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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 12, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1188; Directorate Identifier 2008–SW–46–AD; Amendment 39–17171; AD 2012–17–08]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding four airworthiness directives related to the main rotor yoke (yoke) on the Bell Model 204B, 205A, 205A–1, 205B, and 212 helicopters, to retain certain inspections and certain life limits, to require an increased inspection frequency for certain yokes, and to expand these inspections and retirement lives to other yokes. This airworthiness directive is prompted by past reports of cracks in the yoke, another recent report of a cracked yoke, and the decision that other yokes, approved based on identicality, need to be subject to the same inspection requirements and retirement lives. The actions are intended to detect a crack in a yoke to prevent failure of the yoke, and subsequent loss of control of the helicopter.

DATES: This AD is effective February 27, 2013.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On November 2, 2011, at 76 FR 67628, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Bell Model 204B, 205A, 205A–1, 205B, and 212 helicopters, with a yoke, part number (P/N) AAI–4011–102 (all dash numbers), ASI–4011–102 (all dash numbers), or 204–011–102 (all dash numbers), installed, certificated in any category. That NPRM proposed to supersede four previously-issued ADs for the Bell Model 204, 205, and 212 series helicopters: AD 79–20–05, Amendments 39–3572 (44 FR 55556, September 27, 1979), 39–3626 (44 FR 70123, December 6, 1979), and 39–3662 (45 FR 6922, January 31, 1980); AD 81–19–01, Amendment 39–4207 (46 FR 45595, September 14, 1981); AD 81–19–02, Amendment 39–4208 (46 FR 45595, September 14, 1981); and AD 93–05–01, Amendment 39–8507 (58 FR 13700, March 15, 1993). Those ADs required inspecting certain yokes installed on these helicopters, established retirement life limits for these yokes, and required operators to log additional hours against the retirement life of the yokes for Model 212 helicopters conducting more than four external load lifts per hour.

Since the issuance of those ADs, certain yokes manufactured under a parts manufacturer approval (PMA) were identified as being susceptible to the same cracking as the Bell manufactured yokes. The NPRM proposed retaining the requirements of the existing ADs while expanding the applicability to include yokes produced under a PMA whose design approval was based on identicality with the affected Bell yoke. The NPRM also proposed giving operators credit for the accumulated operating time on certain yokes covered by the superseded ADs.

The proposed requirements of this AD were intended to prevent cracking of a yoke, failure of the yoke, and subsequent loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (76 FR 67628, November 2, 2011).

Related Service Information

Bell issued Alert Service Bulletins (ASBs) Nos. 204–92–36, 205–92–51, and 212–92–80, all dated October 23, 1992. These ASBs specify replacing yoke P/N 204–011–102 (all dash numbers) by December 31, 1993, with yoke P/N 212–011–102–105 or –109, depending on the helicopter configuration. The replacement yokes are made from stainless steel and have improved design characteristics that address the corrosion problems and are not subject to any heavy lift cycle counting required for previous yokes installed on the Model 205B and 212 helicopters.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for minor editorial changes and a change to correct one instance of the word ''Unfactored'' to the word ''Factored.'' In addition, the notes were removed to prevent any misconception that they were mandatory procedures. These minor editorial changes are consistent with the intent of the proposals in the

NPRM and will not increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 15 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Reviewing the helicopter records and determining the total factored hours TIS will require about 3 work hours at an average labor rate of $85 per hour, for a total cost of $255 per helicopter and a total cost to the U.S. operator fleet of $3,825. Removing the yoke from the helicopter and performing a visual inspection and MPI will require about 35 work hours at an average labor rate of $85 per work hour, for a total cost of $2,975 per helicopter and a total cost to the U.S. operator fleet of $44,625 per inspection cycle.

To replace a yoke will require about 32 work hours at an average labor rate of $85 per hour for labor costs of $2,720 per helicopter, and required parts will cost $40,157 for a total cost per helicopter of $42,877 and a total cost to the U.S. operator fleet of $643,155.

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 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 and placed it in the AD docket.

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 Amendments 39–8507 (58 FR 13700, March 15, 1993); 39–4208 (46 FR 45595, September 14, 1981); 39–4207 (46 FR 45595, September 14, 1981); 39–3662 (45 FR 6922, January 31, 1980); 39–3626 (44 FR 70123, December 6, 1979); and 39–3572 (44 FR 55556, September 27, 1979); and by adding a new airworthiness directive (AD) to read as follows:

2012–17–08 Bell Helicopter Textron, Inc. (Bell): Amendment 39–17171; Docket No. FAA–2011–1188; Directorate Identifier 2008–SW–46–AD.

(a) Applicability

This AD applies to Model 204B, 205A, 205A–1, 205B, and 212 helicopters, with a main rotor yoke (yoke), part number (P/N) AAI–4011–102 (all dash numbers), ASI–4011–102 (all dash numbers), or 204–011–102 (all dash numbers), installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a yoke. This condition could result in failure of a yoke, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 93–05–01, Amendment 39–8507 (58 FR 13700, March 15, 1993); AD 81–19–02, Amendment 39–4208 (46 FR 45595, September 14, 1981; AD 81–19–01, Amendment 39–4207 (46 FR 45595, September 14, 1981); and AD 79–20–05, Amendments 39–3662 (45 FR 6922, January 31, 1980), 39–3626 (44 FR 70123, December 6, 1979), and 39–3572 (44 FR 55556, September 27, 1979).

(d) Effective Date

This AD becomes effective February 27, 2013.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) For helicopters with yoke, P/N AAI–4011–102 (all dash numbers) and ASI–4011–102 (all dash numbers), installed, within 100 hours time-in-service (TIS):

(i) Create a component history card or equivalent record for each yoke.

(ii) Determine the model for each helicopter on which the yoke has been installed from the time the yoke had zero hours TIS.

(iii) In accordance with the rate per hour categories shown in Table 1 to paragraph (f) of this AD, categorize the accumulated ''Factored Hours TIS'' on each yoke by determining the types of operation AND the rate per hour of external load lifts for each hour TIS accumulated on each yoke. One external load lift occurs each time the helicopter picks up an external load and drops it off. For determining the proper rate per hour category for external load operations, any external load lift in which the helicopter achieves a vertical altitude difference of greater than 200 feet indicated altitude between the pickup and drop-off point counts as two external load lifts.

TABLE 1 TO PARAGRAPH (f)—FACTORED HOURS TIS FOR A YOKE

[Number of unfactored hours TIS and factored hours TIS are examples for illustration purposes only]

Helicopter model	Types of operation	Rate per hour of external load lifts and takeoffs	Unfactored hours TIS	Hours TIS factor	Factored hours TIS on yoke (unfactored hours TIS × hours TIS factor)
Yokes installed on any Model 204B, 205A, or 205A–1 helicopter.	All Operations	All	120	1	120
Yokes installed on any Model 205B or 212 helicopter.	External Load Operations	1 to 5	105	1	105
		5.1 to 8		1.5	
		8.1 to 12		2	
		12.1 to 18		3	
		18.1 to 32	170	5	850
		32.1 to 48		7	
		more than 48		9	
		Unknown	50	7	350
	Internal Load Operations	All Takeoffs	2,025	1	2,025
Total Factored Hours TIS on Yoke (Summation of the Factored Hours TIS)					3,450

(iv) By reference to Table 1 to paragraph (f) of this AD, enter the ''Unfactored Hours TIS'' for each category as determined by paragraph (f)(1)(iii) of this AD. Calculate the ''Factored Hours TIS'' by multiplying the ''Unfactored Hours TIS'' by the ''Hours TIS Factor.'' Determine the accumulated ''Total Factored Hours TIS'' on each yoke by adding the factored hours TIS for each type of operation and helicopter model. Tracking the Total Factored Hours TIS is only for establishing a retirement life and not for tracking inspection intervals.

(v) Record the accumulated Total Factored Hours TIS on the component history card or equivalent record for each yoke.

(vi) Continue to factor the hours TIS for each yoke by following paragraph (f)(1)(ii) through (f)(1)(iv) of this AD, and record the additional factored hours TIS on the component history card or equivalent record.

(2) For helicopters with yoke, P/N 204–011–102 (all dash numbers), installed, before further flight:

(i) For hours TIS accumulated before the effective date of this AD, calculate and record the Total Factored Hours TIS as follows:

(A) For the Model 212 helicopters, 1 hour TIS in which passenger or internal cargo was carried equals 1 factored hour TIS; 1 hour TIS where more than 4 external load lifts occurred equals 5 factored hours TIS.

(B) For the Model 204 and 205 series helicopters, 1 hour TIS equals 1 factored hour TIS.

(ii) For hours TIS accumulated after the effective date of this AD, calculate and record the factored hours TIS on the yoke in accordance with the requirements of paragraphs (f)(1)(i) thorough (f)(1)(vi) of this AD.

(3) Revise the Airworthiness Limitations section of the applicable maintenance manuals or the Instructions for Continued Airworthiness (ICAs) by establishing a new retirement life of 3,600 Total Factored Hours TIS for each yoke, P/N AAI–4011–102 (all dash numbers), ASI–4011–102 (all dash numbers), or 204–011–102 (all dash numbers), by making pen and ink changes or inserting a copy of this AD into the Airworthiness Limitations section of the maintenance manual or ICAs.

(4) Record a life limit of 3,600 Total Factored Hours TIS for each yoke, P/N AAI–4011–102 (all dash numbers), ASI–4011–102 (all dash numbers), or 204–011–102 (all dash numbers), on the component history card or equivalent record.

(5) Within 100 hours TIS or 600 hours TIS since the last magnetic particle inspection (MPI) of the yoke, whichever occurs later, and thereafter at intervals not to exceed 600 hours TIS, for any yoke installed on any Model 205B or 212 helicopter:

(i) Remove the yoke from the main rotor hub assembly (hub). Using a 5-power or higher magnifying glass, visually inspect each pillow block bushing hole, spindle radius, and center section web for any corrosion or mechanical damage.

(ii) Perform an MPI of each yoke for a crack.

(6) Within 100 hours TIS or 2,400 hours TIS since the last MPI of the yoke, whichever occurs later, and thereafter at intervals not to exceed 2,400 hours TIS, for any yoke installed on any Model 204B, 205A, or 205A–1 helicopter:

(i) Remove the yoke from the hub. Using a 5-power or higher magnifying glass, visually inspect each pillow block bushing hole, spindle radius, and center section web for any corrosion or mechanical damage.

