and the information made available to it as of, February 16, 2011. Goldman Sachs assumed no responsibility for updating, revising or reaffirming its opinion based on circumstances, developments or events occurring after that date.

The advisory services and opinion expressed by Goldman Sachs were provided for the information and assistance of the Board of Directors of Genzyme in connection with its consideration of the Transactions, and such opinion did not constitute a recommendation as to whether or not any holder of Genzyme Common Stock should tender such Shares in connection with the Exchange Offer or how any holder of Shares should vote with respect to the Merger or any other matter. The opinion of Goldman Sachs was approved by a fairness committee of Goldman Sachs.

Request for Exemptive Relief

17. Genzyme has requested an administrative exemption from the Department for (a) The acquisition by the Plan of CVRs as a result of the Plan's ownership of Genzyme Common Stock, in connection with (i) The purchase of Shares of Genzyme Common Stock pursuant to the Exchange Offers by the

Purchaser, and (ii) the Merger of Sanofi into Genzyme; (b) the continued holding of CVRs by the Plan; and (c) the resale of the CVRs by the Plan to Sanofi, pursuant to the exercise of the Repurchase Rights available under certain circumstances specified in the CVR Agreement. If granted, the exemption would be effective as of April 4, 2011 and it would also apply to successor plans to the current Plan.

Genzyme concluded that if the CVRs were to be acquired by the Plan, it would be advisable to seek exemptive relief from the Department because the CVRs would likely be ''employer securities,'' but might not constitute ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act (*i.e.,* stock or marketable obligations). The Applicant states that, as registered securities issued by Sanofi, the CVRs would likely be ''employer securities'' under section 407(d)(1) of the Act because Sanofi would be an ''affiliate'' of Genzyme within the meaning of section 407(d)(7) immediately following the closing of the tender offer inasmuch as it would be more than 50% owned by Sanofi. However, the Applicant further states that it is not clear whether the CVRs, although not ''stock,'' constitute ''marketable obligations'' within the meaning of section 407 of the Act.

18. The Applicant represents that if the CVRs are employer securities, but not qualifying employer securities, the Plan's acquisition and holding of CVRs would violate sections 406(a)(1)(E), 406(a)(2) and 407(a)(1) of the Act, absent an administrative exemption. In addition, the Applicant represents that if Sanofi were to acquire CVRs from the Plan pursuant to an exercise of its Repurchase Right, the transaction would, absent an exemption, constitute a sale or exchange of property between the Plan and a party in interest, in violation of section 406(a)(1)(A) of the Act, and a transfer to a party in interest of assets of the Plan, in violation of section 406(a)(1)(D) of the Act. Moreover, the Applicant states that, to the extent Sanofi or an affiliate is a fiduciary of the Plan at the time of such a transaction, such a fiduciary could be viewed, absent an exemption, as dealing with Plan assets for the fiduciary's own account, in violation of section 406(b)(1) of the Act, or as acting in a transaction involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants or beneficiaries, in violation of section 406(b)(2) of the Act. Finally, the Applicant states that because the price at which the Repurchase Right is exercisable is based on an average trading price for the CVRs over a forty-five day trailing average, circumstances could exist that might cause the purchase price to be viewed as less than ''adequate consideration'' for purposes of Section 408(e) of the Act.

Rationale for the Transactions

19. In light of the foregoing prohibitions, the Applicant represents that Genzyme considered whether it would better serve the interests of participants and beneficiaries in the Plan to remove Genzyme Common Stock from the Plan prior to the Transactions or to retain Genzyme Common Stock in the Plan and apply for exemptive relief covering any CVRs received by the Plan in the Transactions. According to the Applicant, Genzyme determined that a decision to eliminate Genzyme Common Stock from the Plan would deprive participants and beneficiaries with interests in Genzyme Common Stock of the ability to realize the full value of the consideration that would be paid to other shareholders, by forcing a pre-closing sale and effectively depriving participants of investment discretion, including the discretion to retain an investment in CVRs.

20. The Applicant believes that an exemption permitting the Plan to acquire and hold CVRs in connection with the Transactions is in the interest of the Plan's participants and beneficiaries because it maximizes their ability to realize the full value of the consideration offered in exchange for their interests in Genzyme Common Stock by continuing to give them the discretionary ability to hold or sell the employer securities allocated to their accounts. The Applicant represents that a pre-closing sale of Genzyme Common Stock by the Plan would preclude Plan participants from choosing to hold CVRs within the Plan and thereby retain the possibility of substantial future payouts, and would instead force them to settle for the current implied market value of the CVRs.

21. The Applicant believes that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because it permits them to realize the same benefits as other shareholders in connection with the Transactions. The Applicant states that the conditions of the exemption would ensure that the participants have the same rights with respect to CVRs allocated to their accounts under the Plan as other holders of CVRs, including with respect to any repurchase by Sanofi. The Applicant further states that the Plan's past acquisition of the CVRs was a one-time transaction and the proposed exemption is not intended to cover any future acquisitions of CVRs by the Plan. However, the Applicant represents that the Plan would not prevent participants from investing in CVRs outside the Plan on the same basis as unrelated parties.

In addition, the Applicant represents that all rights available to holders of CVRs held outside the Plan are available on the same basis to participants with respect to CVRs held in accounts under the Plan. Moreover, the Applicant states that during the period in which CVRs remain a Plan investment, the retention or disposition of CVRs allocated to a participant's or beneficiary's account will be administered in accordance with the provisions of the Plan in effect for individually-directed investment of participant accounts.

22. The Applicant believes that it is administratively feasible to grant the proposed exemption because all conditions of the exemption either will have been satisfied prior to the grant of the exemption or are required to be satisfied by the documents governing issuance of the CVRs. In addition, the Applicant represents that the fact that the CVRs are registered ensures that the regulatory scheme under the 1933 Act and the 1934 Act will apply in full force to the CVRs.

23. In summary, the Applicant represents that the proposed transactions have satisfied or will satisfy the statutory requirements for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Plan participants holding Genzyme Common Stock received one CVR for each Share on the effective date of the tender or cancellation of their Shares, in connection with the Transactions.

(b) The acquisition of CVRs by the Plan occurred in connection with the Transactions on the same terms and in the same manner as the acquisition of CVRs by all other holders of Genzyme Common Stock, other than Sanofi, the Purchaser, Genzyme and dissenting shareholders.

(c) The Plan's acquisition of CVRs resulted either from a decision by a participant or beneficiary to tender Shares allocated to his or her account or, following a decision by a participant or beneficiary not to tender Shares, by reason of the Merger.

(d) The Plan did not pay any fees or commissions in connection with the acquisition of the CVRs, nor will it pay any fees or commissions in connection with the holding or sale of CVRs to Sanofi pursuant to an exercise of Sanofi's repurchase right under the CVR Agreement.

(e) Credit Suisse Securities and Goldman Sachs advised Genzyme that the consideration to be received by Genzyme Shareholders, including Plan participants, in exchange for their Shares was ''fair,'' from a financial point of view.

(f) The Plan has not acquired or held CVRs, and will not acquire or hold CVRs, other than those acquired in connection with the Transactions.

(g) Plan participants have had and will continue to have the same rights with respect to CVRs allocated to their accounts in the Plan (including with respect to any repurchase of CVRs by Sanofi) as unrelated parties and they may direct the Plan Trustee to sell CVRs allocated to their respective accounts at any time.

(h) For so long as CVRs remain a permissible Plan investment, the retention or disposition by the Plan of CVRs allocated to a participant's or beneficiary's account has been administered and will continue to be administered in accordance with the provisions of the Plan that are in effect for individually-directed investment of participant accounts.

Notice to Interesed Persons

Within fifteen (15) days of the date of publication of the proposed exemption in the **Federal Register**, the Applicant will provide notice of the proposed exemption (consisting of a copy of the proposed exemption, as published in the **Federal Register**, and the supplemental statement required by 29 CFR 2570.43(b)(2), (together, the Notice)) to all current participants and beneficiaries of the Plan. The Applicant will provide interested persons with a copy of the Notice, as well as an explanatory cover letter, by first class mail, at its own expense. The Notice will specify that the Department must receive all written comments and requests for a hearing no later than thirty (30) days from the last date of the mailing of such Notice. Therefore, interested persons will have forty-five (45) days to provide their written comments and/or hearing requests to the Department.

For Further Information Contact: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Retirement Program for Employees of EnPro Industries (Plan), Located in Charlotte, NC

[Application No. D–11662]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[31] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective July 15, 2011, to the in kind contribution (the Contribution) to the Plan of a guaranteed investment contract (the Annuity), issued by the Metropolitan Life Insurance Company (MetLife), an unrelated party, by EnPro Industries, Inc. (EnPro or the Applicant); provided that the following conditions are satisfied:

(a) A qualified, independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan, determined whether the Contribution was in the interests of the Plan and protective of the Plan's participants and beneficiaries;

(b) The Independent Fiduciary reviewed, negotiated and approved the terms of the Contribution on behalf of the Plan in accordance with the fiduciary provisions of the Act;

(c) A qualified, independent appraiser (the Appraiser) determined the fair market value of the Annuity prior to the Contribution, and it updated such valuation on the date of the Contribution;

(d) The Annuity represented approximately 19% of the Plan's assets at the time of the Contribution;

(e) The Plan incurred no fees, commissions, or other charges or expenses in connection with the Contribution;

(f) The terms of the Contribution were no less favorable to the Plan than the terms negotiated at arm's length under similar circumstances between unrelated parties; and

(g) EnPro amended the Investment Policy Statement for the Plan in conformity with the recommendations of the Independent Fiduciary prior to the Contribution.

Effective Date: If granted, this proposed exemption will be effective as of July 15, 2011.

Summary of Facts and Representations

1. EnPro, based in Charlotte, NC, and its companies manufacture and market a variety of industrial products. EnPro's businesses include: Garlock Sealing Technology (Garlock), a manufacturer of gaskets and sealing systems;[32] GGB, a manufacturer of various types of lubricated plain bearings; Stemco, a manufacturer of wheel-end component parts and long-life systems in the medium- and heavy-duty truck and trailer markets; Compressor Products International, a leading supplier of sealing components and services for reciprocating compressors used in chemical plants, refineries and natural gas processing and transmission; and Fairbanks Morse Engine, which manufacturers diesel and dual fuel engines and provides parts and services for such engines. EnPro stock is publicly traded on the New York Stock Exchange under the symbol ''NPO.'' EnPro operates manufacturing facilities throughout the world and employs approximately 5,000 employees. EnPro also sponsors several employee benefit plans, including the Plan.

2. The Plan, which is closed to new participants, is a defined benefit plan covering U.S.-based hourly and salaried employees of EnPro. As of January 26, 2011, the Plan had 1,400 active employees and 1,400 deferred vested and retirees eligible for benefits under the Plan.[33] As of January 1, 2011, the Plan had assets of $112,488,412 and accumulated benefit obligations of $179,539,776.

The named fiduciary of the Plan is the EnPro Industries, Inc. Benefits Committee (the Committee). The Vanguard Fiduciary Trust Company serves as the Plan's trustee. The Committee appointed Evercore Trust Company, N.A. (Evercore) to serve as Independent Fiduciary for the Plan with respect to the Contribution.

3. The Plan also constitutes a single plan that is comprised of three separate plan documents, which reflect different benefit formulas for (a) The EnPro Industries, Inc. Retirement Program for Salaried Employees; (b) the EnPro Industries, Inc. Retirement Program for Hourly Employees; and the (c) Pension

[31] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[32] EnPro represents that Garlock is currently in Chapter 11 Bankruptcy Proceedings in the Bankruptcy Court for the Western District of North Carolina, but operates in the ordinary course under Bankruptcy Court protection from asbestos claims. Further, EnPro represents that this bankruptcy filing will protect EnPro and its other lines of business while permanently resolving asbestos claims against Garlock.

[33] The Applicant represents that effective January 1, 2007, future benefit accruals under the Plan were frozen for a significant number of then current employees of EnPro. As a result, many current employees of EnPro who were employed on January 1, 2007 are entitled to a future benefit under the Plan following termination of employment, but no longer accrue benefits under the Plan. These non-accruing current employees are included in the number of deferred vested participants under the Plan, as well as former employees who are entitled to future Plan benefits.

Plan Between Quincy Compressor Division and Lodge 822 of the International Association of Machinists and Aerospace Workers.

The Origins of the Annuity

4. The Annuity, that is the subject of this exemption request, was formerly an asset of a grantor trust (the Grantor Trust) established by Colt Industries, Inc. and Colt Industries Operating Corp. (together, CIOC), predecessors to Coltec Industries, Inc. (Coltec), a subsidiary of EnPro. The Grantor Trust (a rabbi trust) and another trust known as the ''Colt Midland Retiree Medical Trust'' (the CIOC Trust) were established in connection with the settlement of litigation in 1985 to retiree benefits involving Coltec (the CIOC Settlement). The lawsuit was filed by the United Steel Workers of America against Colt Industries Operating Corp. on January 5, 1985. Although the litigation was filed and settled before EnPro came into existence as an independent corporation, the obligations of the settlement became EnPro's obligations when it was spun off from the Goodrich Corporation in 2002.