(ii) Perform an MPI of each yoke for a crack.

(7) Before further flight, replace each yoke with an airworthy yoke if:

(i) The yoke has 3,600 or more Total Factored Hours TIS; or

(ii) The Total Factored Hours TIS for the yoke is unknown and cannot be determined; or

(iii) The yoke has any corrosion or mechanical damage that exceeds any of the maximum repair damage limits; or

(iv) The yoke has a crack.

(g) Special Flight Permits

Special flight permits may only be issued under 14 CFR 21.197 and 21.199 for the purpose of operating the helicopter to a location where the MPI requirements of paragraphs (f)(5) or (f)(6) of this AD can be performed.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

Bell Alert Service Bulletin Nos. 204–92–36, 205–92–51, and 212–92–80, all dated October 23, 1992, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6220: Main Rotor Head.

Issued in Fort Worth, Texas, on December 21, 2012.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–00985 Filed 1–22–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0022; Directorate Identifier 2012–SW–004–AD; Amendment 39–17322; AD 2013–02–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Model 206L, 206L–1, 206L–3, and 206L–4 helicopters. This AD requires inspecting certain hydraulic servo actuator assemblies (servo) for a loose nut, shaft, and clevis assembly, modifying or replacing the servo as necessary, and reidentifying the servo. This AD is prompted by an investigation after an accident and the determination that there was a loose connection due to improper lock washer installation. These actions are intended to detect loose or misaligned parts of the servo to prevent failure of the servo and subsequent loss of control of the helicopter.

DATES: This AD becomes effective February 7, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document February 7, 2013.

We must receive comments on this AD by March 25, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 economic evaluation The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

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 prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

Transport Canada Civil Aviation (TCCA) has issued AD No. CF–2011–19R1, Revision 1, dated December 7, 2011, to correct an unsafe condition for the Bell Model 206L, 206L–1, 206L–3 helicopters, all serial numbers (S/N), and Model 206L–4 helicopters, S/Ns 52001 through 52430, with servo, part number (P/N) 206–076–062–103, installed. TCCA advises that a ''quality escape'' by a supplier occurred, and a number of Bell servos may have a loose nut, shaft, and clevis assembly. According to TCCA, the loose connection is due to improper lock washer installation. TCAA advises that this discrepancy is not traceable or identifiable except by inspection and that a ''disconnect'' of the affected components may lead to loss of control of the helicopter. TCAA states Revision 1 of its AD retains the mandated inspections and corrective action in the original issue of its AD but expands the applicability to include all serial-numbered servos.

FAA's Determination

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the bilateral agreement, TCCA has kept the FAA informed of the situation described above. We are issuing this AD because we evaluated all information provided by TCCA and determined the unsafe condition is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Bell has issued Alert Service Bulletin (ASB) No. 206L–11–169, Revision B, dated August 29, 2011 (ASB), which specifies, before next flight, unless previously accomplished, a one-time inspection for loose or misaligned parts of the servos, P/N 206–076–062–103, installed on Bell Model 206L, 206L–1, and 206L–3 helicopters, all S/Ns, and Model 206L–4 helicopters, S/Ns 52001 through 52430. TCCA classified this ASB as mandatory and issued AD No. CF–2011–19R1 to ensure the continued airworthiness of these helicopters.

Differences Between This AD and the TCAA AD

The TCCA AD requires you to return the parts removed from service to the manufacturer. This AD does not.

AD Requirements

This AD requires for each servo, before further flight, retracting the boot

and determining whether the nut, shaft, or clevis assembly turns independently from each other. If the shaft turns independently this AD requires replacing the servo with an airworthy servo. If the shaft does not turn independently, this AD requires inspecting the servo to determine the tab alignment. If at least one tab is not aligned with and bent flush against a nut flat surface and at least one tab is not aligned with and bent flush against a flat surface of the clevis assembly, this AD requires replacing the servo with an airworthy servo. If any tab of the lock washer is not bent flush against either a flat surface of the nut or clevis assembly, this AD requires bending the tab flush against a flat surface. This AD also requires re-identifying the servo on the identification plate.

Costs of Compliance

We estimate that this AD will affect 695 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take about .5 work hour to inspect and re-identify a servo at $85 per work hour for a total cost per helicopter of about $43, and a total cost to the U.S. operator fleet of $29,538. Replacing a servo will take about 2 work hours and parts costing $33,000, for a total cost per helicopter of $33,170.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished before further flight.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice an opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

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, 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 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 and placed it in the AD docket.

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):

2013–02–01 Bell Helicopter Textron Canada Limited (Bell): Amendment 39–17322; Docket No. FAA–2013–0022; Directorate Identifier 2012–SW–004–AD.

(a) Applicability

This AD applies to Bell Model 206L, 206L–1, and 206L–3 helicopters, all serial numbers (S/N), and Model 206L–4 helicopters, S/Ns 52001 through 52430, with a hydraulic servo actuator assembly (servo), part number (P/N) 206–076–062–103, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as loose or misaligned parts of the servo. This condition could result in failure of the servo and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 7, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Before further flight, for each servo:

(1) Retract the boot as depicted in Figure 1 of Bell Alert Service Bulletin (ASB) No. 206L–11–169, Revision B, dated August 29, 2011 (ASB).

(2) Applying only hand pressure, determine whether the nut, shaft, and clevis assembly turn independently from each other.

(i) If the shaft turns independently of the nut or the clevis assembly, before further flight, replace the servo with an airworthy servo.

(ii) If the shaft does not turn independently of the nut or the clevis assembly, inspect to determine whether at least one tab of the lock washer (tab) is aligned with and bent flush against a flat surface of the nut and whether at least one tab is aligned with and bent flush against a flat surface of the clevis assembly.

(A) If at least one tab is aligned with and bent flush against a nut flat surface and at least one tab is aligned with and bent flush against a flat surface of the clevis assembly, for any tab that is not bent flush against either a flat surface of the nut or clevis assembly, bend it flush against a flat surface.

(B) If at least one tab is not aligned with and bent flush against a nut flat surface and at least one tab is not aligned with and bent flush against a flat surface of the clevis assembly, before further flight, replace the servo with an airworthy servo.

(3) Re-identify the servo by metal-impression stamping or by vibro-etching the letter ''V'' at the end of P/N 206–076–062–103V on the identification plate.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in Transport Canada Civil Aviation AD CF–2011–19R1, Revision 1, dated December 7, 2011.

(h) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bell ASB No. 206L–11–169, Revision B, dated August 29, 2011.

(ii) Reserved.

(3) For Bell service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference 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/cfr/ibr-locations.html.*

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6730 Rotorcraft Servo System.

Issued in Fort Worth, Texas, on January 9, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–01008 Filed 1–22–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Chapter II, Parts 272 and 273

National Technical Information Service

15 CFR Chapter XI, Parts 1150, 1160, and 1170

National Institute of Standards and Technology

37 CFR Chapter IV, Parts 401 and 404

Under Secretary for Technology

37 CFR Chapter V, Part 501

[Docket No: 080723893–2238–01]

RIN 0693–AB60

Redelegations of Authority Resulting From the America COMPETES Act

AGENCY: National Institute of Standards and Technology, National Technical Information Service, and Under Secretary for Technology, United States Department of Commerce.

ACTION: Final rule.

SUMMARY: The Under Secretary of Commerce for Standards and Technology, U.S. Department of Commerce, issues a final rule that amends regulations to reflect the abolishment of the Technology Administration and the resulting redelegations of authority.

DATES: This rule is effective on January 23, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 23, 2013.

FOR FURTHER INFORMATION CONTACT: Henry Wixon, Chief Counsel for NIST, National Institute of Standards and Technology, Mail Stop 1052, Gaithersburg, MD 20899–1052, telephone: (301) 975–2803.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2007, the President signed into law the America COMPETES Act (Pub. L. 110–69) (''COMPETES Act''). In part, the COMPETES Act amended the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3704) by abolishing the Technology Administration and repealing certain authorities of the Under Secretary for Technology. The Secretary of Commerce has redelegated the remaining authorities of the Under Secretary for Technology through a memorandum issued on November 14, 2007. This rule revises the pertinent regulations to reflect the changes in authorities as well as updates addresses and standards referenced in the regulations.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to 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 currently valid OMB Control Number.

There are no collections of information involved in this rulemaking.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects

15 CFR Part 272

Arms and munitions, Incorporation by reference, Labeling, Toys, Transportation.

15 CFR Part 273

Metric system.

15 CFR Part 1150

Arms and munitions, Incorporation by reference, Labeling, Toys, Transportation.

15 CFR Part 1160

Business and industry, Research, Science and technology.

15 CFR Part 1170

Metric system.

37 CFR Part 401

Administrative practice and procedure, Government contracts, Grant programs, Inventions and patents, Nonprofit organizations, Small businesses.

37 CFR Part 404

Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 501

Administrative practice and procedure, Government employees, Inventions and patents.

Dated: November 2, 2012.

Patrick Gallagher,

Under Secretary of Commerce for Standards and Technology.

For the reasons set forth in the preamble, under the authority of the America COMPETES Act, Public Law 110–69; the National Institute of Standards and Technology Reauthorization Act of 2010, Public Law 111–358; and 15 U.S.C. 277, 15 CFR chapters II and XI and 37 CFR chapters IV and V are amended as follows:

Title 15—Commerce and Foreign Trade

CHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE

■ 1a. The heading of Subchapter H of Chapter II is added to read as follows:

SUBCHAPTER H—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS

■ 1b. The heading of Subchapter I of Chapter II is added to read as follows:

SUBCHAPTER I—METRIC CONVERSION POLICY FOR FEDERAL AGENCIES

■ 1c. The heading of Chapter XI is revised to read as follows:

CHAPTER XI—NATIONAL TECHNICAL INFORMATION SERVICE, DEPARTMENT OF COMMERCE

PART 1150—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS

■ 1d. The authority citation for Title 15, part 1150 continues to read as follows:

Authority: Section 4 of the Federal Energy Management Improvement Act of 1988, 15 U.S.C. 5001.

■ 2. Redesignate Title 15, part 1150 as title 15, part 272 and transfer to Chapter II, Subchapter H.

■ 3. Newly redesignated § 272.1 is amended by revising paragraph (b) to read as follows:

§ 272.1 Applicability.

* * * * *

(b) Traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof, as described in American Society for Testing and Materials standard F 589–85, Standard Consumer Safety Specification for Non-Powder Guns, June 28, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the IHS Inc., 15 Inverness Way East, Englewood, CO 80112, *www.global.ihs.com,* Phone: 800.854.7179 or 303.397.7956, Fax: 303.397.2740, Email: *global@ihs.com.* A copy is available for inspection in the Office of the Chief Counsel for NIST, National Institute of Standards and Technology, Telephone: (301) 975–2803, 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.*

* * * * *

■ 4. Newly redesignated § 272.2 is revised to read as follows:

§ 272.2 Prohibitions.

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm (''device'') covered by this part as set forth in § 272.1 unless such device contains, or has affixed to it, one of the markings set forth in § 272.3, or unless this prohibition has been waived by § 272.4.

■ 5. Newly redesignated § 272.3 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 272.3 Approved markings.

* * * * *

(a) A blaze orange (Fed-Std-595B 12199) or orange color brighter than that specified by the federal standard color number, solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel.

(b) A blaze orange (Fed-Std-595B 12199) or orange color brighter than that specified by the Federal Standard color number, marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzle end for a depth of at least 6 millimeters.

* * * * *

(e) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Federal Standard 595B, December 1989, color number 12199 (Fed-Std-595B 12199), may be obtained from the General Services Administration at General Services Administration, Federal Acquisition Service, FAS Office of General Supplies and Services, Engineering and Cataloging Division (QSDEC) Arlington, VA 22202 or at the General Services Administration Web site at: *http://apps.fas.gsa.gov/pub/fedspecs/.* A copy may be inspected in the Office of the Chief Counsel for NIST, National Institute of Standards and Technology, Telephone: (301) 975–2803 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.*

■ 6. Newly redesignated § 272.4 is revised to read as follows:

§ 272.4 Waiver.

The prohibitions set forth in § 272.2 may be waived for any toy, look-alike or imitation firearm that will be used only in the theatrical, movie or television industry. A request for such a waiver should be made, in writing, to the Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1052, Gaithersburg, Maryland 20899–1052. The request must include a sworn affidavit which states that the toy, look-alike, or imitation firearm will be used only in the theatrical, movie or television industry. A sample of the item must be included with the request.

PART 1160—[REMOVED]

■ 7. Remove Title 15, part 1160.

PART 1170—METRIC CONVERSION POLICY FOR FEDERAL AGENCIES

■ 8. The authority citation for Title 15, part 1170 is revised to read as follows:

Authority: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a, DOO 30–2A.

■ 9. Redesignate Title 15, part 1170 as Title 15, part 273 and transfer to Chapter II, Subchapter I.

■ 10. Newly redesignated § 273.3 is amended by revising paragraph (a) to read as follows:

§ 273.3 General policy.

* * * * *

(a) The Director of the National Institute of Standards and Technology will assist in coordinating the efforts of Federal agencies in meeting their obligations under the Metric Conversion Act, as amended.

* * * * *

Title 37—Patents, Trademarks, and Copyrights

■ 11. The heading of Title 37, Chapter IV is revised to read as follows:

CHAPTER IV—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

■ 12. The authority citation for Title 37, part 401 is revised to read as follows:

Authority: 35 U.S.C. 206; DOO 30–2A.

■ 13. Section 401.2 is amended by revising paragraph (j) to read as follows:

§ 401.2 Definitions.

* * * * *

(j) The term *Secretary* means the Director of the National Institute of Standards and Technology.

* * * * *

■ 14. Section 401.17 is revised to read as follows:

§ 401.17 Submissions and inquiries.

All submissions or inquiries should be directed to the Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1052, Gaithersburg, Maryland 20899–1052; telephone: (301) 975–2803; email: *nistcounsel@nist.gov.*

PART 404—LICENSING OF GOVERNMENT OWNED INVENTIONS

■ 15. The authority citation for Title 37, part 404 is revised to read as follows:

Authority: 35 U.S.C. 207–209, DOO 30–2A.

CHAPTER V—UNDER SECRETARY FOR TECHNOLOGY, DEPARTMENT OF COMMERCE

■ 16. Title 37, parts 500–599 are transferred from Title 37, Chapter V, to Title 37, Chapter IV.

■ 17. Title 37, Chapter V is removed and reserved.

PART 501—UNIFORM PATENT POLICY FOR RIGHTS IN INVENTIONS MADE BY GOVERNMENT EMPLOYEES

■ 18. The authority citation for Title 37, part 501 is revised to read as follows:

Authority: Sec. 4, E.O. 10096, 3 CFR, 1949–1953 Comp., p. 292, as amended by E.O. 10930, 3 CFR, 1959–1963 Comp., p. 456 and by E.O. 10695, 3 CFR, 1954–1958 Comp., p. 355, DOO 30–2A.

■ 19. Section 501.3 is amended by revising paragraph (a) to read as follows:

§ 501.3 Definitions.

(a) The term *Secretary,* as used in this part, means the Director of the National Institute of Standards and Technology.

* * * * *

■ 20. Section 501.11 is revised to read as follows:

§ 501.11 Submissions and inquiries.

All submissions or inquiries should be directed to the Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1052, Gaithersburg, MD 20899–1052; telephone: (301) 975–2803; email: *nistcounsel@nist.gov.*

[FR Doc. 2012–27466 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 34–62575A and PA–47A; File No. S7–19–11]

Authority Citation Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: On August 6, 2010 and September 16, 2011, the Securities and Exchange Commission (''Commission'') published documents in the **Federal Register** (75 FR 47449 and 76 FR 57637, respectively) that each included an inaccurate amendatory instruction pertaining to an authority citation. The Commission is publishing this technical amendment to accurately reflect the authority citation in the Code of Federal Regulations.

DATES: *Effective Date:* January 23, 2013.

FOR FURTHER INFORMATION CONTACT: Linda Cullen, Office of the Secretary, at (202) 551–5402; Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

SUPPLEMENTARY INFORMATION: The final rules that are subject to this correction included inaccurate amendatory instructions that resulted in the publication of two Editorial Notes to Part 200. This document is intended only to correct the authority citation to subpart A of Part 200 and remove the two Editorial Notes and does not affect any other aspects of the two original final rules.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Privacy.

Accordingly, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The general authority citation for part 200, subpart A is revised, and a sectional authority for § 200.312 is added to part 200, subpart A in numerical order, to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, 7202, and 7211 et seq., unless otherwise noted.

* * * * *

Section 200.312 is also issued under 5 U.S.C. 552a(k).

* * * * *

Dated: January 15, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–01202 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 249, 269, 274

[Release Nos. 33–9382; 34–68644; 39–2488; IC–30348]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is

adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The revisions are being made primarily to introduce the new EDGARLink Online submission type IRANNOTICE; and support PDF as an official filing format for submission types 497AD, 40–17G, 40–17G/A, 40–17GCS, 40–17GCS/A, 40–24B2, and 40–24B2/A. The EDGAR system is scheduled to be upgraded to support this functionality on January 14, 2013.

DATES: *Effective Date:* January 23, 2013. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of January 23, 2013.

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions on submission type IRANNOTICE, contact Jeffrey Thomas at (202) 551–3600; in the Division of Investment Management for questions concerning submission types 497AD, 40–17G, 40–17G/A, 40–17GCS, 40–17GCS/A, 40–24B2, and 40–24B2/A, contact Heather Fernandez at (202) 551–6708; and in the Office of Information Technology, contact Vanessa Anderson at (202) 551–8800.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 22 (January 2013). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 13.0 on January 14, 2013 and will introduce the following changes: EDGAR will be updated to introduce a new submission type, IRANNOTICE, on EDGAR Filing Web site for filers to submit notices of disclosure filed in Exchange Act quarterly and annual reports under Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012[4] and new section 13(r) of the Securities Exchange Act of 1934.[5] Filers may access this submission type from the 'EDGARLink Online Form Submission' link on the EDGAR Filing Web site. Additionally, filers may construct XML submissions for this submission type by following the EDGARLink Online Technical Specification document.

EDGAR will be updated to allow filers to submit, on a voluntary basis, submission types 497AD, 40–17G, 40–17G/A, 40–17GCS, 40–17GCS/A, 40–24B2, and 40–24B2/A in Portable Document Format (PDF) as an official filing format. EDGAR will continue to accept ASCII and HTML as official filing formats for these submissions.

The new online version of Form N–SAR deployment has been delayed to April 2013. The specific deployment date will be announced on the Commission's public Web site's ''Information for EDGAR Filers'' page (*http://www.sec.gov/info/edgar.shtml*). Filers should continue to use the EDGAR Filer Manual, Volume III: N–SAR Supplement to file their N–SAR submissions. When the online version of Form N–SAR is deployed, EDGAR Filer Manual, Volume III: N–SAR Supplement will be retired. Instructions to file the online version of Form N–SAR addressed in Chapter 9 of EDGAR Filer Manual, Volume II: EDGAR Filing should then be followed.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[6]

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[7] It follows that the requirements of the Regulatory Flexibility Act[8] do not apply.

The effective date for the updated Filer Manual and the rule amendments is January 23, 2013. In accordance with the APA,[9] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 13.0 is scheduled to become available on January 14, 2013. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[10] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[11] Section 319 of the Trust Indenture Act of 1939,[12] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[13]

List of Subjects

17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239, 249 and 269

Reporting and recordkeeping requirements, Securities.

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on Oct. 4, 2012. *See* Release No. 33–9364 (October 15, 2012) [77 FR 62431].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release No. 33–9364 (October 15, 2012) [77 FR 62431] in which we implemented EDGAR Release 12.2. For additional history of Filer Manual rules, please see the cites therein.

[4] Public Law 112–158.

[5] 15 U.S.C. 78m(r).

[6] We also are making a technical correction to the instructions of Form ID (referenced in 17 CFR 239.63, 249.446, 269.7 and 274.402) to conform them with a recent change we made to Rules 10 (17 CFR 232.10) and 101 (17 CFR 232.101) of Regulation S–T and the EDGAR Filer Manual relating to the use of PDF files in connection with the Form ID authentication process. *See* Release No. 33–9353 (Aug. 29, 2012).

[7] 5 U.S.C. 553(b).

[8] 5 U.S.C. 601– 612.

[9] 5 U.S.C. 553(d)(3).

[10] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[11] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[12] 15 U.S.C. 77sss.