5. Under the terms of the CIOC Settlement, CIOC was required to fund both the CIOC Trust and the Grantor Trust, both of which would be managed by independent parties. The CIOC Trust was established to fund lifetime retiree medical benefits for certain CIOC retirees and their dependents and is a voluntary employees beneficiary association. The CIOC Trust was funded with $14,800,000. An actuary was to review the funding of the CIOC Trust as of June 30, 1994, June 30, 2004, and June 30, 2014 to determine the projected future costs of providing lifetime medical benefits as of January 1, 1995, January 1, 2005 and January 1, 2015, respectively. If the assets of the CIOC Trust fell below pre-set levels on those dates, the CIOC Settlement required CIOC to provide additional funding to the CIOC Trust.[34]

To ensure that the liability of any additional funding obligations would be fulfilled, the CIOC Settlement required CIOC to establish and fund the Grantor Trust.[35] The Grantor Trust would serve as a supplemental source of funding for those benefits only if the CIOC Trust was financially unable to fund its obligations. The Grantor Trust was initially funded with a series of MetLife guaranteed annuity contracts, whose aggregate funding amount is not known. The Grantor Trust also held a group annuity contract that was a predecessor to the Annuity (the Old Annuity), having a face value of $13,781,486. The Old Annuity was issued by MetLife to the CIOC Trustee on December 11, 1997. The Old Annuity paid interest at an effective annual rate of 6.82%. It permitted the contractholder to withdraw $8.4 million on December 31, 2004 and no less than $26,209,835.28 on December 14, 2014, the maturity date.

If no additional funding was necessary as of January 1, 1995, January 1, 2005 or January 1, 2015, the CIOC Settlement permitted CIOC to withdraw a portion of the assets of the Grantor Trust. Further, any assets remaining in the Grantor Trust after January 1, 2015, subject to the fulfillment of any contribution due to the CIOC Trust, would revert to CIOC.[36]

6. On May 25, 2010, Coltec reached an agreement with the trustees of the CIOC Trust and the Grantor Trust that would allow the transfer of ownership of the Old Annuity to EnPro. The agreement required that Coltec would make a one-time $900,000 cash payment to the CIOC Trust to be used by the CIOC trustees for any purpose permitted under the CIOC Trust. The parties also agreed that the Old Annuity would be split into two contracts. The first contract would have a value of $2.3 million. It would be transferred to an escrow account (the Escrow Account) in the name of Coltec and the CIOC Trust to ensure that funds would be available to the CIOC Trust regardless of the financial condition of Coltec. The second contract, the current Annuity, would have a remaining value of approximately $17.85 million and would be eventually issued to EnPro. The parties also agreed that EnPro would guarantee the performance of Coltec's funding obligations with respect to the CIOC Trust and the Escrow Account and that it would be prudent for the parties to seek judicial approval since the process would involve modification of the CIOC Settlement.

7. In June 2010, this matter was presented to the United States District Court for the Western District of Pennsylvania (the Court), which had jurisdiction over the retiree medical benefits litigation and had retained jurisdiction over the CIOC and the Grantor Trusts pursuant to the CIOC Settlement. As a condition of approval, the Court required notice to, and an opportunity to comment from, the CIOC Trust beneficiaries. Following the notice period, the Court set a hearing on July 27, 2010. The settlement agreement transferring ownership of the Annuity to EnPro and establishment of the Escrow Account was approved by the Court on July 27, 2010. As permitted by the Court's order, the escrow account was funded and the Grantor Trust was terminated. Unencumbered title to the portion of the Old Annuity not deposited in the Escrow Account is vested in EnPro.

The Annuity

8. On January 7, 2011, Metlife issued a new group annuity contract, the Annuity, naming EnPro as the contractholder. The Annuity had a face value of $17,852,632.22 on the date of issuance. Under the terms of the Annuity, Metlife will pay the Annuity's contractholder, in a single payout, no less than $23,214,698.70 on December 31, 2014. Metlife will credit interest, payable at a fixed rate, on amounts in the Annuity's funding account. Such interest will be credited at a rate compounded daily equivalent to an effective annual rate of 6.82%. The Annuity is fully funded and does not require any further payments to MetLife by any person. The Annuity also does not permit early withdrawal, including payment of Plan benefits prior to the final maturity date.

The Transaction

9. On July 15, 2011, EnPro contributed the Annuity to the Plan in order to meet its funding obligations under the Act. Therefore, EnPro requests an administrative exemption from the Department for the Contribution. Absent an exemption, the Contribution to the Plan by EnPro, a party in interest, would violate section 406(a)(1)(A) of the Act. Additionally, because EnPro is also a fiduciary with respect to the Plan, the Contribution would violate sections 406(b)(1) and (2) of the Act.

[34] Pursuant to the terms of the CIOC Settlement, Coltec, as successor of CIOC, provided approximately $2 million of additional funding to the CIOC Trust following the January 1, 1995 valuation. However, Coltec was not required to provide additional funding to such trust following the January 1, 2005 valuation and withdrew a portion of funds available in the Grantor Trust in accordance with the terms of the CIOC Settlement.

[35] EnPro represents that the assets of the Grantor Trust have always been assets of EnPro's corporate predecessors or EnPro and, as such, they have never been plan assets.

[36] According to the most recent actuarial valuations, the CIOC Trust's assets are more than sufficient to meet all of it funding needs. Therefore, Coltec will not be required to provide additional funding to the CIOC Trust in 2015. Further, in the unlikely event additional funding would be required, under an analysis of the ''worst case scenario,'' the maximum contribution from the Grantor Trust would be $2.7 million. This amount is far below the approximated value of $22 million held in the Grantor Trust prior to its termination (See Representation 7).

Annuity Appraisals

10. In an April 25, 2011 letter, the Cognient Group, LLC of Chicago, IL confirmed and acknowledged its status as a qualified, independent appraiser on behalf of Evercore, the Independent Fiduciary. The Appraiser has also worked for the Independent Fiduciary (and its predecessor) on other types of assignments. However, prior to this engagement, the Appraiser had not provided financial advisory services to EnPro or its retirement plans. The Appraiser represents that its fee from this assignment represents less than 1% of its annual gross income.

The Appraiser states that it has been involved as an independent financial adviser to plan fiduciaries for over 25 years in numerous ERISA securities transactions. Prior to its 2009 formation, the Appraiser explains that most of its professionals had spent a majority of their professional careers at the financial services and business valuation firm of Duff & Phelps for approximately 25 years. The Appraiser's professionals have represented independent fiduciaries and company plan committees in numerous ERISA-related transactions.

The Appraiser represents that its ERISA-related work for clients includes contributions of large blocks of restricted securities to public company retirement plans and the sale of securities to employee stock ownership plans for both publicly-traded and closely-held companies. Such securities have also included certain fixed income securities, such as guaranteed investment contracts.

11. In a valuation analysis (the Appraisal), the Appraiser valued the Annuity initially at $20,709,088 as of March 15, 2011. The Appraiser valued the Annuity based on the expected cash flows discounted at a rate that appropriately reflected the risk of the Contractholder receiving full payment on the final payment date. For the cash flow analysis, the Appraiser noted that the Annuity's funding account had a balance of $18,024,481.02 as of February 28, 2011 and that interest accrued on this balance at a rate, compounded daily, equivalent to an effective annual rate of 6.82%. This would result in a projected funding account balance of $23,227,291 as of December 31, 2014.

12. In order to select the appropriate discount rate to apply to the expected lump sum payment on December 31, 2014, the Appraiser reviewed MetLife's credit ratings and recent bond offerings. The Appraiser noted that the major credit rating firms currently rate Metlife's senior unsecured corporate bonds at investment grade and that Metlife was rated ''A-'' by Standard and Poor's, ''A3'' by Moody's Investors Service and ''A-'' by Fitch. The Appraiser also considered publicly traded MetLife bonds maturing in 2014 and 2015. The first was a $350 million bond due on June 30, 2014 with a coupon rate of 5.5% or current yield to maturity of 2.59%. The second was a $1,000 million due June 30, 2015 with a coupon rate of 5.0% or current yield to maturity of 2.95%. In addition, the Appraiser represents that MetLife issued $1,000 million in new unsecured bonds due February 6, 2014 at a coupon rate of 2.375%. Based on this information, the Appraiser determined that the appropriate discount rate for the Annuity, given its maturity date of December 31, 2014, was 3.02% as of March 15, 2011. According to the Appraiser, this discount rate would reflect current MetLife market bond yields and the non-publicly traded nature of the Contract.

The Appraiser then applied the discount rate to the projected funding account balance for the annuity of $23,227,291 as of December 31, 2014. After applying the discount rate and considering the Annuity's time to maturity from March 15, 2011 to December 31, 2014 (1,387 days), the Appraiser determined that the Annuity's present value was $20,709,088 as of March 15, 2011. Thus, the annuity would represent approximately 18% of the Plan's assets.

13. The Appraiser updated the Appraisal (the Appraisal Update) on the date of the Contribution. In the Appraisal Update, the Appraiser placed the fair market value of the Annuity at $21,406,713 as of July 15, 2011. Although the Appraiser utilized the same valuation methodology in the Appraisal Update as it had done in the Appraisal, there were differences in the amounts previously calculated. For example, in the cash flow analysis, the Appraiser noted that the Annuity's funding account balance had increased to $18,426,370.25, in contrast to the $18,024,418.02 balance originally determined in the Appraisal. Thus, because of a change in the daily interest rate, the projected funding account balance for the Annuity as of December 31, 2014 in the Appraisal Update would be $23,223,092, instead of $23,227,291, as evidenced in the Appraisal.

Additionally, the Appraiser determined, in the Appraisal Update, that the appropriate discount rate for the Annuity was 2.35% instead of 3.02%, which was the rate set forth in the Appraisal. In applying the July 15, 2011 discount rate of 2.35% to the Annuity's projected funding balance of $23,223,092 as of December 31, 2014, and considering the Annuity's time to maturity (*i.e.,* 1,265 days instead of 1,387 days), the Appraiser calculated the Annuity's fair market value at $21,406,713 as of July 15, 2011. This amount represented an increase from the $20,709,088 fair market value of the Annuity as of March 15, 2011 that was set forth in the Appraisal. The fair market value of the Annuity also represented approximately 19% of the Plan's assets at the time of the Contribution.

Independent Fiduciary's Recommendation

14. Pursuant to engagement letter executed on October 6, 2010 (the Engagement Letter), EnPro retained Evercore as the Independent Fiduciary to determine whether the proposed Contribution was in the interests of the Plan and its participants and beneficiaries. The Independent Fiduciary represents that it is independent of and unrelated to EnPro and that (a) It does not directly or indirectly control, is not controlled by, and is not under common control with EnPro; (b) neither it, nor any of its officers, directors, or employees is an officer, director, partner or employee of EnPro (or is a relative of such person); and (c) it does not directly or indirectly receive any compensation or other consideration for its own account in connection with the Contribution, except that the Independent Fiduciary may receive compensation from EnPro for performing the services described in the Engagement Letter as long as amount of such payment is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision.

The Independent Fiduciary also represents that its total fee in connection with the subject exemption application represents less than 1% of its 2010 gross business income. The Independent Fiduciary further represents that it acknowledges and understands its duties, responsibilities and liabilities under the Act in acting as a fiduciary on behalf of the Plan with respect to the proposed transaction.

15. The Independent Fiduciary represents that it is a national trust bank, chartered by the U.S. Office of the Comptroller of Currency. The Independent Fiduciary, which formerly comprised U.S. Trust's Special Fiduciary Services division, states that it has served as an independent fiduciary to employee benefit plans since 1987, including serving as an independent fiduciary to qualified plans

in connection with prior exemptions granted by the Department. The Independent Fiduciary also asserts that it has extensive experience in serving as an independent fiduciary to defined benefits plans in connection with proposed contributions to such plans of qualifying employer securities.

16. In its Engagement Letter, a March 29, 2011 report, and a July 29, 2011 supplemental report, the Independent Fiduciary agreed to perform the following duties on behalf of the Plan: (a) Determine whether to accept the proposed Contribution, subject to the Department's grant of an exemption; (b) cause the Appraiser, acting as Evercore's independent valuation expert, to prepare a report as to the fair market value of the Annuity; [37] (c) negotiate the terms and conditions of the proposed Contribution; and (d) render an opinion suitable for submission to the Department in connection with this exemption request.

17. In making its determinations about the Contribution, the Independent Fiduciary explains that it considered several factors. These included the exemption application, the Annuity, the Appraisal, the Appraiser's spreadsheet analysis of the Annuity, the Plan's Investment Annuity Statement, communications between EnPro and its outside counsel and a statement from Towers Watson, the Plan's actuary, that the Plan had sufficient assets to cover benefit payments through December 2014. After reviewing the Appraisal, the Independent Fiduciary determined that the Appraiser's valuation approach was appropriate.

18. The Independent Fiduciary represents that the Plan's assets declined during the recent recession and have yet to recover fully. For Plan Year 2011, the Independent Fiduciary explains that EnPro owed the Plan required minimum contributions totaling approximately $20 million and that it intended to make a first quarter cash contribution of $3 million. (On April 11, 2011, EnPro contributed $3,478,251 to the Plan.)

The Independent Fiduciary states that EnPro estimates that it will owe the Plan annual contributions of $21 to $24 million per year from 2011 through 2014. These contributions, according to the Independent Fiduciary, could impact EnPro's financial strength, limit its operating goals and impair its ability to maintain the Plan in its current form.

19. The Annuity, valued at $21,406,173 as of July 15, 2011, exceeds the amount of the required minimum contribution for Plan Year 2011, the Independent Fiduciary explains. Once contributed to the Plan, the Annuity would provide the Plan with assets in excess of $24 million. This, in the Independent Fiduciary's view, would give the Plan an incremental benefit of more than $4 million over its required minimum contribution for Plan Year 2011.