[13] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 14 (October 2012). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 22 (January 2013). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also inspect the document 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.*

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and Pub. L. 111–203, § 939A, 124 Stat. 1376, (2010) unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.,* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 5. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, and 78*ll*(d), unless otherwise noted.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 6. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 7. Form ID (referenced in §§ 239.63, 249.446, 269.7 and 274.402 of this chapter) is amended by revising the fourth paragraph of the section entitled ''Using and Preparing Form ID'' of the Form ID General Instructions, to read as follows.

[The revised Form ID will not appear in the Code of Federal Regulations]

FORM ID

UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

* * * * *

FORM ID

GENERAL INSTRUCTIONS

USING AND PREPARING FORM ID

* * * * *

The Form ID application must include a notarized authentication document in PDF format. The application can include other attachments such as a cover letter or Power of Attorney. To assemble the Form ID submission (i.e., associate any attachments with your Form ID application), you must upload them to EDGAR. The PDF document attachment must not contain active content (Actions, embedded JavaScript, etc.), external references (Destinations, Hyperlinks, etc.), and passwords or document security controls.

* * * * *

Dated: January 14, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–01058 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–68668; File No. S7–11–11]

RIN 3235–AL11

Lost Securityholders and Unresponsive Payees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to Rule 17Ad–17 to implement the requirements of Section 929W of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). That Section added to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') subsection (g), ''Due Diligence for the Delivery of Dividends, Interest, and Other Valuable Property Rights,'' which directs the Commission to revise Exchange Act Rule 17Ad–17, ''Transfer Agents' Obligation to Search for Lost Securityholders'' to: extend the requirements of Rule 17Ad–17 to search for lost securityholders from only recordkeeping transfer agents to brokers and dealers as well; add a requirement that ''paying agents'' notify ''unresponsive payees'' that a paying agent has sent a securityholder a check that has not yet been negotiated; and add certain other provisions. The Commission also is adopting a proposed conforming amendment to Rule 17Ad–7(i) and new Rule 15b1–6, a technical rule to help ensure that brokers and dealers have notice of their new obligations with respect to lost securityholders and unresponsive payees.

DATES: The amendments will become effective on March 25, 2013. The

compliance date will be January 23, 2014.

FOR FURTHER INFORMATION CONTACT: Thomas C. Etter, Jr., Special Counsel, at (202) 551–5710, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION

I. Introduction

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] This legislation was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] Title IX of the Dodd-Frank Act provides the Commission with new tools to protect investors and to improve the regulation of securities.[3]

Section 929W of the Dodd-Frank Act added to Section 17A of the Exchange Act subsection (g), which requires the Commission to revise Exchange Act Rule 17Ad–17[4] to extend to brokers and dealers the rule's requirement that recordkeeping transfer agents search for ''lost securityholders.''[5]

Subsection (g) of Section 17A of the Exchange Act further directs the Commission to revise Rule 17Ad–17 to include ''a requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated.''[6] Such written notification must be sent to a missing securityholder no later than seven months after the sending of the not yet negotiated check and may be sent along with a check or other mailing subsequently sent to the missing securityholder.

Section 17A(g)(1)(D)(i) of the Exchange Act provides that ''a security holder shall be considered a 'missing security holder' if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of six months after the sending of the not yet negotiated check.''[7] Section 17A(g)(1)(D)(ii) of the Exchange Act defines the term ''paying agent'' to include ''any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.''[8]

Exchange Act Section 17A(g)(1)(B) and (C) also require that the revisions to Rule 17Ad–17: (1) Provide an exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25;[9] and (2) add a provision to make clear that the notification requirements imposed on paying agents shall have no effect on state escheatment laws.[10]

Exchange Act Section 17A(g)(2) requires the Commission to adopt rules, regulations, or orders necessary to implement the provisions of Section 17A(g)(1).[11] Section 17A(g)(2) further requires the Commission to seek to minimize disruptions to the current systems used by or on behalf of paying agents to process payments to account holders and to avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.[12]

On March 18, 2011, the Commission issued a release proposing for comment amendments to Exchange Act Rules 17Ad–17 and 17Ad–7 (''Proposing Release'').[13] The amendments were designed to implement Section 929W of the Dodd-Frank Act.

The Commission received fourteen comment letters on the proposed rule amendments, including six letters from trade associations.[14] Five commenters generally expressed support for the amendments,[15] and one commenter expressed disapproval.[16] Twelve commenters offered suggestions for modification or requests for clarification with respect to specific provisions of the proposal.[17] As discussed below, we are adopting the proposed amendments to Rule 17Ad–17 with certain modifications based on the comments we received, and we are adopting an amendment to Rule 17Ad–7(i) as proposed. We also are adopting a new rule, Rule 15b1–6, to ensure that brokers and dealers have notice of their new obligations with respect to lost securityholders and unresponsive payees.

II. Final Rule

A. Background

The Commission originally adopted Rule 17Ad–17 in 1997 to address situations where recordkeeping transfer agents have lost contact with

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

[2] *Id.* at Preamble.

[3] *Id.* § 901 (''This section may be cited as the 'Investor Protection and Securities Reform Act of 2010'.''); Title IX (''Investor Protections and Improvements to the Regulation of Securities'').

[4] 17 CFR 240.17Ad–17.

[5] Rule 17Ad–17(b)(2), as amended herein, defines a ''lost securityholder'' to mean ''a securityholder: (i) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file or in the customer security account record of the broker or dealer has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent, broker, or dealer may deem the securityholder to be a lost securityholder as of the day the re-sent item is returned as undeliverable; and (ii) For whom the transfer agent, broker, or dealer has not received information regarding the securityholder's new address.''

[6] Section 17A(g)(1)(A), 15 U.S.C. 78q–1(g)(1)(A). We note that in drafting Exchange Act Section 17A(g), Congress used a two-word formulation of the term ''security holder.'' Currently, in Rule 17Ad–17, however, there is a one-word formulation of the term ''securityholder.'' We do not believe that Congress intended for the term ''security holder'' to have a different meaning than the term ''securityholder.'' Thus, for the sake of consistency within Rule 17Ad–17, we use the term ''missing securityholder'' to discuss the statutory provision and the amendments to Rule 17Ad–17. In addition, as discussed further in Section II.B.2 below, in response to comments, we use the term ''unresponsive payee'' in the rule text and throughout this release in place of the statutory term ''missing securityholder.''

[7] Section 17A(g)(1)(D)(i), 15 U.S.C. 78q–1(g)(1)(D)(i).

[8] Section 17A(g)(1)(D)(ii), 15 U.S.C. 78q–1(g)(1)(D)(ii).

[9] Section 17A(g)(1)(B), 15 U.S.C. 78q–1(g)(1)(B).

[10] Section 17A(g)(1)(C), 15 U.S.C. 78q–1(g)(1)(C).

[11] Section 17A(g)(2), 15 U.S.C. 78q–1(g)(2).

[12] *Id.*

[13] 17 CFR 240.17Ad–17 and 240.17Ad–7; Securities Exchange Act Release No. 64099 (March 18, 2011), 76 FR 16707 (Mar. 25, 2011) (''Proposing Release'').

[14] The Commission received comment letters from six trade associations (representing transfer agents, investment companies, insurance products, the securities industry, the banking industry, and the securities bar), two transfer agents, one broker-dealer, one law firm, and four individuals.

Letters were received from: Mary Pitman, author, *The Little Book of Missing Money* (March 25, 2011); Kara Follis (April 6, 2011); B.J. Luis (April 7, 2011); Chris Barnard (May 2, 2011); Charles V. Rossi, President, The Security Transfer Association, Inc. (''STA'') (May 5, 2011); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI'') (May 9, 2011); Laura Stevenson, Compliance Officer, Computershare Trust Company of Canada/Computershare Investor Services Inc. (''Computershare'') (May 9, 2011); Ronald C. Long, Director of Regulatory Services, Wells Fargo Advisors (''WFA'') (May 9, 2011); Prescott Lovern, President, R & L Associates Law LLC (May 9, 2011); Holly H. Smith and Clifford E. Kirsch, Sutherland Asbill & Brennan, LLP on behalf of its client, The Committee on Annuity Insurers (''Annuity Committee'') (May 9, 2011); Thomas F. Price, Managing Director, SIFMA (May 9, 2011); Anthony Thalman, Managing Director, BNY Mellon Shareholder Services (''BNY Mellon'') (May 17, 2011); Phoebe A. Papageorgiou, Senior Counsel, American Bankers Association (''American Bankers'') (May 23, 2011); and Jeffrey W. Rubin, Chair, Federal Regulation of Securities Committee, Business Law Section, American Bar Association (''ABA'') (May 26, 2011).

[15] Kara Folis, Chris Barnard, STA, ICI, and SIFMA, *supra* note 14.

[16] Prescott Lovern, *supra* note 14.

[17] Chris Barnard, STA, ICI, Computershare, WFA, SIFMA, Prescott Levern, Annuity Committee, SIFMA, BNY Mellon, American Bankers, and ABA, *supra* note 14.

securityholders.[18] The rule requires such transfer agents to exercise reasonable care to ascertain the correct addresses of these ''lost securityholders'' and to conduct certain database searches for them.[19] As the Commission noted at that time, such loss of contact can be harmful to securityholders because they no longer receive corporate communications or the interest and dividend payments to which they may be entitled.[20] Additionally, the securities and any related interest and dividend payments to which the securityholders may be entitled are often placed at risk of being deemed abandoned under operation of state escheatment laws.[21] This loss of contact has various causes, but it most frequently results from: (1) Failure of a securityholder to notify the transfer agent of his correct address after relocating; or (2) failure of the estate of a deceased securityholder to notify the transfer agent of the death of the securityholder and the name and address of the trustee/administrator for the estate.[22]

B. Discussion

1. Application of Rule 17Ad–17 to Brokers and Dealers

The amendments to Rule 17Ad–17 implement the statutory directive of Section 17A(g)(1) of the Exchange Act to extend the application of that rule to brokers and dealers. Specifically, the Commission is adopting the changes to Rule 17Ad–17 implementing this extension largely as proposed, principally by revising paragraph (a) of Rule 17Ad–17 to extend its requirements to ''every broker or dealer that has customer security accounts that include accounts of lost securityholders''.[23] As a result, each such broker or dealer will, like recordkeeping transfer agents, be required to exercise reasonable care to ascertain the correct addresses of ''lost securityholders'', as that term is defined in paragraph (b)(2)(i) of Rule 17Ad–17, and to conduct certain database searches for them.[24] The database searches will be conducted by taxpayer identification number (''TIN''), or by name if a search based on TIN is not likely to locate the securityholder, the same procedure that has existed under Rule 17Ad–17 since its adoption in 1997 with respect to lost securityholder searches by transfer agents.[25]

a. Definition of ''Broker'' and ''Dealer''

As adopted, Rule 17Ad–17(a) will now apply to all ''brokers'' and ''dealers''. Two commenters[26] argued that extension of the rule's lost securityholder requirements to brokers and dealers as directed by the statute[27] should be interpreted in paragraph (a) of Rule 17Ad–17 to mean only those brokers and dealers that carry securities for customers (*i.e.,* ''carrying firms''). As explained by one of these commenters, carrying firms by contract accept the obligation to hold customer funds and securities, and without a limitation to carrying firms, the rule could be overbroad and could apply to insurance underwriters and firms selling annuities that do not hold securities for the accounts of customers.[28] A third commenter[29] suggested that the Proposing Release overstated the carrying firm's role in handling customers' accounts and stated that while the carrying firm does carry customer accounts for introducing firms, in many cases it is the introducing firm that has the primary relationship with the customers. The commenter further suggested that the obligations of Rule 17Ad–17 be allocable among introducing and carrying firms such that the broker or dealer that has the primary relationship with the particular customer, which in many cases would be an introducing firm rather than a carrying firm, would bear the responsibility for complying with those obligations. A fourth commenter[30] asserted that it is unclear whether Congress intended to extend the rule's coverage to all brokers and dealers and suggested that the Commission could use its exemptive authority under Section 36 of the Exchange Act[31] to narrow the term's scope and apply the rule only to a subset of brokers and dealers, such as those having customer accounts that contain securities registered under Section 12 of the Exchange Act (''Section 12 securities'').[32]

The Commission has carefully considered these comments for narrowing the application of Rule 17Ad–17 to some subset of brokers and dealers or securities. The Commission acknowledges that there may be different means by which a broker or dealer may determine whether it has accounts of lost securityholders, as well as different means of exercising reasonable care to ascertain the correct addresses of those securityholders under Rule 17Ad–17.[33] However, the statutory directive of Section 17A(g) of the Exchange Act does not exclude any class of brokers or dealers from making such determinations or exercising such care. Rather, the terms ''broker'' and ''dealer'' used by Section 17A(g) are defined terms under Sections 3(a)(4) and (5) of the Exchange Act,[34] and neither the statutory language of Section 17A(g) nor any legislative history indicates that Congress intended the Commission to use an abbreviated or alternative version of these terms for purposes of this rule. Similarly, there is no indication that Congress intended that brokers' and dealers' obligations to search for lost securityholders should depend on the type of the securities, such as Section 12 securities, held in the securityholder's account. Accordingly, the Commission believes that the approach set forth in the Proposing Release of applying Rule 17Ad–17 to all brokers and dealers

[18] Securities Exchange Act Release No. 39176 (Oct. 1, 1997), 62 FR 52229 (Oct. 7, 1997) (''Rule 17Ad–17 Adopting Release''). A ''recordkeeping transfer agent'' is a registered transfer agent that maintains and updates the master securityholder file. *See* Rule 17Ad–9(h).

[19] Rule 17Ad–17, 17 CFR 240.17Ad–17.

[20] Rule 17Ad–17 Adopting Release, *supra* note 18.

[21] *Id.* Generally, after expiration of a certain period of time, which varies from state to state but is usually three to seven years, an issuer or its transfer agent will remit abandoned property (*e.g.,* securities and funds of lost securityholders) to a state's unclaimed property administrator pursuant to the state's escheatment laws.

[22] Securities Exchange Act Release No. 37595 (Aug. 22, 1996), 61 FR 44249 (Aug. 28, 1996).

[23] While the Commission is adopting Rule 17Ad–17(a) largely as proposed, we are clarifying that the requirements apply only to brokers or dealers that have customer security accounts ''that include accounts of lost securityholders''. The additional language parallels the language applicable to recordkeeping transfer agents and eliminates ambiguity in the proposed rule as to what obligations would be incurred by a broker or dealer that has no customer security accounts of lost securityholders. Letter from ABA, *supra* note 14.

[24] For the amended definition of ''lost securityholder,'' *see supra* note 5.

[25] *See* Rule 17Ad–17 Adopting Release, *supra* note 18.

[26] Letters from Mr. Bernard and Annuity Committee, *supra* note 14.

[27] Exchange Act, Section 17A(g)(1), 15 U.S.C. 78q–1(g)(1).

[28] Letter from Annuity Committee, *supra* note 14. While commenters that opined on limiting the kinds of brokers and dealers covered by the amendments to Rule 17Ad–17 referred generally to ''clearing firms'', we believe the relevant question is whether to apply the amendments only to carrying firms. While firms that are not carrying firms may clear transactions—such as self-clearing firms with no customer business—it does not appear that commenters were addressing a limitation to clearing firms without regard to whether such firms actually carry accounts for customers that could be lost securityholders. Accordingly, the discussion in this release focuses on ''carrying firms,'' not the broader universe of ''clearing firms''.

[29] Letter from SIFMA, *supra* note 14.

[30] Letter from ABA, *supra* note 14.

[31] 15 U.S.C. 78mm.

[32] 15 U.S.C. 78l.

[33] For example, the specific functions of carrying and introducing firms may vary from firm to firm depending on particular carrying agreements. *See, e.g.,* FINRA Rule 4311.

[34] 15 U.S.C. 78c(a)(4) and (5).

remains an appropriate implementation of the recent amendments to the Exchange Act and that an exercise of exemptive authority at this stage would be premature.

The Commission is therefore interpreting the terms ''broker'' and ''dealer'' in paragraph (a) of the rule to mean a ''broker'' or ''dealer'' as defined, respectively, in Exchange Act Sections 3(a)(4) [35] and 3(a)(5).[36] Each broker or dealer that has customer security accounts will have to determine whether one or more of its customers has become a lost securityholder for purposes of the rule, whether it is consequently subject to the requirements of Rule 17Ad–17 to search for those customers, and what means it should use for making such determinations and complying with such requirements.[37]

b. Items of Correspondence

As adopted, Rule 17Ad–17(a)(1) will now require brokers and dealers to search for ''lost securityholders'' as that term is defined in paragraph (b)(2) of the rule. Two commenters questioned the obligation to consider a securityholder ''lost'' after the return of a single item of correspondence, as provided in paragraph (b)(2) of the rule.[38] They suggested that this obligation, which previously applied only to recordkeeping transfer agents, will be burdensome on brokers and dealers because brokers and dealers, unlike transfer agents, routinely send out large amounts of mail to securityholders. These commenters argued that a single item of correspondence easily could be returned as undeliverable, perhaps even by mistake.[39] One of the commenters suggested that the Commission modify the rule to expand the number of returned correspondence to ''no less than three before deeming a shareholder lost.'' [40] The other commenter, while not addressing a minimum quantity of returned items, suggested limiting the categories of correspondence that trigger the lost securityholder designation to ''annual tax forms (*e.g.,* Forms 1099), returned checks, or account statements returned in two consecutive periods.'' [41]

The Commission notes that the purpose of Rule 17Ad–17 has been to make certain that records of transfer agents—and now brokers and dealers—reflect the correct addresses for securityholders. Because of the importance of having accurate records and of maintaining contact with securityholders, the rule as adopted in 1997—the version the Commission is directed by Congress to extend to brokers and dealers—provides that the obligation to search for a lost securityholder should attach when the first item of any type of correspondence is returned as undeliverable.[42] The 1997 rule recognized that a loss of contact with a securityholder does not turn on the number or nature of correspondence, simply that correspondence was returned as undeliverable. This objective and rationale for the rule conditioning ''lost securityholder'' status on a single item of any correspondence remain whether the records of a transfer agent or a broker or dealer are concerned. In addition, we note that to help make sure that the item was not returned because of simple addressing error of the sender or delivery error of the post office, Rule 17Ad–17 provides in paragraph (b)(2)(i) that if the sender resends the returned item within one month of its return, the sender does not have to consider the securityholder lost until the item is again returned as undeliverable. Consequently, brokers and dealers will have, as do transfer agents, a way to confirm that an item that is returned as undeliverable is actually undeliverable (*i.e.,* was not returned because of error) before the requirement to search for the lost securityholder attaches.

Therefore, the Commission has determined not to adopt the suggestions to delay a broker's or dealer's obligation to search until several items or some specific type of correspondence have been returned as undeliverable.

c. Other Issues Regarding Lost Securityholders

One commenter suggested that if the proposed amendments to Rule 17Ad-17 were adopted, the rule should make clear that a broker's or dealer's obligation to search for lost securityholders applies to the same universe of securities to which a registered transfer agent's obligation applies,[43] which the commenter views as limited to Section 12 securities.[44] As stated previously, Section 17A(g) of the Exchange Act includes no indication that Congress intended to limit a broker-dealer's obligation under this rule to Section 12 securities. In addition, a transfer agent's obligations under Rule 17Ad–17 are not limited to Section 12 securities. While a transfer agent is required to register with the Commission only if it services one or more Section 12 securities,[45] once a transfer agent is registered, its obligations, including its search obligations under Rule 17Ad–17, are not limited to Section 12 securities.

The commenter also states that if a transfer agent has contractually agreed to search for the lost securityholders of a particular issuer, then no principal underwriter or selling broker of that issuer's securities should be obligated to search for the same lost securityholders.[46] Section 17A(g) of the Exchange Act does not limit its directive to extend Rule 17Ad–17 to a broker or dealer where some third party may have separate cause to search for lost securityholders that may be searched for by that broker or dealer, whether that separate cause is private contract or otherwise. Rather, the language of Section 17A(g) suggests that Congress intended transfer agents, brokers, and dealers all to have search requirements with respect to the securityholders on their records. Such interpretation of the statute is consistent with the fact that brokers' and dealers' records will have certain information about securityholders that is not available from the records of transfer agents and vice versa. We believe that Congress intended the Rule 17Ad–17 amendments to extend the benefits of the search requirements to the additional securityholders available on the records of brokers and dealers, not limit such requirements to the securityholders available on the records of transfer agents.

2. Requirements Applicable to Paying Agents

New paragraph (c) of Rule 17Ad–17 implements the statutory directive of Section 17A(g) of the Exchange Act by requiring, among other things, that a paying agent must provide to each unresponsive payee a single written notification no later than seven months

[35] 15 U.S.C. 78c(a)(4).

[36] 15 U.S.C. 78c(a)(5).

[37] *See, e.g., supra* note 32.