20. The Independent Fiduciary also explains that it considered the quality of the Annuity. In this regard, the Independent Fiduciary states that the Annuity is very similar to a zero coupon bond.[38] The Independent Fiduciary represents that were the Plan to purchase a zero coupon bond with a similar time to maturity, from an issuer with a similar credit profile as MetLife, the Plan would not likely obtain a better quality investment. Instead, the Plan would receive an asset with a face value of $17,852,632.22 and a fair market value of $21,406,713 as of July 15, 2011. Such asset would generate a return of 6.82% from face value and 2.35% from fair market value until the date of maturity on December 31, 2014, according to the Independent Fiduciary. Were the Plan to invest in a similar bond, *i.e.,* a bond with a similar time to maturity from an issuer with a similar credit profile, the Independent Fiduciary explains that the return from fair market value or yield to maturity of that hypothetical bond would be no better than the Annuity.

With respect to Plan benefits, the Independent Fiduciary notes that should the Department deny this exemption, one of the options available to EnPro is to impose benefit restrictions on Plan participants. However, the Applicant represents that the Contribution of the Annuity, in lieu of cash, should not have a detrimental effect on the Plan's ability to pay benefits from the Contribution date until the maturity date of the Annuity. The Independent Fiduciary, after confirming with the Plan's actuary, represents that the Plan is in a position to meet its benefit obligations from the date of the Contribution until the maturity date of the Annuity on December 31, 2014.

21. The Independent Fiduciary represents that based on its review and analysis of the Contribution and the Appraisal, the Contribution was in the interests of the Plan and its participants and beneficiaries. Furthermore, the Independent Fiduciary has determined that the Contribution was fair and reasonable, and it approved the Plan's acceptance of the Annuity.

22. Finally, the Independent Fiduciary requested that EnPro amend its Investment Policy Statement for the Plan (the Investment Policy Statement). This document was silent with regard to the Contribution of the Annuity. The value of the Annuity would have violated certain diversification guidelines because the Plan's Investment Policy Statement, prior to the Contribution, limited fixed income investments (with the exception of fixed income explicitly guaranteed by the United States) to less than 5% of the Plan's assets. EnPro represents that at the time of the Contribution, the value of the Annuity would exceed the diversification guidelines under the Plan's Investment Policy Statement. Accordingly, the Independent Fiduciary confirmed that the Plan's Investment Policy Statement was amended by EnPro to permit the Contribution.

Rationale for the Proposed Contribution

23. The Applicant represents that the Contribution was administratively feasible because it was a one-time transaction that would be easy to review and audit. In addition, the Plan was not required to pay any fees, commissions or expenses in connection therewith. Moreover, the Independent Fiduciary had been engaged to determine whether to accept the Annuity, and, if so, the value of the Annuity for Contribution and funding purposes. In this regard, the Independent Fiduciary (a) Reviewed and approved the methodology used by the Appraiser, (b) ensured that such methodology was properly applied in determining the fair market value of the Annuity on the date of the Contribution, and (c) determined whether it was prudent to go forward with the transaction. Finally, EnPro would value the Annuity annually with the assistance of the Appraiser or another qualified, independent appraiser.

EnPro states that the Contribution was also in the interests of the Plan and its participants and beneficiaries because the Plan realized an additional contribution of approximately $4 million above the estimated required minimum contribution for Plan Year 2011. In addition, the Plan obtained, with no transaction costs, a high-quality instrument backed by MetLife. Further,

[37] In this regard, the Independent Fiduciary reviewed and approved the methodology used by the Appraiser and ensured that such methodology was properly applied in determining the fair market value of the Annuity on the date of the Contribution.

[38] The Independent Fiduciary explains that zero coupon bonds make no coupon payments and investors in such bonds receive par value at the time of maturity but no interest payments. Such bonds are issued at prices that are considerably below par value and the return comes solely from the difference between the issue price and the payment of par value at maturity. The holder of the Annuity, similarly, will receive no interest payment in installments, but will get a lump sum payment at maturity.

EnPro states that the Contribution was protective of the rights of the Plan's participants and beneficiaries because the Plan would be in a position to meet its benefit obligations from the date of the Contribution until the maturity date of the Annuity on December 31, 2014. EnPro notes that the Annuity pays a daily effective interest rate equivalent to a 6.82% annual interest rate and states that the Plan would not likely find a zero coupon bond with a better interest rate.

Summary

24. In summary, the Applicant represents that the Contribution satisfied the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary, acting on behalf of the Plan, determined whether the Contribution was in the interests of the Plan and protective of the Plan's participants and beneficiaries;

(b) The Independent Fiduciary reviewed, negotiated and approved the terms of the Contribution on behalf of the Plan in accordance with the fiduciary provisions of the Act;

(c) The Appraiser determined the fair market value of the Annuity prior to the Contribution and it updated such valuation on the date of the Contribution;

(d) The Annuity represented approximately 19% of the Plan's assets at the time of the Contribution;

(e) The Plan incurred no fees, commissions, or other charges or expenses in connection with the Contribution;

(f) The terms of the Contribution were no less favorable to the Plan than the terms negotiated at arm's length under similar circumstances between unrelated parties; and

(g) EnPro amended the Plan's Investment Policy Statement in conformity with the recommendations of the Independent Fiduciary prior to the Contribution.

Notice to Interested Parties

Notice of the proposed exemption will be given to interested persons within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail or personal delivery. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of December, 2011.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2011–31741 Filed 12–12–11; 8:45 am]

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Part III

Federal Deposit Insurance Corporation

Notice of New and Altered Systems of Records; Notice

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974, as Amended; System of Records

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of New and Altered Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and OMB Circular A–130, the Federal Deposit Insurance Corporation (''FDIC'') has conducted required reviews of its systems of records and is publishing this notice regarding its proposal to introduce two new systems of records, alter four existing systems of records, and to incorporate minor editorial and administrative changes in other existing systems of records that do not meet the threshold criteria established by the Office of Management and Budget for either a new or altered system of records. We hereby publish this notice for comment on the proposed actions.

DATES: Comments on the proposed systems of records must be received on or before January 12, 2012. The proposed systems of records will become effective 45 days following publication in the **Federal Register**, unless a superseding notice to the contrary is published before that date.

ADDRESSES: You may submit written comments by any of the following methods:

- *Agency web site:* Located at *http://www.fdic.gov/regulations/laws/federal/propose.html.*

Follow instructions for submitting comments on this web site.

- *Email:* Send to *comments@fdic.gov*. Include ''Notice of New and Altered FDIC Systems of Records'' in the subject line.
- *Mail:* Send to Gary Jackson, Counsel, Attention: Comments, FDIC Systems of Records, 550 17th Street NW., Washington, DC 20429.

All submissions should refer to ''Notice of New and Altered FDIC Systems of Records.'' By prior appointment, comments may also be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1005, Arlington, Virginia 22226, between 9 a.m. and 4 p.m. (EST), Monday to Friday.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Counsel, FDIC, 550 17th Street NW., Washington, DC 20429, (703) 562–2677.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, the FDIC has conducted a review of its Privacy Act systems of records and has determined that it needs to add two new systems of records and to alter four existing systems of records. The FDIC's system notices were last published in the **Federal Register** on October 26, 2009, Volume 74, Number 205 (74 FR 55005); this last publication may be viewed at *http://www.fdic.gov/about/privacy/on* the FDIC's Privacy web page. With the present notice, the FDIC is also publishing the complete text of all of its system notices to incorporate other minor editorial and administrative changes and to provide a current, easily accessible compilation. Information about the reasons for these proposed changes is noted below.

The first new system of records will be designated as FDIC 30–64–0033 and entitled, ''Emergency Notification Records.'' This system will contain individual contact information to provide for rapid communication to registered FDIC personnel during and after emergency and security events to disseminate time sensitive information, provide personnel accountability and status, and provide for the receipt of real-time message acknowledgements and related management reports.

The second new system of records will be designated as FDIC 30–64–0034 and entitled, ''Office of Inspector General Inquiry Records.'' This system will contain correspondence and other communications addressed or directed to FDIC OIG and used to manage receipt, assignment, tracking, and final matter disposition.

As described in the last published notice, the Employee Training Information Records (FDIC 30–64–0007) is used to maintain information required to manage personnel training programs. Substantive changes to the notice have been made to the following sections: (1) System Name, reflecting the new title: Employee Learning and Development Records; (2) Categories of Records, adding new record types involving career development, certifications, and special skills and competencies; and (3) Purpose, adding to record and manage career development, certifications, and special skills and competencies.

As described in the last published notice, the Investigative Files of the Office of Inspector General (FDIC 30–64–0010) is used to maintain information related to the investigation of criminal, civil, or administrative matters. A substantive change to the notice has been made to the Routine Uses section by adopting the following eight new general routine uses that are consistent with the purpose for which the information in question is collected: (1) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; (2) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit; (3) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties; (4) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; (5) To a financial institution affected by enforcement activities or reported criminal activities; (6) To the Internal Revenue Service and appropriate State and local taxing authorities; (7) To other Federal, State or foreign financial institutions' supervisory or regulatory authorities; and (8) To appropriate Federal agencies and other public authorities for use in records management inspections.

As described in the last published notice, the Insured Financial Institution Liquidation Records (FDIC 30–64–0013) is used to maintain information required to manage the receivership and conservatorship functions of the FDIC. A substantive change to the notice has been made to the System Location section by adding third-party service providers as the site of certain records.

As described in the last published notice, the Freedom of Information Act and Privacy Act Request Records (FDIC 30–64–0022) is used to maintain information required to manage FOIA and Privacy Act requests and related matters. A substantive change to the notice has been made to the Categories of Records section by adding new record types for online identity verification including username and password.

A Report of New and Altered Systems of Records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About

Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

More detailed information on the proposed new and revised systems of records may be viewed in the complete text below.

Index of FDIC Privacy Act Systems of Records in This Publication

FDIC 30–64–0001 Attorney and Legal Intern Applicant Records
FDIC 30–64–0002 Financial Institution Investigative and Enforcement Records
FDIC 30–64–0003 Administrative and Personnel Action Records
FDIC 30–64–0004 Changes in Financial Institution Control Ownership Records
FDIC 30–64–0005 Consumer Complaint and Inquiry Records
FDIC 30–64–0006 Employee Confidential Financial Disclosure Records
FDIC 30–64–0007 Employee Learning and Development Records
FDIC 30–64–0008 Chain Banking Organization Identification Records
FDIC 30–64–0009 Safety and Security Incident Records
FDIC 30–64–0010 Investigative Files of the Office of Inspector General
FDIC 30–64–0011 Corporate Applicant Recruiting, Evaluating, and Electronic Referral Records
FDIC 30–64–0012 Financial Information Management Records
FDIC 30–64–0013 Insured Financial Institution Liquidation Records
FDIC 30–64–0014 Personnel Benefits and Enrollment Records
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FDIC 30–64–0016 Professional Qualification Records for Municipal Securities Dealers, Municipal Securities Representatives and U.S. Government Securities Brokers/Dealers
FDIC 30–64–0017 Employee Medical and Health Assessment Records
FDIC 30–64–0018 Grievance Records
FDIC 30–64–0019 Potential Bidders List
FDIC 30–64–0020 Telephone Call Detail Records
FDIC 30–64–0021 Fitness Center Records
FDIC 30–64–0022 Freedom of Information Act and Privacy Act Request Records
FDIC 30–64–0023 Affordable Housing Program Records
FDIC 30–64–0024 Unclaimed Deposit Account Records
FDIC 30–64–0025 Beneficial Ownership Filings (Securities Exchange Act)
FDIC 30–64–0026 Transit Subsidy Program Records
FDIC 30–64–0027 Parking Program Records
FDIC 30–64–0028 Office of the Chairman Correspondence Records
FDIC 30–64–0029 Congressional Correspondence Records
FDIC 30–64–0030 Legislative Information Tracking System Records
FDIC 30–64–0031 Online Ordering Request Records
FDIC 30–64–0032 Nationwide Mortgage Licensing System and Registry
FDIC 30–64–0033 Emergency Notification Records
FDIC 30–64–0034 Office of Inspector General Inquiry Records

FDIC–30–64–0001

SYSTEM NAME:

Attorney and Legal Intern Applicant Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429; and Atlanta Regional Office, FDIC, 10 Tenth Street, Suite 800, Atlanta, Georgia 30309.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the position of attorney or legal intern with the Legal Division of the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence from the applicants and individuals whose names were provided by the applicants as references; applicants' resumes; application forms; and in some instances, comments of individuals who interviewed applicants; documents relating to an applicant's suitability or eligibility; writing samples; and copies of academic transcripts and class ranking.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The information in this system is used to evaluate the qualifications of individuals who apply for attorney or legal intern positions in the Legal Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To individuals or concerns whose names were supplied by the applicant as references and/or past or present employers in requesting information about the applicant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are retrieved by name. Records of unsuccessful applicants are indexed first by job position category and year and then by name.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel. Some paper records may be maintained in a locked room accessible only to authorized personnel during a finite initial review period.

Retention and Disposal: Records of unsuccessful applicants are retained two years after their submission; records of successful applicants become a part of the Personnel Records system of records (FDIC 30–64–0015) and are retained two years after the applicant leaves the employ of the FDIC.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the applicants; references supplied by the applicants; current and/or former employers of the applicants; and FDIC employees who interviewed the applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 12 CFR part 310.13(b), investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for FDIC employment may be withheld from disclosure to the extent that disclosure of such material would reveal the identity of a source who furnished information to the FDIC under an express promise of confidentiality.

FDIC–30–64–0002

SYSTEM NAME:

Financial Institution Investigative and Enforcement Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who participate or have participated in the conduct of or who are or were connected with financial institutions, such as directors, officers, employees, and customers, and who have been named in suspicious activity reports or administrative enforcement orders or agreements. Financial institutions include banks, savings and loan associations, credit unions, other similar institutions, and their affiliates whether or not federally insured and whether or not established or proposed.