[38] Letters from WFA and SIFMA, *supra* note 14.

[39] Another commenter questioned the use of the term ''returned as undeliverable'' in paragraph (b)(2) of the rule, asserting that no one can prove that correspondence returned by the U.S. Postal Service is undeliverable. Letter from Prescott Lovern, *supra* note 14. The Commission notes that the term ''undeliverable'', a term of the U.S. Postal Service, has been in paragraph (b)(2) of Rule 17Ad–17 since the original rule's adoption in 1997, and until receipt of this comment, the Commission had never received a request for guidance or a report of confusion concerning the term. Accordingly, at this time, the Commission does not believe there is sufficient basis for substituting another term in the rule.

[40] Letter from WFA, *supra* note 14.

[41] Letter from SIFMA, *supra* note 14.

[42] Rule 17Ad–17 Adopting Release, *supra* note 18.

[43] Letter from Annuity Committee, *supra* note 14.

[44] Exchange Act, Section 12, 78 U.S.C. 78*l*.

[45] Exchange Act Section 17A(c)(1), 15 U.S.C. 78q–1(c)(1).

[46] Letter from Annuity Committee, *supra* note 14.

after the sending of any not yet negotiated check to inform the unresponsive payee that the unresponsive payee has been sent a check that has not yet been negotiated.

The Commission is adopting Rule 17Ad–17 largely as proposed. However, as described below, the Commission is adopting the term ''unresponsive payee'' throughout Rule 17Ad–17(c) in lieu of ''missing securityholder'' because of the potential for confusion and misinterpretation by paying agents and other parties. In addition, also as described below, the Commission is providing additional guidance about when certain of the requirements applicable to paying agents apply, clarifying when notifications must be sent by paying agents, and modifying paragraphs (c)(1) and (c)(3) from the text of the Proposing Release to allow the requisite calculations to rely on days as well as months.

a. Definition of ''Paying Agent''

Consistent with the definition in Section 17A(g)(1)(D)(ii) of the Exchange Act,[47] new paragraph (c)(2) of Rule 17Ad–17 defines ''paying agent'' to ''include any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from an issuer of securities and distributes the payments to the holders of the security.'' One commenter stated that the rule's proposed definition of ''paying agent'' is very broad and that not all of the term's covered entities are registered with the Commission.[48] The commenter also noted that the proposed definition's use of the term ''any other person'' covers entities that are outside the Commission's jurisdiction. This commenter further suggested that the rule's definition of ''paying agent'' might be revised and shortened, and because the rule will include the comprehensive term ''any other person,'' some of the other categories in the definition could be eliminated.

The Commission understands that the term ''paying agent'' applies broadly, but believes this expansive definition is consistent with congressional intent in light of the precise language requiring a range of specific entities to be included in the definition. While the Commission recognizes that some of the entities covered by the definition of ''paying agent'' are not required to be registered with the Commission, the Commission believes that the broad definition of ''paying agent'' in Section 17A(g) of the Exchange Act provides the Commission with authority with respect to such entities for purposes of Rule 17Ad–17. Consequently, the Commission is adopting as proposed the statutory language defining ''paying agent'' specifically drafted by Congress for inclusion in Rule 17Ad–17.

Another commenter stated that the term ''paying agent'' should be defined to exclude any broker, dealer, transfer agent, investment adviser, indenture trustee, custodian, or any other person that is not contractually obligated to distribute money received from an issuer to an issuer's securityholders.[49] Because Congress specifically provided a broad statutory definition of ''paying agent'' that expressly includes entities that accept payments from issuers of securities and distributes those payments to the holders of securities and does not limit this definition to circumstances in which there is a contractual obligation, the Commission is not adopting a more narrow definition of paying agent than provided by the statute.[50]

This commenter also suggests that the rule should exempt issuers that contract with other paying agents from the requirement to provide written notification to persons with checks that are not yet negotiated. The Commission does not interpret the definition of ''paying agent'' to apply to an issuer that has contracted with another entity to act as the issuer's ''paying agent'' and that is not itself distributing payments to securityholders; accordingly, the Commission does not believe a specific exemption is required.

b. Definition of ''Missing Securityholder'' and ''Unresponsive Payee''

New paragraph (c)(3) of Rule 17Ad–17, consistent with Section 17A(g)(1)(D)(i) of the Exchange Act,[51] provides that a securityholder will be considered an ''unresponsive payee'' if a check that is sent to the securityholder is not negotiated before the earlier of the paying agent's sending the next regularly scheduled check or the elapsing of six months after the sending of the not yet negotiated check.

As adopted, paragraph (c)(3) uses the term ''unresponsive payee'' instead of the term ''missing securityholder,'' which is used by Section 17A(g) of the Exchange Act and by the proposed rule. Five commenters objected to the proposed rule's use of the term ''missing securityholder,'' asserting that the new term: (1) Would be confused with the rule's existing term ''lost securityholder''; (2) is a misnomer because it does not actually involve securityholders that are missing but simply securityholders who have uncashed checks; and (3) should be replaced by a more descriptive term like ''unresponsive payee'' or ''securityholder with an uncashed check.''[52] In light of these comments, the Commission is adopting the term ''unresponsive payee'' in connection with the requirements of Rule 17Ad–17. While ''missing securityholder'' was expressly set forth for purposes of this rule by Congress in Section 17A(g)(1)(D)(ii) of the Exchange Act, the potential for confusion with the term ''lost securityholder,'' as defined since 1997 in paragraph (b)(2) of Rule 17Ad–17, by paying agents and others is apparent from the comments. In addition, as a defined term, an alternative term can be used without potentially frustrating the intent of Congress in its carefully detailed requirements applicable to paying agents. The Commission therefore believes that the term ''unresponsive payee''—suggested by several commenters—is a suitable alternative to ''missing securityholder.''

One commenter suggested that the term ''unresponsive payee'' should apply only to natural persons in order to be consistent with the requirements applicable to ''lost securityholders.''[53] The Commission agrees with the commenter that, with respect to lost securityholders, paragraph (a)(3)(iii) of Rule 17Ad–17 limits the required searches to natural persons.[54] However, unlike with respect to a lost securityholder, the paying agent will have no indication, such as returned mail, that it has an incorrect address for the unresponsive payee. The paying agents will only know that the check sent to the investor has not been returned as undeliverable and that the investor has not negotiated the check. Therefore, the notices required by Rule 17Ad–17 could be properly sent to the investor's address on the records of the paying agent without the need for a

[47] Section 17A(g)(1)(D)(ii), 15 U.S.C. 78q–1(g)(1)(D)(ii).

[48] Letter from ABA, *supra* note 14.

[49] Letter from Annuity Committee, *supra* note 14.

[50] Rule 17Ad–1(c)(2).

[51] 15 U.S.C. 78q–1(g)(1)(D)(i).

[52] Letters from STA, ICI, BNY Mellon, SIFMA, and Computershare, *supra* note 14..

[53] Letter from ICI, *supra* note 14. To avoid confusion, the adopted term ''unresponsive payee'' is used throughout this discussion, even though the comments referred to the proposed term ''missing securityholder''.

[54] *See* Rule 17Ad–17 Adopting Release, *supra* note 18 above (limiting the search requirements of Rule 17Ad–17 to natural persons not known to be deceased as the databases used to search for lost securityholders when the rule was adopted in 1997 generally did not contain information on heirs or estates and were limited to natural persons).

database search to determine the investor's correct address. In addition, Section 17A(g) of the Exchange Act provides no indication that Congress intended to limit a paying agent's obligation to natural persons. Accordingly, the Commission has determined not to limit the meaning of ''unresponsive payee'' to natural persons.

Two commenters suggested that the Commission clarify that a securityholder may be deemed an unresponsive payee for purposes of paragraph (c) of Rule 17Ad–17 for having failed to cash a check, but that such status will not result in his being deemed a lost securityholder for purposes of paragraph (a) unless that person specifically meets the definition of ''lost securityholder'' in paragraph (b)(2) of Rule 17Ad–17.[55] The Commission agrees. The rule as amended would not require a person to be deemed a lost securityholder just because he has been classified as an unresponsive payee. For a securityholder to be deemed a lost securityholder, the securityholder must specifically meet the definition of ''lost securityholder'' in paragraph (b)(2) of Rule 17Ad–17.

A commenter asked how long a person who becomes an unresponsive payee will remain in that status.[56] Such status will cease when the securityholder negotiates the check or checks that caused the securityholder to be classified as an unresponsive payee. In response to this comment, the Commission has revised paragraph (c)(3) of Rule 17Ad–17 to clarify this point.

A commenter inquired about the situation where an unresponsive payee either becomes a lost securityholder or is known to have died.[57] Under Rule 17Ad–17(c)(1), if an unresponsive payee would be considered a lost securityholder by a transfer agent, broker, or dealer, the paying agent would not be required to send the notice of an unnegotiated check to the unresponsive payee until such time as the paying agent obtains a good address to send the notice. At such time, the investor would no longer be a lost securityholder. In response to this comment, the Commission has revised the rule text of paragraph (c)(1) of Rule 17Ad–17 to clarify this point. However, with respect to an unresponsive payee that is known to have died, the paying agent would still have the obligation to send the notice of an unnegotiated check. The fact that a securityholder has died does not in and of itself mean that there is not a good address to send the notice, and such notice could be of benefit to the deceased securityholder's estate. The paying agent will not know if and how checks ultimately will be negotiated by the trustee or administrator of the estate.

This commenter also inquired about an unresponsive payee who has received one or more checks from a paying agent on a monthly basis but who has not negotiated any check.[58] Specifically, the commenter questioned whether there would be a notification requirement if the unresponsive payee were to negotiate the checks before the ''six month period has lapsed'' per paragraph (c)(3) of Rule 17Ad–17. We note that if an unresponsive payee were to negotiate a check before the elapsing of six months after the paying agent sent the check, Rule 17Ad–17 would not require the paying agent to send the notice required in paragraph (c)(1) of the rule for that check.

c. Definition of ''Regularly Scheduled Check''

The term ''regularly scheduled check'' in Section 17A(g)(1)(D)(i) of the Exchange Act is not defined by the statute. One commenter suggested that the term should refer to checks that securityholders have made arrangements to have sent to them on a ''pre-specified, regularly-scheduled basis'' and that the term should not include *ad hoc* checks.[59] Another commenter noted that unnegotiated checks from paying agents are not necessarily related to scheduled interest and dividend payments and may not even be regularly scheduled.[60] A third commenter suggested the notification requirement should apply only to those checks sent to the securityholder by the paying agent pursuant to its contractual obligation to pass along dividends and other distributions from an issuer to the securityholder and should not apply to unnegotiated checks sent by the paying agent to third parties on behalf of the securityholder or to unregistered checks that constitute the proceeds of a sale.[61]

Congress, in drafting Section 17A(g)(1)(B) of the Exchange Act, did not limit the meaning of ''regularly scheduled check'' to such instruments as ''interest and dividend checks'' or mention established ''arrangements'' in this connection.[62] In addition, Section 17A(g)(1) is captioned ''Due Diligence for the Delivery of Dividends, Interest, and Other Valuable Property Rights''. On the other hand, Congress did refer to ''regularly scheduled checks'' in defining who would qualify as an unresponsive payee, rather than simply ''checks.'' Therefore, for purposes of Rule 17Ad–17, we are interpreting the term ''regularly scheduled check'' to include not only checks for interest and dividend payments but also any other regularly scheduled periodic payments from an issuer of securities to be distributed to securityholders as a class. Accordingly, the term ''regularly scheduled check'' would not include checks for payment solely to an individual securityholder and not to a class of securityholders pursuant to specific arrangements established at the request of the securityholder or to third parties on behalf of the securityholder.

d. Notification

In the Proposing Release, the Commission proposed to incorporate the statutory definition of ''missing securityholder'' from Section 17A(g)(1)(D)(i) into subparagraph (c)(3) of Rule 17Ad–17.[63] Specifically, the proposed rule stated, ''[T]he securityholder shall be considered a missing securityholder [*i.e.,* an unresponsive payee] if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent's sending the next regularly scheduled check or the elapsing of six (6) months after the sending of the not yet negotiated check.''

Two commenters stated that some regularly scheduled distributions by paying agents are made on a monthly cycle.[64] In such a situation, they suggest that a securityholder who did not negotiate a check sent to him or her could become an unresponsive payee within one month (*i.e.,* at the time of the next regularly scheduled check). One of the commenters stated that this monthly interval would frequently overlap the timeframe in which payees routinely negotiate their checks.[65] The other commenter likewise stated that, as a paying agent, it provides many clients with services that include payment of a

[55] Letters from ICI and SIFMA, *supra* note 14.

[56] Letter from BNY Mellon, *supra* note 14.

[57] Letter from American Bankers, *supra* note 14. *See also* Letter from ICI, *supra* note 14, with respect to the status of a deceased person.

[58] *Id.*

[59] Letter from ICI, *supra* note 14.

[60] Letter from SIFMA, *supra* note 14.

[61] Letter from American Bankers, *supra* note 14.

[62] The Commission notes that a number of periodic distributions by issuers, such as partnership distributions, may technically not be interest or dividend payments.

[63] Proposing Release, *supra* note 13.

[64] Letters from Computershare and BNY Mellon, *supra* note 14.

[65] Letter from Computershare, *supra* note 14.

monthly dividend.[66] As an example, the commenter noted that if a securityholder has mail held for himself or herself at one location while he or she spends part of the year at another location, as many retirees do, checks may not be delivered to—let alone negotiated by—the payee before the next monthly check is sent. This commenter suggested that it would be more practical to have a longer time for the required notification of a check that was not negotiated and for the triggering of ''unresponsive payee'' status in those circumstances. One of these commenters recommended a minimum time of not less than 60 days from the payable date of a dividend or from the sending of a check before notification to an unresponsive payee would have to be made.[67]

The Commission notes that the paying agent would have to send only one notification for a given check and that such notification could be sent along with another check or other subsequent mailing. In addition, the Commission notes that while a particular payee receiving monthly checks may become an ''unresponsive payee'' after a single month, the requirement to provide an actual notification to the payee allows a full seven months following the sending of the unnegotiated check (*i.e.,* about six months in the case of an unnegotiated monthly check) before the paying agent must send such notification. As clarified in Rule 17Ad–17(c)(1), if the unresponsive payee negotiates the check in that seven-month interval, he or she will no longer be an unresponsive payee and no notification will need to be sent. Accordingly, the Commission does not at this time believe there is a need to create an initial 60-day period or other time frame before which notifications would not be required. In any case, the timeline for qualifying as an unresponsive payee and the related notification duty are statutory requirements that are set forth, respectively, in Sections 17A(g)(1)(D)(i) and 17A(g)(1)(A) of the Exchange Act.[68]

Two commenters asked if a paying agent may issue one generic notification to alert an unresponsive payee of multiple checks, perhaps from different issuers, that remain unnegotiated for the seven-month measuring period.[69] Section 17A(g)(1)(A) of the Exchange Act requires that the paying agent ''provide a single written notification to each [unresponsive payee] that the [unresponsive payee] has been sent a check that has not yet been negotiated.'' It is not clearly stated in the statute whether the paying agent must provide: (1) A single written notification to *each unresponsive payee* who has been sent a check that has not yet been negotiated; or (2) a single written notification to the unresponsive payee for *each check* that has been sent but has not yet been negotiated. The Commission believes that the apparent congressional purpose of Section 17A(g)(1)(A) is to help ensure that securityholders receive and have the benefits of their distribution checks, which can be accomplished through a notice covering one or multiple checks. While a paying agent's per-check notice may focus a securityholder's attention on each check, a notice covering multiple checks may serve as a signal to a securityholder that there is an issue with systems or methods used by that securityholder for negotiating checks from that paying agent. Accordingly, we interpret the statutory language as permitting either approach to be used by a paying agent, provided that the applicable time requirements of Rule 17Ad–17—in particular, the seven-month measuring interval—are met with respect to each individual check. For a notice covering multiple checks, this interpretation means that the notification must sufficiently identify each not yet negotiated check and that the notice must be sent to the unresponsive payee no later than seven months after the sending of the *oldest* not yet negotiated check that is covered by the notice.

Commenters further suggested that a check that has not yet been negotiated should be excluded from notification requirements if the check is ''redeposited'' into the securityholder's account. One commenter suggested that such check redepositing should occur within six months of its issuance.[70] The Commission understands these comments to mean that the checks or equivalent funds would be deposited into the securityholders' brokerage or other accounts with no record of the holders' potential status as unresponsive payees. While we recognize that the deposit of a previously issued check into the account of a securityholder would have the effect of assuring that the funds represented by the check are no longer held in abeyance and are available to benefit the securityholder, there is no evidence to suggest that it was Congress' intent to establish or encourage such a depository arrangement for a securityholder where one did not exist prior to the transmittal of the check or checks subject to redeposit. To the extent a securityholder has established standing or other prior instructions for any check or checks to be deposited into its account in a particular manner, a check deposited in compliance with such instructions may properly be considered to have been negotiated by the securityholder for the purpose of Rule 17Ad–17. However, there is no evidence to suggest Congress intended to allow paying agents to avoid the notification requirements of Rule 17Ad–17 simply by depositing the monetary equivalent of the uncashed check into an account for the unresponsive payee.

Another commenter observed that broker-dealers provide periodic statements to customers that include all disbursements, including checks, and that such statements could serve as the notifications contemplated by the rule amendments.[71] While the Commission recognizes that generally all transactions, including checks, are detailed in brokers' periodic statements, we do not believe that such all-inclusive statements in their present form would present the kind of focused notification of uncashed checks that Congress intended in enacting Section 17A(g)(1)(A).

Three commenters requested clarification on whether the written notification would include electronic communications.[72] Consistent with our prior guidance on electronic delivery of customer disclosures and confirmations, a paying agent may provide the written notification electronically if the customer has affirmatively consented to receiving disclosures generally in such manner.[73]

One of these commenters suggested that instead of using the statutory terms 6 months and 7 months as measuring times, the rule could use 180 calendar days and 210 calendar days, respectively, which the commenter suggests are easier to accommodate in accounting periods and in programming systems. Accordingly, to accommodate variances in entities' accounting procedures and systems, the Commission is adopting language to provide the option of using months or days. Rule 17Ad–17(c), as adopted, allows ''6 months (or 180 days)'' and ''7 months (or 210 days).''

[66] Letter from BNY Mellon, *supra* note 14.

[67] Letter from Computershare, *supra* note 14.

[68] 15 U.S.C. 78q–1(g)(1)(D)(i) and 78q–1(g)(1)(A).

[69] Letters from ICI and BNY Mellon, *supra* note 14.

[70] Letters from ICI and SIFMA, *supra* note 14.

[71] Letter from ICI, *supra* note 14.

[72] Letters from ICI, SIFMA, and American Bankers, *supra* note 14.

[73] ''Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940,'' 61 FR 24644 (May 15, 1996).

e. Exemption for Checks Less Than $25

New paragraph (c)(4) of Rule 17Ad–17, consistent with Exchange Act Section 17A(g)(1)(B), excludes a paying agent from the notification requirements where the value of the not yet negotiated check is less than $25.[74] One commenter suggested that significant cost savings might accrue by increasing the rule's notification threshold on uncashed checks to $100, instead of $25.[75] The Commission has determined not to modify the $25 amount established by Section 17A(g) of the Exchange Act for purposes of paragraph (c)(4) of Rule 17Ad–17 at this time, which would require deviating from a specific *de minimis* level recently selected by Congress.

f. Minimization of Disruptions

In the Proposing Release, the Commission requested comment on Congress' directive in Section 17A(g)(2) that ''[t]he Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payments to account holders and avoid requiring multiple paying agents to send written notifications to a missing security holder [*i.e.,* unresponsive payees] regarding the same not yet negotiated check.'' Two commenters responded that, while there would be certain increases in programming and administrative costs, they do not believe the amendments would cause any significant disruptions.[76] With regard to paying agents, these commenters stated that the obligation to notify would fall only on the paying agent that holds the relevant records and that, accordingly, it would be unlikely that multiple paying agents would be sending redundant notices about the same checks to securityholders. We agree with these commenters that it would be unlikely for multiple paying agents to be sending redundant notices about the same checks. The Commission also agrees with the commenters' views that the rule amendments should not cause significant disruptions.

g. State Escheatment Laws

New paragraph (c)(5) of Rule 17Ad–17, as required by Exchange Act Section 17A(g)(1)(C),[77] provides that the requirements of paragraph (c)(1) of Rule 17Ad–17 ''shall have no effect on state escheatment laws.'' Two commenters observed that future timelines for state escheatment practices are at some point likely to conflict with the timeline for notifying missing securityholders.[78] These commenters suggested that the Commission clarify in the adopting release how firms should apply the rule if a conflict should arise with state escheatment laws. Rather than address hypothetical situations of what may happen if a conflict arises at some future time between federal and state law, the Commission will consider how to address any such actual conflict at the time it is made aware that such a conflict exists.