(2) Individuals, such as directors, officers, employees, controlling shareholders, or persons who are the subject of background checks designed to uncover criminal activities bearing on the individual's fitness to be a director, officer, employee, or controlling shareholder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains interagency or intra-agency correspondence or memoranda; criminal referral reports; suspicious activity reports; newspaper clippings; Federal, State, or local criminal law enforcement agency investigatory reports, indictments and/or arrest and conviction information; and administrative enforcement orders or agreements. Note: Certain records contained in this system (principally criminal investigation reports prepared by the Federal Bureau of Investigation, Secret Service, and other federal law enforcement agencies) are the property of federal law enforcement agencies. Upon receipt of a request for such records, the FDIC will notify the proprietary agency of the request and seek guidance with respect to disposition. The FDIC may forward the request to that agency for processing in accordance with that agency's regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 5, 6, 7, 8, 9, 18, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1815, 1816, 1817, 1818, 1819, 1828, 1829).

PURPOSE:

The information is maintained to support the FDIC's regulatory and supervisory functions by providing a centralized system of information (1) for conducting and documenting investigations by the FDIC or other financial supervisory or law enforcement agencies regarding conduct within financial institutions by directors, officers, employees, and customers, which may result in the filing of suspicious activity reports or criminal referrals, referrals to the FDIC Office of the Inspector General, or the initiation of administrative enforcement actions; and (2) to identify whether an individual is fit to serve as a financial institution director, officer, employee or controlling shareholder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the

congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To a financial institution affected by enforcement activities or reported criminal activities;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To other Federal, State or foreign financial institutions supervisory or regulatory authorities; and

(13) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third Parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name of the individual.

Safeguards: Electronic files are password protected and accessible only by authorized persons. File folders are maintained in lockable metal file cabinets.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGERS AND ADDRESS:

Director, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Financial institutions; financial institution supervisory or regulatory authorities; newspapers or other public records; witnesses; current or former FDIC employees; criminal law enforcement and prosecuting authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of the records in this system of records were compiled for law enforcement purposes and are exempt from disclosure under 12 CFR part 310.13 and 5 U.S.C. 552a(k)(2). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

FDIC–30–64–0003

SYSTEM NAME:

Administrative and Personnel Action Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Legal Division, Executive Secretary Section, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of administrative actions or personnel actions by the FDIC Board of Directors or by standing committees of the FDIC and individuals who have been the subject of administrative actions by FDIC officials under delegated authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Minutes of the meetings of the FDIC Board of Directors or standing committees and orders of the Board of Directors, standing committees, or other officials as well as annotations of entries into the minutes and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 8, 9, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1819, 1829).

PURPOSE:

The system is maintained to record the administrative and personnel actions taken by the FDIC Board of Directors, standing committees, or other officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To the U.S. Office of Personnel Management, General Accounting Office, the Office of Government Ethics, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media, microfilm, and paper format within individual file folders, minute book ledgers and index cards.

Retrievability: Records are indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format, index cards, and minute book ledgers are stored in lockable metal file cabinets or vault accessible only by authorized personnel. A security copy of certain microfilmed portions of the records is retained at another location.

Retention and Disposal: Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Legal Division, Executive Secretary Section, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Intra-agency records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0004

SYSTEM NAME:

Changes in Financial Institution Control Ownership Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who acquired or disposed of voting stock in an FDIC-insured financial institution resulting in a change of financial institution control or ownership; and

(2) Individuals who filed or are included as a member of a group listed in a ''Notice of Acquisition of Control'' of an FDIC-insured financial institution. Note: The information is maintained only for the period 1989 to 1995. Commencing in 1996 the records were no longer collected nor maintained on an individual name or personal identifier basis and are not retrievable by individual name or personal identifier. Beginning in 1996, information concerning changes in financial institution control is collected and maintained based upon the name of the FDIC-insured financial institution or specialized number assigned to the FDIC-insured financial institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the name of proposed acquirer; statement of assets and liabilities of acquirer; statement of income and sources of income for each acquirer; statement of liabilities for each acquirer; name and location of the

financial institution; number of shares to be acquired and outstanding; date ''Change in Control Notice'' or ''Notice of Acquisition of Control'' was filed; name and location of the newspaper in which the notice was published and date of publication. For consummated transactions, names of sellers/transferors; names of purchasers/transferees and number of shares owned after transaction; date of transaction on institution's books, number of shares acquired and outstanding. If stock of a holding company is involved, the name and location of the holding company and the institution(s) it controls.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

PURPOSE:

The system maintains information on individuals involved in changes of control of FDIC-insured financial institutions for the period 1989 to 1995 and is used to support the FDIC's regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To other Federal or State financial institution supervisory authorities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records for the period 1989 to 1995 are indexed and retrieved by name of the individual.

Safeguards: Electronic files are password protected and accessible only by authorized persons. File folders are maintained in lockable metal file cabinets.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Persons who acquired control of an FDIC-insured financial institution; the insured financial institution or holding company in which control changed; filed ''Change in Control Notice'' form and ''Notice of Acquisition of Control'' form during the period 1989 to 1995; federal and state financial institution supervisory authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0005

SYSTEM NAME:

Consumer Complaint and Inquiry Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Depositor and Consumer Protection, FDIC, 550 17th Street NW., Washington, DC 20429, and FDIC regional offices for complaints or inquiries originating within or involving an FDIC-insured depository institution located in an FDIC region. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted complaints or inquiries concerning activities or practices of FDIC-insured depository institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence and records of other communications between the FDIC and the individual submitting a complaint or making an inquiry, including copies of supporting documents and contact information supplied by the individual. May contain correspondence between the FDIC and the FDIC-insured depository institution in question and/or intra-agency or inter-agency memoranda or correspondence concerning the complaint or inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and Section 202(f) of Title II of the Federal Trade Improvement Act (15 U.S.C. 57a(f)).

PURPOSE:

The system maintains correspondence from individuals regarding complaints or inquiries concerning activities or practices of FDIC-insured depository institutions. The information is used to identify concerns of individuals, to manage correspondence received from individuals and to accurately respond to complaints, inquiries, and concerns expressed by individuals. The information in this system supports the FDIC regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the insured depository institution which is the subject of the complaint or inquiry when necessary to investigate or resolve the complaint or inquiry;

(11) To authorized third-party sources during the course of the investigation in order to resolve the complaint or inquiry. Information that may be disclosed under this routine use is limited to the name of the complainant or inquirer and the nature of the complaint or inquiry and such additional information necessary to investigate the complaint or inquiry; and

(12) To the Federal or State supervisory/regulatory authority that has direct supervision over the insured depository institution that is the subject of the complaint or inquiry.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Electronic media is indexed and retrieved by unique identification number which may be cross referenced to the name of complainant or inquirer.

Safeguards: Electronic files are password protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Division of Depositor and Consumer Protection, FDIC, 550 17th Street NW., Washington, DC 20429, or the Regional Director, Division of Supervision and Consumer Protection for records maintained in FDIC regional offices (See *Appendix A* for the location of FDIC Regional Offices).

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such

information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained; FDIC-insured depository institutions that are the subject of the complaint; the appropriate agency, whether Federal or State, with supervisory authority over the institution; congressional offices that may initiate the inquiry; and other parties providing information to the FDIC in an attempt to resolve the complaint or inquiry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0006

SYSTEM NAME:

Employee Confidential Financial Disclosure Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Records are located in component divisions, offices and regional offices to which individuals covered by the system are assigned. Duplicate copies of the records are located in the Legal Division, Executive Secretary Section, Ethics Unit, FDIC, 550 17th Street NW., Washington, DC 20429. (See *Appendix A* for a list of the FDIC regional offices and their addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officers and employees, and special government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains statements of personal and family financial holdings and other interests in business enterprises and real property; listings of creditors and outside employment; opinions and determinations of ethics counselors; information related to conflict of interest determinations; relevant personnel information and ethics training records; and information contained on the following forms:

(1) Confidential Financial Disclosure Report—contains listing of personal and family investment holdings, interests in business enterprises and real property, creditors, and outside employment for covered employees.

(2) Confidential Report of Indebtedness—contains information on extensions of credit to employees, including loans and credit cards, by FDIC-insured depository institutions or their subsidiaries; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured financial institutions or subsidiaries thereof.

(3) Confidential Report of Interest in FDIC–Insured Depository Institution Securities—contains a brief description of an employee's direct or indirect interest in the securities of an FDIC-insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; a brief description of an employee's direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC-insured depository institution, affiliate, or depository institution holding company; and a certification acknowledging that the employee has read and understands the rules governing the ownership of securities in FDIC-insured depository institutions.

(4) Employee Certification and Acknowledgment of Standards of Conduct Regulation—contains employee's certification and acknowledgment that he or she has received a copy of the Standards of Ethical Conduct for Employees of the FDIC.

(5) Public Financial Disclosure Form—contains a description of an employee's personal and family investment holdings, including interests in business enterprises or real property, non-investment income, creditors, former or future employer information, outside positions, and other affiliations for political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Ethics in Government Act of 1978 (5 U.S.C. 7301 and App.); Section 9 and 12(f) of the Federal Deposit Insurance Act (12 U.S.C. 1819(a), 1822(f)); 26 U.S.C. 1043; Executive Order Nos. 12674 (as modified by 12731), 12565, and 11222; 5 CFR part 2634, 2635, and 3201.

PURPOSE:

The records are maintained to assure compliance with the standards of conduct for Government employees contained in the Executive Orders, Federal Statutes and FDIC regulations and to determine if a conflict of interest exists between employment of individuals by the FDIC and their personal employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or

appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections; and

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name of individual. Electronic media and paper format do not index the names of prospective employees who are not selected for employment.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format copies are maintained in lockable file cabinets.

Retention and Disposal: Records concerning prospective employees who are not selected for employment are retained for one year and then destroyed, except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation. All other records are retained for six years and then destroyed. Entries maintained in electronic media are deleted, except that paper format documents and electronic media entries needed in an ongoing investigation will be retained until no longer needed for the investigation. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Program Manager, Executive Secretary Section, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual or a person or entity designated by the individual; FDIC employees designated as Ethics Counselors or Deputy Ethics Counselors; FDIC automated personnel records system; and other employees or individuals to whom the FDIC has provided information in connection with evaluating the records maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0007

SYSTEM NAME:

Employee Learning and Development Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC Corporate University, 3501 North Fairfax Drive, Arlington, VA 22226, and FDIC Office of Inspector General, 3501 North Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees and any non-FDIC employees that have attended training conducted or sponsored by the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the training history of an individual while employed by the FDIC. Records may include the schedule of the individual's training classes and other educational programs attended, dates of attendance, continuing education credits earned, tuition fees and expenses. Also contains information on career development, certifications, and learner skills and competencies. The system used by the Office of Inspector General may also contain information on educational degrees or professional memberships and other similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Sections 4(b) and 6(e) of the Inspector General Act of 1978, at amended (5 U.S.C. app).

PURPOSE:

The system is used to record and manage comprehensive learning and development information that is available to learners, training administrators, and management. The system is also used to schedule training events, enroll students, launch online training, and run reports. The system is used to track training, career development, certifications, continuing education and learner skills and competencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or

confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To educational institutions for purposes of enrollment and verification of employee attendance and performance;

(11) To vendors, professional licensing boards or other appropriate third parties, for the purpose of verification, confirmation, and substantiation of training or licensing requirements;

(12) To the U.S. Office of Personnel Management for purposes of tracking and analyzing training and related information of FDIC employees; and

(13) To other Federal Offices of Inspector General or other entities for purposes of conducting quality assessments or peer reviews of the OIG or any of its components.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Electronic media are accessible by unique identifier or name. File folders are indexed and retrieved by name of individual.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper records within individual file folders are maintained in lockable metal file cabinets accessible only by authorized personnel.

Retention and Disposal: Permanent retention.

SYSTEM MANAGER(S) AND ADDRESSES:

Associate Chief Learning Officer, Corporate University, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226; Deputy Assistant Inspector General for Management, Office of Inspector General, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the employee about whom the record is maintained, employee supervisors, training administrators, and the training facility or institution attended.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0008

SYSTEM NAME:

Chain Banking Organizations Identification Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Stree, NW., Washington, DC 20429, and FDIC regional offices. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who directly, indirectly, or in concert with others, own or control two or more insured depository institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the names of and contact information for individuals who, either alone or in concert with others, own or control two or more insured depository institutions as well as the insured depository institutions names, locations, stock certificate numbers, total asset size, and percentage of outstanding stock owned by the controlling individual or group of individuals; charter types and, if applicable, name of intermediate holding entity and percentage of holding company held by controlling individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 7(j) and 9 of the Federal Deposit Insurance Act (12 U.S.C. 1817(j), 1819).

PURPOSE:

This system identifies and maintains information of possible linked FDIC-insured depository institutions or holding companies which, due to their common ownership, present a concentration of resources that could be susceptible to common risks. The information in this system is used to support the FDIC's regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including

disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To other Federal or State financial institution supervisory authorities for: (a) coordination of examining resources when the chain banking organization is composed of insured depository institutions subject to multiple supervisory jurisdictions; (b) coordination of evaluations and analysis of the condition of the consolidated chain organization; and (c) coordination of supervisory, corrective or enforcement actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Indexed and retrieved by name of controlling individual(s) or assigned identification number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel.

Retention and Disposal: Records are maintained in electronic media. Certain records are archived in off-line storage and all records are periodically updated to reflect changes. These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Examination reports and related materials; regulatory filings; and Change in Financial Institution Control Notices filed pursuant to 12 U.S.C. 1817(j).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0009

SYSTEM NAME:

Safety and Security Incident Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Division of Administration, 550 17th Street NW., Washington, DC 20429, and the FDIC regional or area offices. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and past FDIC employees, contractors, volunteers, visitors, and others involved in the investigation of accidents, injuries, criminal conduct, and related civil matters involving the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains investigative reports, correspondence and other communications that may include, without limitation, name, home and office address and phone numbers, physical characteristics, and vehicle information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to support the administration and maintenance of a safety and security incident investigation, tracking and reporting system involving FDIC facilities, property, personnel, contractors, volunteers, or visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of

presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; and

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date, or case number.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: Paper records and electronic media are retained for five years after their creation in accordance with the FDIC Records Retention and Disposition Schedule. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include current FDIC employees, contractors, members of the public, witnesses, law enforcement officials, medical providers, and other parties providing information to the FDIC to facilitate an inquiry or resolve the complaint.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(c)(3), (d)(5), (e)(1), (e)(4)(G), (H), and (I), (f) and (k).

FDIC–30–64–0010

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC Office of Inspector General (OIG), 3501 North Fairfax Drive, Arlington, VA 22226. In addition, records are maintained in OIG field offices. OIG field office locations can be obtained by contacting the Assistant Inspector General for Investigations at said address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FDIC employees and individuals involved in or associated with FDIC programs and operations including contractors, subcontractors, vendors and other individuals associated with investigative inquiries and investigative cases, including, but not limited to, witnesses, complainants, suspects and those contacting the OIG Hotline.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files, including memoranda, computer-generated background information, correspondence, electronic case management and tracking files, reports of investigations with related exhibits, statements, affidavits, records or other pertinent documents, reports from or to other law enforcement bodies, pertaining to violations or potential violations of criminal laws, fraud, waste, and abuse with respect to administration of FDIC programs and operations, and violations of employee and contractor Standards of Conduct as set forth in section 12(f) of the Federal Deposit Insurance Act (12 U.S.C. 1822(f)), 12 CFR parts 336, 366, and 5 CFR parts 2634, 2635, and 3201. Records in this system may contain personally identifiable information such as names, social security numbers, dates of birth and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act of 1978, as amended (5 U.S.C. app.).

PURPOSE:

Pursuant to the Inspector General Act, the system is maintained for the purposes of (1) conducting and documenting investigations by the OIG or other investigative agencies regarding FDIC programs and operations in order

to determine whether employees or other individuals have been or are engaging in waste, fraud and abuse with respect to the FDIC's programs or operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other FDIC components or divisions for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act or those of other federal instrumentalities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To the appropriate Federal, State, local, foreign or international agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the record, either by itself or in combination with other information, indicates a violation or potential violation of law, or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, alternative dispute resolution mediator or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings when the FDIC or OIG is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary;

(3) To the FDIC's or another Federal agency's legal representative, including the U.S. Department of Justice or other retained counsel, when the FDIC, OIG or any employee thereof is a party to litigation or administrative proceeding or has a significant interest in the litigation or proceeding;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury;

(6) To the subjects of an investigation and their representatives during the course of an investigation and to any other person or entity that has or may have information relevant or pertinent to the investigation to the extent necessary to assist in the conduct of the investigation;

(7) To third-party sources during the course of an investigation only such information as determined to be necessary and pertinent to the investigation in order to obtain information or assistance relating to an audit, trial, hearing, or any other authorized activity of the OIG;

(8) To a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the records pertain;

(9) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for the FDIC to obtain information concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit;

(10) To a Federal agency responsible for considering suspension or debarment action where such record is determined to be necessary and relevant;

(11) To a consultant, person or entity who contracts or subcontracts with the FDIC or OIG, to the extent necessary for the performance of the contract or subcontract. The recipient of the records shall be required to comply with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(12) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(13) To the U.S. Office of Personnel Management, Government Accountability Office, Office of Government Ethics, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, Office of Management and Budget or the Federal Labor Relations Authority of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with hiring or retaining an employee, rendering advice requested by OIG, issuing a security clearance, reporting an investigation of an employee, reporting an investigation of prohibited personnel practices, letting a contract or issuing a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter;

(14) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(15) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(16) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(17) To a financial institution affected by enforcement activities or reported criminal activities;

(18) To the Internal Revenue Service and appropriate State and local taxing authorities;

(19) To other Federal, State or foreign financial institutions' supervisory or regulatory authorities;

(20) To appropriate Federal agencies and other public authorities for use in records management inspections;

(21) To a governmental, public or professional or self-regulatory licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of

professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed;

(22) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC or to obtain information in the course of an investigation (to the extent permitted by law). Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt; and

(23) To other Federal Offices of Inspector General or other entities for the purpose of conducting quality assessments or peer reviews of the OIG, or its investigative components, or for statistical purposes.

Note: In addition to the foregoing, a record which is contained in this system and derived from another FDIC system of records may be disclosed as a routine use as specified in the published notice of the system of records from which the record is derived.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name of individual, unique investigation number assigned, referral number, social security number, or investigative subject matter.

Safeguards: The electronic system files are accessible only by authorized personnel and are safeguarded with user passwords and authentication, network/database permission, and software controls. File folders are maintained in lockable metal file cabinets and lockable offices accessible only by authorized personnel.

Retention and Disposal: Records maintained in file folders are retained: for five years if the records are of an investigative nature but are not related to a specific investigation; for ten years if the records are related to a specific investigation; and permanently if the investigation to which the records relate results in national media attention, congressional investigation or substantive changes in agency policy and procedures. Nonpermanent records are then destroyed by shredding. The retention period for electronic system data is ten years. However, the manner of disposing of electronic system records has not been determined. This determination will depend on expected future guidance from legislation or from the National Archives and Records Administration. Until that determination is made, electronic system records may be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, FDIC Office of Inspector General, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity. Note: This system contains records that are exempt under 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). See ''Exemptions Claimed for the System'' below.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310. **Note:** This system contains records that are exempt under 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). See ''Exemptions Claimed for the System'' below.

RECORD SOURCE CATEGORIES:

Current and former employees of the FDIC, other government employees, private individuals, vendors, contractors, subcontractors, witnesses and informants. Records in this system may have originated in other FDIC systems of records and were subsequently transferred to this system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5); (e)(8); (e)(12); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of investigatory material compiled: (A) for other law enforcement purposes (except where an individual has been denied any right, privilege, or benefit for which he or she would otherwise be entitled to or eligible for under Federal law, so long as the disclosure of such information would not reveal the identity of a source who furnished information to the FDIC under an express promise that his or her identity would be kept confidential); or (B) solely for purposes of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the FDIC on a confidential basis, has been exempted from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G) and (H); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), respectively.

FDIC–30–64–0011

SYSTEM NAME:

Corporate Applicant Recruiting, Evaluating and Electronic Referral Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Human Resources Branch, Division of Administration, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing applications for employment with the FDIC in response to advertised position vacancy announcements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Position vacancy announcement information such as position title, series and grade level(s), office and duty location, opening and closing date of the announcement, and dates of referral and return of lists of qualified candidates;

applicant personal data such as name, address, other contact information, social security number, sex, veterans' preference and federal competitive status; and applicant qualification and processing information such as qualifications, grade level eligibility, reason for ineligibility, referral status, and dates of notification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); 5 U.S.C. 1104.

PURPOSE:

The records are collected and maintained to monitor and track individuals filing employment applications with the FDIC and to assess recruiting goals and objectives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; and

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Indexed and retrieved by name and truncated social security number of individual applicant.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Network servers are located in a locked room with physical access limited to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Information Systems and Services Section, Human Resources Branch, Division of Administration, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information originates from position vacancy announcements, applications for employment submitted by individuals, and the applicant qualification and processing system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0012

SYSTEM NAME:

Financial Information Management Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Finance, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226. Records concerning garnishments, attachments, wage assignments and related records concerning FDIC employees are located with the General Counsel, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, current and former vendors and contractors providing goods and/or services to the FDIC, current and former advisory committee members and others who travel or perform services for the FDIC, current and former FDIC customers, and individuals who were depositors or claimants of failed financial institutions for which the FDIC was appointed receiver. Note: Only records reflecting personal information

are subject to the Privacy Act. This system also contains records concerning failed financial institution receiverships, corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains (1) employee payroll, benefit, and disbursement-related records; (2) contractor and vendor invoices and other accounts payable records; (3) customer records related to accounts receivables; (4) payment records for individuals who were depositors or claimants of failed financial institutions for which the FDIC was appointed receiver; and (5) accounting and financial management records. The payroll and/or disbursement records include employees' mailing addresses and home addresses; financial institution account information; social security number and unique employee identification number; rate and amount of pay; tax exemptions; tax deductions for employee payments; and corporate payments information for tax reporting. Records relating to employee, advisory committee and other claims for reimbursement of official travel expenses include travel authorizations, vouchers showing amounts claimed, exceptions taken as a result of audit, and amounts paid. Other records maintained on employees include reimbursement claims for relocation expenses consisting of authorizations, advances, vouchers of amounts claimed and amounts paid; reimbursement for educational expenses or professional membership dues and licensing fees and similar reimbursements; awards, bonuses, and buyout payments; advances or other funds owed to the FDIC; and garnishments, attachments, wage assignments or related records. Copies of receipts/invoices provided to the FDIC for reimbursement may contain credit card or other identifying account information. Contractor, vendor, and other accounts payable records consist of all documents relating to the purchase of goods and/or services from those individuals including contractual documents, vendor addresses and financial institution account information, vendor invoice statements; amounts paid, and vendor tax identification number. Copies of documentation supporting vendor invoice statements may contain identifying data, such as account number. Customer information is also captured as necessary for the collection of accounts receivable. Payment records for individuals who were depositors or claimants of failed financial institutions for which the FDIC was appointed receiver include name, address, and payment amount; tax id numbers or social security numbers are also included for depositors or claimants when an informational tax return must be filed. The records also include general ledger and detailed trial balances and supporting data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9 and 10(a) of the Federal Deposit Insurance Act (12 U.S.C. 1819 and 1820(a)).

PURPOSE:

The records are maintained for the FDIC and the failed financial institution receiverships managed by the FDIC. The records are used to manage and account for financial transactions and financial activities of the FDIC. The records and associated databases and subsystems provide a data source for the production of reports and documentation for internal and external management reporting associated with the financial operations of the FDIC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To auditors employed by the U.S. Government Accountability Office;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To vendors, carriers, or other appropriate third parties by the FDIC Office of Inspector General for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations; and

(13) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information

necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format in file folders.

Retrievability: Electronic media are indexed and retrievable by social security number or specialized identifying number; paper format records are generally indexed and retrieved by name

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are maintained in secure areas.

Retention and Disposal: Financial records are retained by the FDIC for ten years in electronic format and then transferred to the Federal Records Center or destroyed. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Finance, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226. For records about FDIC employees concerning garnishments, attachments, wage assignments and related records, the system manager is the General Counsel, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual upon whom the record is maintained; other government agencies; contractors; or from another FDIC office maintaining the records in the performance of their duties. Where an employee is subject to a tax lien, a bankruptcy, an attachment, or a wage garnishment, information also is obtained from the appropriate taxing or judicial authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0013

SYSTEM NAME:

Insured Financial Institution Liquidation Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429; Field Operations Branch, Division of Resolutions and Receiverships, FDIC, 1601 Bryan Street, Dallas, Texas 75201; and at secure sites and on secure servers maintained by third-party service providers for the FDIC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were obligors, obligees, or subject to claims of FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator of FDIC-insured financial institutions that were provided assistance by the FDIC and the FDIC is acting as receiver or conservator of certain of the financial institution's assets. Note: Only records reflecting personal information are subject to the Privacy Act. This system also contains records concerning failed financial institution receiverships, corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the individual's files held by the closed or assisted financial institution, including loan or contractual agreements, related documents, and correspondence. The system also contains FDIC asset files, including judgments obtained, restitution orders, and loan deficiencies arising from the liquidation of the obligor's loan asset(s) and associated collateral, if any; information relating to the obligor's financial condition such as financial statements and income tax returns; asset or collateral verifications or searches; appraisals; and potential sources of repayment. FDIC asset files also include intra- or inter-agency memoranda, as well as notes, correspondence, and other documents relating to the liquidation of the loan obligation or asset. FDIC's receivership claims files may include all information related to claims filed with the receivership estate by a failed financial institution's landlords, creditors, service providers or other obligees or claimants. Note: Records held by the FDIC as receiver are a part of this system only to the extent that the state law governing the receivership is not inconsistent or does not otherwise establish specific requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 13 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, and 1823) and applicable State laws governing the liquidation of assets and wind-up of the affairs of failed financial institutions.

PURPOSE:

The records are maintained to: (a) Identify and manage loan obligations and assets acquired from failed FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or from FDIC-insured financial institutions that were provided assistance by the FDIC; (b) identify, manage and discharge the obligations to creditors, obligees and other claimants of FDIC-insured financial institutions for which the FDIC was appointed receiver or conservator, or of FDIC-insured financial institutions that were provided assistance by the FDIC; and (c) assist with financial and management reporting. The records support the receivership and conservatorship functions of the FDIC required by applicable Federal and State statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation

of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors or entities performing services for the FDIC in connection with the liquidation of an individual's obligation(s), including judgments and loan deficiencies or in connection with the fulfillment of a claim filed with the FDIC as receiver or liquidator. Third party contractors include, but are not limited to, asset marketing contractors; loan servicers; appraisers; environmental contractors; attorneys retained by the FDIC; collection agencies; auditing or accounting firms retained to assist in an audit or investigation of FDIC's liquidation activities; grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To prospective purchaser(s) of the individual's obligation(s), including judgments and loan deficiencies, for the purpose of informing the prospective purchaser(s) about the nature and quality of the loan obligation(s) to be purchased;

(11) To Federal or State agencies, such as the Internal Revenue Service or State taxation authorities, in the performance of their governmental duties, such as obtaining information regarding income, including the reporting of income resulting from a compromise or write-off of a loan obligation;

(12) To participants in the loan obligation in order to fulfill any contractual or incidental responsibilities in connection with the loan participation agreement;

(13) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

(14) To Federal or State agencies or to financial institutions where information is relevant to an application or request by the individual for a loan, grant, financial benefit, or other entitlement;

(15) To Federal or State examiners for the purposes of examining borrowing relationships in operating financial institutions that may be related to an obligation of an individual covered by this system; and

(16) To the individual, the individual's counsel or other representatives, insurance carrier(s) or underwriters of bankers' blanket bonds or other financial institution bonds for failed or assisted FDIC-insured financial institutions in conjunction with claims made by the FDIC or litigation instituted by the FDIC or others on behalf of the FDIC against former officers, directors, accountants, lawyers, consultants, appraisers, or underwriters of bankers' blanket bonds or other financial institution bonds of a failed or assisted FDIC-insured financial institution.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed by financial institution number, name of failed or assisted insured institution, and by name of individual.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records maintained in individual file folders are stored in lockable file cabinets and/or in secured vaults or warehouses and are accessible only by authorized personnel.

Retention and Disposal: Credit/loan files or files concerning the obligors, obligees, or individuals subject to claims of the failed or assisted financial institution are maintained until the receivership claim, loan obligation, judgment, loan deficiency or other asset or liability is sold or otherwise disposed of, or for the period of time provided under applicable Federal or State laws pursuant to which the FDIC liquidates the assets, discharges the liabilities or processes the claims. FDIC asset files will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429; and Deputy Director, Field Operations Branch, FDIC, 1601 Bryan Street, Dallas, Texas 75201.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on whom the record is maintained; appraisers retained by the originating financial institution or the FDIC; investigative and/or research companies; credit bureaus and/or services; loan servicers; court records; references named by the individual; attorneys or accountants retained by the originating financial institution or the FDIC; participants in the obligation(s) of the individual; officers and employees of the failed or assisted financial institution; congressional offices that may initiate an inquiry; and other parties providing services to the FDIC in its capacity as liquidator or receiver.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0014

SYSTEM NAME:

Personnel Benefits and Enrollment Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429. For administrative purposes, duplicate systems may exist within the FDIC at the duty station of each employee. (See Appendix A for a list of the FDIC regional offices.) The FDIC also has an interagency agreement with the U.S. Department of Agriculture, National Finance Center in New Orleans, Louisiana, to provide and maintain payroll, personnel, and related services and systems involving FDIC employees. The FDIC also has agreements with T. Rowe Price, Benefit Allocation Systems, and other benefit plan contractors to provide employee benefits and related administrative services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and former FDIC employees and their dependents who are enrolled in the FDIC-sponsored Savings Plan, health, life, and other insurance or benefit programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains general personnel and enrollment information for the FDIC-sponsored Savings Plan, flexible spending account (FSA) plans and insurance plans (life, dental, vision, or long-term disability). The FDIC maintains information on earnings, number and name of dependents, gender, birth date, home address, social security number, employee locator information (including email and office addresses), claims for FSA reimbursements, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 819) and Executive Order 9397.

PURPOSE(S):

The records are collected, maintained and used to support the administration and management of the FDIC personnel benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(10) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FDIC personnel;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To appropriate Federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States;

(13) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish and modify orders of child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, the Federal Parent Locator System and the Federal Tax Offset System;

(14) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

(15) To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return;

(16) To Benefit Allocation Systems, T. Rowe Price, and other benefit providers, carriers, vendors, contractors, and agents to process claims and provide related administrative services involving FDIC personnel.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name or social security number of the employee.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: Paper records and electronic media are retained in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Human Resources Branch, FDIC Division of Administration, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information retrieved from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0015

SYSTEM NAME:

Personnel Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429. For administrative purposes, duplicate systems may exist within the FDIC at the duty station of each employee. (See Appendix A for a list of the FDIC regional offices.) The FDIC also has an interagency agreement with the U.S. Department of Agriculture, National Finance Center in New Orleans, Louisiana, to provide and maintain payroll, personnel, and related services and systems involving FDIC employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and former FDIC employees, contractors, and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to personnel actions and determinations made about individuals while employed or seeking employment. These records may contain information about an individual relating to name, birth date, Social Security Number (SSN), personal telephone numbers and addresses, employment applications, background, identity verification and credentials, duty station telephone numbers and addresses, compensation, performance, separation, Internal Revenue Service (IRS) or court-ordered levies, emergency contacts, and related records and correspondence. NOTE: Records maintained by the FDIC in the official personnel file are described in the government-wide Privacy Act System Notice known as OPM/GOVT–1 and other government-wide system notices published by the Office of Personnel Management, and are not included within this system. Also not included in this system are records covered by FDIC–30–64–0009 (Safety and Security Incident Records), FDIC–30–64–0014 (Personnel Benefits and Enrollment Records), FDIC–30–64–0026 (Transit Subsidy Program Records), and FDIC–30–64–0027 (Parking Program Records).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and Executive Order 9397.

PURPOSE(S):

The records are collected, maintained and used to support the administration and management of the FDIC personnel and benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government.

(10) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FDIC personnel;

(11) To the Internal Revenue Service and appropriate State and local taxing authorities;

(12) To appropriate Federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States;

(13) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish and modify orders of child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, the Federal Parent Locator System and the Federal Tax Offset System;

(14) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

(15) To the Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982. Debt information concerning a government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and Section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt. Disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name or social security number of the employee.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: Records are retained in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Human Resources Branch, FDIC Division of Administration, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information retrieved from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0016

SYSTEM NAME:

Professional Qualification Records for Municipal Securities Dealers, Municipal Securities Representatives, and U.S. Government Securities Brokers/Dealers.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, Risk Management Policy and Exam Oversight Branch, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Persons who are or seek to be associated with municipal securities

brokers or municipal securities dealers which are FDIC-insured, state-chartered financial institutions (including insured state-licensed branches of foreign financial institutions), not members of the Federal Reserve System, or are subsidiaries, departments, or divisions of such financial institutions;

(2) Persons who are or seek to be persons associated with U.S. Government securities dealers or brokers which are FDIC-insured state-chartered financial institutions, other than members of the Federal Reserve System.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain identifying information, detailed educational and employment histories, examination information, disciplinary information, if any, and information concerning the termination of employment of individuals covered by the system. Identifying information includes name, address, date and place of birth, and may include social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 15B(c), 15C, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4, 78o–5, and 78q and 78w); and Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The records are maintained to comply with the registration requirements of municipal securities dealers, municipal securities representatives, and U.S. Government securities brokers or dealers and associated persons contained in the Securities Exchange Act of 1934 and to support the FDIC's regulatory and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the appropriate Federal, State, local, or foreign agency or authority or to the appropriate self-regulatory organization, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(26)), to the extent disclosure is determined to be necessary and pertinent for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information by itself or together with additional information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or regulation, rule or order issued pursuant thereto;

(11) To assist in any proceeding in which the Federal securities or banking laws are in issue or a proceeding involving the propriety of a disclosure of information contained in this system, in which the FDIC or one of its past or present employees is a party, to the extent that the information is relevant to the proceeding;

(12) To a Federal, State, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to an FDIC inquiry concerning a person who is or seeks to be associated with a municipal securities dealer as a municipal securities principal or representative or a U.S. Government securities broker or a U.S. Government securities dealer;

(13) To a Federal, State, local, or foreign governmental authority or a self-regulatory organization in connection with the issuance of a license or other benefit to the extent that the information is relevant and necessary; and

(14) To a registered dealer, registered broker, registered municipal securities dealer, U.S. Government securities dealer, U.S. Government securities broker, or an insured financial institution that is a past or present employer of an individual that is the subject of a record, or to which such individual has applied for employment, for purposes of identity verification or for purposes of investigating the qualifications of the subject individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Indexed by name and dealer registration number or FDIC financial institution certificate number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are stored in file folders in lockable metal file cabinets accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with

National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Examination Specialist, Risk Management Policy and Exam Oversight Branch, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained, municipal securities dealers and U.S. Government securities dealers and brokers (as such dealers are described in ''Categories of Individuals Covered by the System'' above), and Federal, State, local, and foreign governmental authorities and self-regulatory organizations or agencies which regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0017

SYSTEM NAME:

Employee Medical and Health Assessment Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Health Unit, Corporate Services Branch, Division of Administration, FDIC, located at the following addresses: 550 17th Street NW., Washington, DC 20429; 3501 North Fairfax Drive, Arlington, VA 22226; 1310 Courthouse Road, Arlington VA 22226; and Health Units located in FDIC regional offices. (See *Appendix A* for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former FDIC employees and other individuals who seek information, treatment, medical accommodations, or participate in health screening programs administered by the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of the employee, including name, age, height, weight, history of certain medical conditions, health screening records; dates of visits to the FDIC Health Unit, diagnoses, and treatments administered; ergonomic reviews and assessments; and the name and telephone number of the person to contact in the event of a medical emergency involving the employee.

Note: In addition to the FDIC system of records, the United States Office of Personnel Management maintains government-wide system of records (known as OPM/GOVT–10).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The records are collected and maintained to identify potential health issues and concerns of an individual and to identify and collect information with respect to medical conditions reported by an individual to the FDIC Health Unit and to identify necessary contacts in the event of a medical emergency involving the covered individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the appropriate Federal, State or local agency when necessary to adjudicate a claim (filed by or on behalf of the individual) under the Federal

Employees Compensation Act (the FECA) as codified in 5 U.S.C. 8101–8193, or a retirement, insurance or health benefit program;

(11) To a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease;

(12) To health or life insurance carriers contracting with the FDIC to provide life insurance or to provide health benefits plan, such information necessary to verify eligibility for payment of a claim for life or health benefits;

(13) To a Health Unit or occupational safety and health contractors, including contract nurses, industrial hygienists, and others retained for the purpose of performing any function associated with the operation of the Health Unit; and

(14) To the person designated on the appropriate form as the individual to contact in the event of a medical emergency of the employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: The records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are stored in lockable metal file cabinets. Access is limited to authorized employees and contractors responsible for servicing the records in the performance of their duties.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Health, Safety and Environmental Program Manager, Corporate Services Branch, Division of Administration, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The records are compiled by the employee and contractor personnel during the course of a visit to the Health Unit for treatment. Records are also created as a result of the individual's participation in a health screening program, and are used to assist in the performance of accident/incident investigations, or if the individual requests an ergonomic assessment or health or medical accommodation. The employee supplies the information contained in the emergency contact sheet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0018

SYSTEM NAME:

Grievance Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Human Resources Branch, Division of Administration, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226. Records at the regional level generated through grievance procedures negotiated with recognized labor organizations are located in the FDIC regional office where originated (See Appendix A for a list of the FDIC regional offices and their addresses). For non-headquarters employees, duplicate copies may be maintained by the Human Resources Branch, Division of Administration, Arlington, VA for the purpose of coordinating grievance and arbitration proceedings.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former FDIC employees who have submitted grievances in accordance with part 771 of the United States Office of Personnel Management's regulations (5 CFR part 771) or a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by FDIC employees under Part 771 of the United States Office of Personnel Management's regulations, or under 5 U.S.C. 7121. Case files contain documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the final decision, and related correspondence and exhibits. This system includes files and records of internal grievance procedures that FDIC may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) 5 U.S.C. 7121; 5 CFR part 771.

PURPOSE:

The information contained in this system is used to make determinations and document decisions made on filed grievances and settle matters of dissatisfaction or concern of covered individuals. Information from this system may be used for preparing statistical summary or management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the

congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To any source during the course of an investigation only such information as determined to be necessary and pertinent to process a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: The records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Paper format records are stored in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director of Personnel, Human Resources Branch, Division of Administration, FDIC, 3501 North Fairfax Drive Arlington, VA 22226. The appropriate FDIC Regional Director for records maintained in FDIC regional offices (see Appendix A for a list of the FDIC regional offices and their addresses).

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information in this system is provided: (1) By the individual on whom the record is maintained; (2) by testimony of witnesses; (3) by agency officials; and (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0019

SYSTEM NAME:

Potential Bidders List.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429; and Field Operations Branch, Division of Resolutions and Receiverships, FDIC, 1601 Bryan Street Dallas, Texas 75201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have purchased or submitted written notice of an interest in purchasing loans, owned real estate, securities, or other assets from the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the individual's name, address, telephone number and electronic mail address, if available; information as to the kind or category and general geographic location of loans or owned real estate that the individual may be interested in purchasing; and information relating to whether any bids have been submitted on prior sales.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11 and 13 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821 and 1823).

PURPOSE:

The system collects, identifies and maintains information about potential purchasers of assets (primarily loans and owned real estate) from the FDIC. The information is utilized by the FDIC in the marketing of assets, to identify qualified potential purchasers and to solicit bids for assets. The information in this system is used to support the FDIC's liquidation/receivership functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in

the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To other Federal or State agencies and to contractors to assist in the marketing and sale of loans, real estate, or other assets held by the FDIC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format in file folders.

Retrievability: Electronic media and paper format are indexed and retrieved by name of prospective purchaser or unique identification number assigned to the prospective purchaser.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Hard copy printouts are maintained in lockable metal file cabinets or offices.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual about whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0020

SYSTEM NAME:

Telephone Call Detail Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Information Technology, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned telephone numbers by the FDIC, including current and former FDIC employees and contractor personnel, who make local and long distance telephone calls and individuals who receive telephone calls placed from or charged to FDIC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, including telephone number, location, dates and duration of telephone call, relating to use of FDIC telephones to place or receive long distance and local calls; records of any charges billed to FDIC telephones; records indicating assignment of telephone numbers to individuals covered by the system; and the results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSES:

The records in this system are maintained to identify and make a record of all telephone calls placed to or from FDIC telephones and enable the FDIC to analyze call detail information for verifying call usage; to determine responsibility for placement of specific long distance calls; and for detecting possible abuse of the FDIC-provided long distance telephone network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of

presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To current and former FDIC employees and other individuals currently or formerly provided telephone services by the FDIC to determine their individual responsibility for telephone calls;

(11) To a telecommunications company providing telecommunications support to permit servicing the account; and

(12) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC. Disclosure of information contained in these records will be limited to the individual's name and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Records are indexed and retrieved by telephone number and office location.

Safeguards: Electronic files are password protected and accessible only by authorized personnel.

Retention and Disposal: Records are destroyed after the close of the fiscal year in which they are audited or after three years from the date the record was created, whichever occurs first.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Division of Information Technology, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance and local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0021

SYSTEM NAME:

Fitness Center Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Fitness Centers, Corporate Services Branch, Division of Administration, FDIC, 3501 North Fairfax Drive, Arlington, VA, 22226, and 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FDIC employees who apply for membership and participate in the Fitness Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the individual's name, gender, age; fitness assessment results; identification of certain medical conditions; and the name and phone number of the individual's personal physician and emergency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE:

The records are collected and maintained to control access to the fitness center; to enable the Fitness Centers' contractor to identify any potential health issues or concerns and the fitness level of an individual; and to identify necessary contacts in the event of a medical emergency while the individual is participating in a fitness activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To the individuals listed as emergency contacts or the individual's personal physician, in the event of a medical emergency; and

(11) To a Health Unit or occupational safety and health contractors, including contract nurses, industrial hygienists, and others retained for the purpose of performing any function associated with the operation of the Fitness Centers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

Storage: Records are stored in paper format within individual file folders. Information recorded on index cards is stored in a card file box.

Retrievability: Individual file folders and cards are indexed and retrieved by name.

Safeguards: Records are maintained in lockable metal file cabinets. Access is limited to authorized employees of the contractor responsible for servicing the records in the performance of their duties. **Note:** In the future, all or some portion of the records may be stored in electronic media. These records will be indexed and retrieved by name and will be password protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Health, Safety and Environmental Program Manager, Acquisition and Corporate Services Branch, Division of Administration, FDIC, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is principally obtained from the individual who has applied for membership and Fitness Center personnel. Some information may be provided by the individual's personal physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0022

SYSTEM NAME:

Freedom of Information Act and Privacy Act Request Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit requests and administrative appeals pursuant to the provisions of the Freedom of Information Act (FOIA) or the Privacy Act; individuals whose requests, appeals or other records have been referred to FDIC by other agencies; attorneys or other persons authorized to represent individuals submitting requests and appeals; individuals who are the subjects of such requests; and FDIC personnel assigned to process such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain requesters' and their attorneys' or representatives' names, addresses, email addresses, telephone numbers; online identity verification information (username and password); and any other information voluntarily submitted, such as an individual's social security number; tracking numbers; correspondence with the requester or others representing the requester; internal FDIC correspondence and memoranda to or from other agencies having a substantial interest in the determination of the request; responses to the request and appeals; and copies

of responsive records. These records may contain personal information retrieved in response to a request. Note—FOIA and Privacy Act case records may contain inquiries and requests regarding any of the FDIC's other systems of records subject to the FOIA and Privacy Act, and information about individuals from any of these other systems may become part of this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C 552a), 12 CFR 309 and 310.

PURPOSES:

The records are collected and maintained to process requests made under the provisions of the FOIA and Privacy Act and to assist the FDIC in carrying out any other responsibilities relating to the FOIA and Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(7) To another Federal government agency having a substantial interest in the determination of the request or for the purpose of consulting with that agency as to the propriety of access or correction of the record in order to complete the processing of requests; and

(8) To a third party authorized in writing to receive such information by the individual about whom the information pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Electronic media and paper format records are indexed and retrieved by the requester's name or by unique number assigned to the request. Records sometimes are retrieved by reference to the name of the requester's firm, if any, or the subject matter of the request.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. File folders are maintained in lockable metal file cabinets in a locked room accessible only to authorized personnel.

Retention and Disposal: Records for Freedom of Information Act requests which are granted, withdrawn or closed for non-compliance or similar reason, are destroyed two years after the date of the reply. Records for all other Freedom of Information Act requests (*e.g.,* requests denied in part, requests denied in full, and requests for which no responsive information was located) are destroyed six years after the date of the reply, unless the denial is appealed, in which case the request and related documentation are destroyed six years after the final agency determination or three years after final adjudication by the courts, whichever is later. Records maintained for control purposes are destroyed six years after the last entry. Records maintained for processing Privacy Act requests are disposed of in accordance with established disposition schedules for individual records, or five years after the date of the disclosure was made, whichever is later. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER AND ADDRESS:

Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Requesters and persons acting on behalf of requesters, FDIC offices and divisions, other Federal agencies having a substantial interest in the determination of the request, and employees processing the requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The FDIC has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5) and 12 CFR 310.13. During the processing of a Freedom of Information Act or Privacy Act request, exempt records from these other systems of records may become part of the case record in this system of records. To the extent that exempt records from other FDIC systems of records are entered or become part of this system, the FDIC has claimed the same exemptions, and any such records compiled in this system of records from any other system of

records continues to be subject to any exemption(s) applicable for the records as they have in the primary systems of records of which they are a part.

FDIC–30–64–0023

SYSTEM NAME:

Affordable Housing Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Purchasers and prospective purchasers of residential properties offered for sale through the FDIC's Affordable Housing Program.

Note: To be considered a prospective purchaser for purposes of this record system, the individual must have: (1) Completed and signed an FDIC ''Certification of Income Eligibility;'' and (2) delivered the form to an authorized representative of the FDIC's Affordable Housing Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the purchaser's or prospective purchaser's income qualification form and substantiating documents (such as personal financial statements, income tax returns, asset or collateral verifications, appraisals, and sources of income); copies of sales contracts, deeds, or other recorded instruments; intra-agency forms, memoranda, or notes related to the property and purchaser's participation in the FDIC's Affordable Housing Program; correspondence; and other documents related to the FDIC's Affordable Housing Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, 13, and 40 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, 1823, 1831q).

PURPOSE:

The records are collected and maintained to determine and verify eligibility of individuals to participate in the FDIC Affordable Housing Program and to monitor compliance by individuals with purchaser income restrictions. The information in the system supports the FDIC's liquidation of qualifying residential housing units and the FDIC's goal to provide home ownership for low-income and moderate-income families.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(10) To mortgage companies, financial institutions, federal agencies (such as the Federal Housing Administration, the Housing and Urban Development Agency, the Farm Service Agency, and the Veterans Administration), or state and local government housing agencies where information is determined to be relevant to an application or request for a loan, grant, financial benefit, or other type of assistance or entitlement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Electronic media and paper format are accessible by name of purchaser or prospective purchaser and by address of the property purchased.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. File folders are maintained in lockable metal file cabinets accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Resolutions and Receiverships Specialist, Operations Branch, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550

17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual seeking to participate in the FDIC's Affordable Housing Program. Information pertaining to an individual may, in some cases, be supplemented with reports from credit bureaus and/or similar credit reporting services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0024

SYSTEM NAME:

Unclaimed Deposit Account Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Resolutions and Receiverships, Field Operations Branch, FDIC, 1601 Bryan Street, Dallas, Texas 75201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified as deposit account owners of unclaimed insured deposits of a closed insured depository institution for which the FDIC was appointed receiver after January 1, 1989.

CATEGORIES OF RECORDS IN THE SYSTEM:

Deposit account records, including signature cards, last known home address, social security number, name of insured depository institution, relating to unclaimed insured deposits or insured transferred deposits from closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 12 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, and 1822).

PURPOSE:

The information in this system is used to process inquiries and claims of individuals with respect to unclaimed insured deposit accounts of closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989, and to assist in complying with the requirements of the Unclaimed Deposits Amendments Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; and

(10) To the appropriate State agency accepting custody of unclaimed insured deposits;

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format.

Retrievability: Electronic media and paper format are indexed and retrieved by depository institution name, depositor name, depositor social security number, or deposit account number.

Safeguards: Electronic files are password protected and accessible only by authorized personnel. Hard copy printouts are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: If the appropriate State has accepted custody of unclaimed deposits, a record of the unclaimed deposits will be retained by the FDIC during the custody period of ten years. Such records will subsequently be destroyed in accordance with the FDIC's records retention policy in effect at the time of return of any deposits to the FDIC from the State. If the appropriate State has declined to accept custody of the unclaimed deposits of the closed insured depository institution, the FDIC will retain the unclaimed deposit records and upon termination of the receivership of the closed insured depository institution, the records will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Field Operations Branch, Division of Resolutions and Receiverships, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information originates from deposit records of closed insured depository institutions and claimants. Records of unclaimed transferred deposits are provided to the FDIC from assuming depository institutions to which the FDIC transferred deposits upon closing of the depository institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0025

SYSTEM NAME:

Beneficial Ownership Filings (Securities Exchange Act).

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Any director or officer of an FDIC-insured depository institution with a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934, and (2) Any person who is directly or indirectly the beneficial owner of greater than 10% of a class of equity securities issued by an FDIC-insured depository institution that are registered under section 12 of the Securities Exchange Act of 1934; including any trust, trustee, beneficiary or settlor required to report pursuant to Securities and Exchange Commission Rule 16a–8.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reporting persons submit electronically or on paper reports on any of the following three forms: ''Initial Statement of Beneficial Ownership of Securities,'' ''Statement of Changes in Beneficial Ownership of Securities'' and ''Annual Statement of Beneficial Ownership of Securities.'' Reporting persons are required to use these forms to disclose ownership and transactional information relative to their beneficial ownership of securities of FDIC-insured depository institutions with securities registered under the Securities Exchange Act of 1934. Under section 403 of the Sarbanes-Oxley Act of 2002, these forms must be submitted in electronic form and must be made available to the public on a Federal agency's external Internet Web site. The forms require disclosure of the name of the financial institution, relationship of reporting person to the financial institution, reporting person's name and street address, date of form or amendment, and filer's signature and date. A description of the securities' terms and transactional information including transaction date, type of transaction, amount of securities acquired or disposed, price, aggregate amount of securities beneficially owned, and form and nature of beneficial ownership must also be disclosed on the forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 12(i) and 16(a) of the Securities Exchange Act of 1934 (respectively, 15 U.S.C. 78l(i) and 78p(a)).

PURPOSE:

In accordance with Section 16(a) of the Securities Exchange Act of 1934, as amended by section 403 of the Sarbanes-Oxley Act of 2002, this information is being made available to the public on the FDIC's external Internet Web site in order to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and financial institution regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or

appeals, or if needed in the performance of other authorized duties;

(7) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(8) To appropriate Federal agencies and other public authorities for use in records management inspections;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; and

(10) To the appropriate governmental or self-regulatory organizations when relevant to the organization's regulatory or supervisory responsibilities or if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or on paper format in file folders.

Retrievability: Electronically filed reports are indexed and retrieved by the name of the reporting party. Paper-filed reports are indexed by the name of the depository institution issuing the securities being reported, with sub-indexing by the filer's name.

Safeguards: Access to the information in this electronic system of records is unrestricted. The filing and amendment of electronic records is restricted to authorized users who have been issued non-transferable user ID's and passwords.

Retention and Disposal: These records will be maintained for fifteen years from the date of filing, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Accounting & Securities Disclosure Section, Division of Risk Management Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information originates from (1) any director or officer of an FDIC-insured depository institution with a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934; and (2) any beneficial owner of greater than 10% of an FDIC-insured depository institution with a class of equity securities registered under the Securities Exchange Act of 1934, including any trust, trustee, beneficiary or settlor required to report pursuant to SEC Rule 16a–8.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0026

SYSTEM NAME:

Transit Subsidy Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429 and the FDIC regional or area offices. (See Appendix A for a list of the FDIC regional offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers employees who apply for and receive transit subsidy program benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed transit subsidy application forms (FDIC Form 3440). The applications include, but are not limited to, the applicant's name, home address, title, grade, Division, Office, work hours, room and telephone numbers, commuting schedule, and transit system(s) used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

The records are used to administer the FDIC transit subsidy program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of

liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name of the transit subsidy program participant.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: Records are retained in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, FDIC Division of Administration, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information taken from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0027

SYSTEM NAME:

Parking Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429 and regional offices with FDIC parking facilities. (See Appendix A for a list of the FDIC regional offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers employees and others who have applied for and/or been issued a parking permit for the use of FDIC parking facilities; individuals who car-pool with employees holding such permits; and employees interested in joining a car pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed parking application forms (FDIC Forms 3410), car pool information, disability parking applications, special parking authorizations, and visitor parking requests. The information includes, but is not limited to, the applicant's name, home address, title, grade, make, year and license number of vehicle, Division, Office, work hours, room and telephone numbers, and arrival/departure times.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

The records are used to administer the parking program, to allocate the limited number of parking spaces in the FDIC parking facilities among employees and visitors, to facilitate the formation of car pools with employees who have been issued parking permits, and to provide for the safe use of FDIC facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for

processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media or in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by the name of the permit holder, employee identification number, or license tag number.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: Records are retained in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, FDIC Division of Administration, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR part 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain, information retrieved from official FDIC records, or information from other agency parking records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0028

SYSTEM NAME:

Office of the Chairman Correspondence Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Office of Legislative Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who correspond to, or receive correspondence from, the Office of the Chairman; and individuals who are the subject of correspondence to or from the Office of the Chairman.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence, memoranda, Email, and other communications with the Office of the Chairman that may include, without limitation, name and contact information supplied by the individual as well as information concerning subject matter, internal office assignments, processing, and final response or other disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to document and respond to correspondence addressed to the FDIC, Office of the Chairman.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint; and

(10) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date, and subject.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Legislative Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence to the FDIC for response, and FDIC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0029

SYSTEM NAME:

Congressional Correspondence Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Office of Legislative Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Members of the U.S. Congress and Congressional staff; and individuals whose inquiries relating to FDIC activities are forwarded by Members of Congress or Congressional staff to the FDIC for response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence from Members of the U.S. Congress or Congressional staff making inquiries or transmitting inquiries, correspondence or documents from constituents that may include, without limitation, name and contact information as well as information concerning subject matter, internal office assignments, processing, and final response or other disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to document and respond to constituent and other inquiries forwarded by Members of the U.S. Congress or Congressional staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(10) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint; and

(11) To authorized third-party sources during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date, and subject.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Legislative Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence to the FDIC for response, and FDIC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0030

SYSTEM NAME:

Legislative Information Tracking System Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC, Office of Legislative Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Members of the U.S. Congress and Congressional staff; and individuals who contact, or are contacted by the FDIC Office of Legislative Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains memoranda, email and other communications with the Office of Legislative Affairs that may include without limitation, name and contact information supplied by the individual as well as information related to the inquiry that was developed by FDIC staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to document and respond to inquiries regarding FDIC's views on proposed legislation, facilitate Congressional briefings, and coordinate preparation of FDIC responses to constituent inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate Federal agencies and other public authorities for use in records management inspections;

(8) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(10) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint; and

(11) To authorized third-party sources during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Records are indexed and retrieved by name, date, and subject.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is completed by electronic purging and removal of records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Legislative Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who contact the FDIC for response, and FDIC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0031

SYSTEM NAME:

Online Ordering Request Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

These electronic records are collected in a web-based system located at a secure site and on secure servers maintained by a contractor for the FDIC, Office of Public Affairs, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make an online request for publications, products, or other materials from the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains names, business or organization affiliations, addresses, phone numbers, email addresses, order history, payment information (debit and/or credit card information), identity verification information (username, user ID, and password), fulfillment information (shipping and delivery instructions), and other contact information provided by individuals covered by this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

This system of records is used to organize and process requests for publications, products, or other materials offered by the FDIC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(7) To Pay.gov to obtain debit or credit card approval or disapproval from the issuing financial institution.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media at a secure site and on secure servers maintained by a contractor.

Retrievability: Records are indexed and retrieved by name, order number, and date.

Safeguards: Electronic transmission records are password-protected and accessible only by authorized personnel. Debit and credit card information is encrypted.

Retention and Disposal: These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is completed by electronic purging and removal of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Web Officer, Office of Public Affairs, FDIC, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who contact the FDIC, FDIC personnel, and contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0032

SYSTEM NAME:

Nationwide Mortgage Licensing System and Registry.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Financial Industry Regulatory Authority, 9509 Key West Avenue, Rockville, MD 20850 (Background Check System data); HP Enterprise Services Charlotte SMC, 9014 Research Drive, Charlotte, NC 28262 (Production Center); and HP Enterprise Services Plano SMC, 6901 Windcrest Drive, Plano, TX 75024 (Dual Use Test and Disaster Recovery Facility).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residential mortgage loan originators (MLOs) employed with: a depository institution; a subsidiary owned and controlled by a depository institution and regulated by a Federal banking agency; or an institution regulated by the Farm Credit Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains information documenting identity, including name and former names, Social Security number, gender, date of birth, and place of birth; home and business contact information; the date on which the MLO becomes an employee with the institution; criminal history, including the results of a background check; financial services-related employment history; civil, arbitration, regulatory, and disciplinary actions arising out of the MLO's financial services; and licensure revocations and suspensions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act (12 U.S.C. 5106)).

PURPOSE(S):

The system is utilized to register MLOs employed by state and federally regulated depository institutions in a national registry, as required by the S.A.F.E. Act. The information is maintained to support regulatory supervision while providing the general public with access to certain information concerning MLOs including names and employment histories.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To other Federal, State or foreign financial institutions supervisory or regulatory authorities;

(7) To depository institutions or their subsidiaries for use in registering employees as mortgage loan originators or renewing employee registrations;

(8) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(10) To the appropriate governmental or self-regulatory organizations when relevant to the organization's regulatory or supervisory responsibilities or if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(11) To third parties when the information relates to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public in accordance with section 1507 of the S.A.F.E. Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media.

Retrievability: Records are retrieved by an individual MLO's name or unique

identification number and by the financial institution's name.

Safeguards: Records are stored in a locked environment. Access to the system is limited to users who satisfy a comprehensive background check. The extent to which users have access is based on pre-determined roles. All data exchanges take place over an encrypted network.

Retention and Disposal: There is presently no records control schedule covering the disposition and retention of FDIC records maintained in NMLSR. FDIC staff will work with the National Archives and Records Administration to establish disposition and retention authority for FDIC records maintained in NMLSR. No data or other FDIC records of the system will be destroyed prior to obtaining such disposition and retention authority.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Depositor and Consumer Protection, FDIC, 550 17th Street NW., Washington, DC 20429; and State Regulatory Registry LLC, 1155 Connecticut Avenue NW., Fifth Floor, Washington, DC 20036.

NOTIFICATION PROCEDURES:

Records created by a MLO in the Nationwide Mortgage Licensing System and Registry may be accessed or amended directly by the MLO. If assistance is required to access or amend such a record, contact the NMLS Call Center at (240) 386–4444 or State Regulatory Registry LLC, 1155 Connecticut Avenue NW., Fifth Floor, Washington, DC 20036. Any other individual wishing to determine if he or she is named in this system of records or who is seeking access or amendment to records maintained in this system of records must submit a request in writing to the Legal Division, FOIA/Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. The request to the FDIC should contain: (1) A statement that it is made pursuant to the Privacy Act of 1974, (2) the name of the system of records expected to contain the records requested or a concise description of such system of records, (3) necessary information to verify the identity of the requester, including the requester's name and residence address, (4) a notarized statement attesting to the requester's identity, and (5) any other information that may assist in the rapid identification of the records for which access or amendment is being requested.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedures'' above except that the envelope mailed to the FDIC should be clearly marked ''Privacy Act Amendment Request.'' A request to the FDIC for amendment of a record should contain the information set forth in ''Notification Procedures'' above. In addition, the request should also: (1) Specify the portion of the record requested to be amended, and (2) describe the nature of and reasons for each requested amendment in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from MLOs who submit information to the registry and the results of FBI background checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0033

SYSTEM NAME:

Emergency Notification Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Division of Administration, FDIC, 550 17th Street NW., Washington, DC 20429; FDIC regional or area offices (See Appendix A for a list of the FDIC regional offices and their addresses); and at a secure site and on secure web-based servers maintained by a contractor for the FDIC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current FDIC employees, contractors, and other registered users.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes individual contact information including name, personal telephone numbers, personal email addresses, official business phone number, and official business email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

PURPOSE(S):

The system provides for multiple communication device notification to registered FDIC personnel during and after local, regional or national emergency events and security incidents, disseminates time sensitive information, provide personnel accountability and status during emergency events, and conduct communication tests. The system also provides for the receipt of real-time message acknowledgements and related management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate Federal agencies and other public authorities for use in records management inspections;

(6) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or

appeals, or if needed in the performance of other authorized duties;

(7) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; and

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media at a secure site and on secure servers maintained by a contractor.

Retrievability: Records are indexed and retrieved by groups and individual name.

Safeguards: Electronic records are password-protected and accessible only by authorized personnel.

Retention and Disposal: Records are retained in accordance with National Archives and Records Administration and FDIC Records Retention and Disposition Schedules. Disposal is completed by electronic purging and removal of records.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, FDIC Division of Administration, Security and Emergency Preparedness Section, 550 17th Street NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, and comply with the procedures contained in FDIC's Privacy Act regulations, 12 CFR 310.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

RECORD SOURCE CATEGORIES:

The sources of records in this category include the individuals to whom the records pertain and information taken from official FDIC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FDIC–30–64–0034

SYSTEM NAME:

Office of Inspector General Inquiry Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

FDIC Office of Inspector General (OIG), 3501 North Fairfax Drive, Arlington, VA 22226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals—including, but not limited to, members of the public, the media, contractors and subcontractors, Congressional sources, and employees of the FDIC or of other governmental agencies—who communicate with the Office of Inspector General (OIG) through written correspondence or telephonically including the OIG Hotline. The system also includes individuals who receive correspondence from OIG and those who are the subject of correspondence to or from OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence, memoranda, email, faxes, other electronic or digital communications, and additional documentation supplied by the source of the records. Records provided by the source may include personally identifiable information including name, addresses, email addresses, telephone numbers, and any other information voluntarily submitted such as Social Security Number, as well as information developed by OIG, such as the date the matter was received by OIG, the date the matter was closed, and the manner of disposition. Records that involve law enforcement matters are transferred to the OIG investigative function, whose applicable system of records is covered by FDIC–30–64–0010, Investigative Files of the Office of Inspector General.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act of 1978, as amended (5 U.S.C. app.).

PURPOSE:

This system of records is used to document and respond to correspondence addressed or directed to FDIC OIG; to track the receipt and disposition of correspondence; and to act as a means of referring allegations of illegality, fraud and abuse to the OIG investigative function.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To the appropriate Federal, State, local, foreign or international agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the record, either by itself or in combination with other information, indicates a violation or potential violation of law, or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, alternative dispute resolution mediator or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings when the FDIC or OIG is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary;

(3) To a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the records pertain;

(4) To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To the FDIC's or another Federal agency's legal representative, including the U.S. Department of Justice or other retained counsel, when the FDIC, OIG or any employee thereof is a party to litigation or administrative proceeding

or has a significant interest in the litigation or proceeding;

(6) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(7) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(8) To appropriate Federal agencies and other public authorities for use in records management inspections;

(9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(10) To an insured depository institution which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(11) To the primary Federal or State financial regulator of an insured depository institution that is the subject of an inquiry or complaint;

(12) To authorized third-party sources during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint;

(13) To the U.S. Office of Personnel Management, Government Accountability Office, Office of Government Ethics, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, Office of Management and Budget or the Federal Labor Relations Authority of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with hiring or retaining an employee, rendering advice requested by OIG, issuing a security clearance, reporting an investigation of an employee, reporting an investigation of prohibited personnel practices, letting a contract or issuing a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter; and

(14) To other Federal Offices of Inspector General or other entities for the purpose of conducting quality assessments or peer reviews of the OIG, or its investigative components, or for statistical purposes.

Note: In addition to the foregoing: (1) A record which is contained in this system and derived from another FDIC system of records may be disclosed as a routine use as specified in the published notice of the system of records from which the record is derived; and (2) records contained in this system that are subsequently transferred to OIG's investigative function may be disclosed as a routine use as specified in FDIC–30–64–0010, Investigative Files of the Office of Inspector General.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are stored in electronic media and in paper format within individual file folders.

Retrievability: Records are indexed and retrieved by name, date received or closed, and/or subject.

Safeguards: The electronic system files are accessible only by authorized personnel on a need-to-know basis. File folders are maintained in lockable metal file cabinets and lockable offices accessible only by authorized personnel.

Retention and Disposal: In general, these records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with National Archives and Records Administration and the FDIC Records Retention and Disposition schedules. Disposal of records in paper format is by shredding or other appropriate disposal means. For records transferred from this system to OIG investigative function, the retention period and manner of destruction will be governed by the applicable investigative-records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

FDIC Inspector General or his/her immediate office, 3501 North Fairfax Drive, Arlington, VA 22226.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access or amendment to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA & Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, in accordance with FDIC regulations at 12 CFR part 310. Individuals requesting their records must provide their name, address and a notarized statement attesting to their identity. Note: Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC–30–64–0010, Investigative Files of the Office of Inspector General. See ''Exemptions Claimed for the System'' below.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310. Note: Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC–30–64–0010, Investigative Files of the Office of Inspector General. See ''Exemptions Claimed for the System'' below.

RECORD SOURCE CATEGORIES:

Current and former employees of the FDIC, other government employees, private individuals, vendors, contractors, subcontractors, witnesses and informants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC–30–64–0010, Investigative Files of the Office of Inspector General.

Appendix A

FDIC Atlanta Regional Office, 10 Tenth Street NE., Suite 800, Atlanta, GA 30309–3906.

FDIC Chicago Regional Office, 300 South Riverside Plaza, Suite 1700, Chicago, IL 60606.

FDIC Boston Regional Office, 15 Braintree Hill Office Park, Suite 100, Braintree, MA 02184–8701.

FDIC Dallas Regional Office, 1601 Bryan Street, Dallas, TX 75201.

FDIC Kansas City Regional Office, 1100 Walnut Street, Suite 2100, Kansas City, MO 64106.	FDIC Memphis Area Office, 5100 Poplar Avenue, Suite 1900, Memphis, TN 38137–1900.
FDIC New York Regional Office, 350 Fifth Avenue, New York, NY 10118–0110.	FDIC San Francisco Regional Office, 25 Jessie Street at Ecker Square, Suite 2300, San Francisco, CA 94105–2780.

Dated at Washington, DC this 7th day of December, 2011.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–31786 Filed 12–12–11; 8:45 am]

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