One commenter stated that language in footnote 15 of the Proposing Release constituted an effort by the Commission to ''eliminate federal preemption subtly.''[79] Footnote 15 of the Proposing Release stated, ''Generally, after expiration of a certain period of time, which varies from state to state but is usually three to seven years, an issuer or its transfer agent must remit abandoned property (*e.g.,* securities and funds of lost securityholders) to a state's unclaimed property administrator pursuant to the state's escheatment laws.''[80] Footnote 15 of the Proposing Release was not a statement concerning federal preemption but instead was intended to be merely a general statement of the operation of state escheatment law. Similarly, the Commission is not in this release or in Rule 17Ad–17 making any statement regarding federal preemption or regarding preemption's relationship to state escheatment laws.

3. Compliance Date

Three commenters requested clarification concerning the effective and compliance dates of the amendments to Rule 17Ad–17.[81] One of these commenters suggested that compliance with the amended rule be required 12 months after its approval date,[82] as proposed, and the other two commenters suggested that compliance with the amended rule be required 18 months after the approval date to allow added time for the development of new systems.[83]

In response to the comments, the Commission is making clear that the rules will be effective 60 days after publication in the **Federal Register** and that the compliance date will be twelve months after publication in the **Federal Register.** The compliance date is the date on which all entities subject to the requirements of the rule must be in compliance with the rule. Although the Commission is aware that changes to systems require time to plan and implement, we do not find that the two commenters who requested additional time sufficiently justified their need in light of the statutory directive and the policy goals it apparently seeks to advance. Therefore, we are adopting the compliance date substantially as proposed.

One commenter asked whether the rule would apply retroactively, meaning that notifications might be required for checks already outstanding.[84] The Commission notes that the changes to the rule will apply only prospectively.

4. Rule 15b1–6: Notice to Brokers and Dealers of Rule Amendments

Another commenter observed that the rule covers brokers, dealers, transfer agents, and others who may not be aware that the rule will apply to them.[85] It suggests a separate rule, referencing Rule 17Ad–17, be added to the Commission's rules under Section 15(b) of the Exchange Act, which applies to brokers and dealers, to keep brokers and dealers apprised of the requirements. The Commission agrees with this commenter's suggestion and is adopting a new technical rule, Rule 15b1–6, which will provide ongoing notice to brokers and dealers of their obligations under Rule 17Ad–17.[86]

The Commission is adopting Rule 15b1–6 simply to provide ongoing notice to brokers and dealers of amendments to Rule 17Ad–17 that affect brokers and dealers, and it imposes no independent obligation on any party.[87] Rule 15b1–6 is solely a mechanism to provide additional notice—on an ongoing basis—to certain registrants regarding amendments to Rule 17Ad–17 that will now impose substantive obligations on them as

[74] Section 17A(g)(1)(B), 15 U.S.C. 78q–1(g)(1)(B).

[75] Letter from SIFMA, *supra* note 14.

[76] Letters from STA and ICI, *supra* note 14.

[77] Section 17A(g)(1)(C), 15 U.S.C. 78q–1(g)(1)(C).

[78] Letters from WFA and SIFMA, *supra* note 14. Another commenter, Mary Patman, observed that one way to resolve escheatment problems is ''to require the shareholder to be informed about unclaimed property laws and educate them on how to prevent their investments from getting turned over to the state in the first place,'' but she also indicated that this was probably impossible. Letter from Ms. Putman, *supra* note 14.

[79] Letter from Prescott Lovern, Esq., *supra* note 14.

[80] Proposing Release, *supra* note 13. This footnote is replicated herein at note 21.

[81] Letters from STA, ICI, and Annuity Committee, *supra* note 14.

[82] Letter from STA, *supra* note 14.

[83] Letters from ICI and Annuity Committee, *supra* note 14.

[84] Letter from STA, *supra* note 14.

[85] Letter from ABA, *supra* note 14.

[86] *Id.*

[87] *See* 6 U.S.C. 553(b).

described in the Proposing Release and this release.[88]

5. Recordkeeping

Currently, Rule 17Ad–17(c)[89] requires that every recordkeeping transfer agent shall maintain records to demonstrate compliance with the requirements of the rule (including written procedures that describe the transfer agent's methodology for complying) and requires that such records be maintained for a period of not less than three years with the first year in an easily accessible place.[90] These recordkeeping requirements have been part of Rule 17Ad–17 since its adoption in 1997.[91] In the Proposing Release, the Commission proposed redesignating paragraph (c) as paragraph (d) and amending that paragraph to require brokers, dealers, and paying agents (in addition to transfer agents) to maintain such records. The Commission also proposed a conforming amendment to Rule 17Ad–7(i)[92] so that it would cross-reference redesignated paragraph (d), rather than paragraph (c), of Rule 17Ad–17. The Commission received no comments on these proposed recordkeeping amendments and is adopting them as proposed, with a technical change to avoid unnecessarily duplicative language between Rule 17Ad–7(i) and Rule 17Ad–17(d).[93]

6. Title

One commenter suggested that the Commission's proposed name for Rule 17Ad–17 (''Transfer agents', brokers', and dealers' obligation to search for lost securityholders; paying agents' obligation to search for missing securityholders'') is too long.[94] The commenter suggests: ''Lost and missing securityholders'' as the title for Rule 17Ad–17. The Commission agrees that a shorter title is appropriate and is adopting the title ''Lost securityholders and unresponsive payees'' for amended Rule 17Ad–17.

III. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of proposed amendments to Rule 17Ad–17 required a new and mandatory ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[95] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.[96] In accordance with 44 U.S.C. 3507 of the PRA, the Commission submitted the requirements of the proposed amendments to Rule 17Ad–17 entailing a ''collection of information'' to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, and the Commission published notice requesting public comment on such requirements in the Proposing Release.[97]

The control number for this release is OMB Control Number 3225–0469 and the title is ''Transfer Agents' Obligation to Search for Lost Securityholders (17 CFR 240.17Ad–17).'' The Commission anticipates changing the title of the collection to ''Obligation to Search for Lost Securityholders and Notify Unresponsive Payees'' to reflect the amendments to Rule 17Ad–17 and the change in the title of the rule.[98]

A. Summary of Collection of Information

As adopted, the amendments to Rule 17Ad–17 require a new and mandatory ''collection of information'' within the meaning of the PRA. This collection of information consists of: (1) Brokers and dealers collecting information in order to comply with new requirements to search for lost securityholders under paragraph (a) of Rule 17Ad–17; (2) paying agents collecting information in order to comply with new requirements to provide notifications to unresponsive payees under paragraph (c) of Rule 17Ad–17; and (3) brokers, dealers, and paying agents making and maintaining records under paragraph (d) of Rule 17Ad–17 to demonstrate compliance with the requirements of Rule 17Ad–17, including written procedures which describe their methodology for complying.[99] The records required by paragraph (d) must be maintained for a period of not less than three years, with the first year in an easily accessible place, consistent with Rule 17Ad–7(i) under the Exchange Act.

B. Use of Information

Brokers and dealers will use the information collected pursuant to paragraph (a) of Rule 17Ad–17—namely, information regarding the accounts of lost securityholders and the addresses of lost securityholders—to engage in searches for lost securityholders. Paying agents will use the information collected pursuant to paragraph (c) of Rule 17Ad–17—namely, information regarding the accounts of unresponsive payees and the status of their negotiations of checks sent by the paying agent—to provide notifications to unresponsive payees that they have been sent checks but have not negotiated them.

The Commission will use the information collected under paragraph (d) of Rule 17Ad–17 to monitor the records made and maintained by every recordkeeping transfer agent, broker or dealer, and paying agent to demonstrate compliance with the requirements set forth in Rule 17Ad–17. Such records will include written procedures that describe the entity's methodology for complying with the rule.

C. Respondents

The Commission estimates that approximately 4,705 brokers and dealers would be subject to paragraph (a) of Rule 17Ad–17, which would require them to do certain database searches for their lost securityholders. While applicable to all brokers and dealers, we are estimating that, as a practical matter, paragraph (a) will apply primarily to those brokers and dealers that carry securities accounts for customers (*i.e.,* carrying firms), of which there are about 301 brokers and dealers.[100]

The Commission estimates that approximately 28,577 entities—issuers, transfer agents, brokers, dealers, indenture trustees, and custodians—potentially will be subject to the requirements of paragraph (c) of Rule 17Ad–17, which would require them to

[88] The adoption of Rule 15b1–6 does not require analysis under the Regulatory Flexibility Act or under the Small Business Regulatory Enforcement Fairness Act. 5 U.S.C. 601 and 5 U.S.C. 804.

[89] 17 CFR 240.17Ad–17(c).

[90] Pursuant to Rule 17Ad–7(i), 17 CFR 240.17Ad–7(i), transfer agents have had to maintain records to show their compliance with Rule 17Ad–17. This same requirement for transfer agents, brokers, dealers, and paying agents is now stated explicitly in amended Rule 17Ad–17. In order to maintain consistency with amended Rule 17Ad–17, we have adopted a technical change to Rule 17Ad–7(i) so that it will cross-reference new Rule 17Ad–17(d) rather than superseded Rule 17Ad–17(c).

[91] Rule 17Ad–17 Adopting Release, supra note 18, Section II.B at pages 52232–52233.

[92] 17 CFR 240.17Ad–7(i).

[93] Specifically, Rule 17Ad–17(d) now requires transfer agents, brokers, and dealers to ''retain such records in accordance with Rule 17Ad–7(i)'', rather than ''for a period of not less than three (3) years with the first year in an easily accessible place''.

[94] Letter from ABA, *supra* note 14.

[95] 44 U.S.C. 3501 *et seq.*

[96] 44 U.S.C. 3506(c)(1).

[97] For Proposing Release, *see supra* note 13. We note that neither Rule 15b1–6 nor the amendments to Rule 17Ad–7 require any ''collection of information'' within the meaning of the PRA.

[98] *See supra* Section II.B.6.

[99] For the definition of ''paying agent,'' *see* discussion at Section II.B.2.a, *supra.* For the definition of ''unresponsive payee,'' *see* discussion at Section II.B.2.b, *supra.*

[100] There are approximately 4,705 brokers and dealers registered with the Commission, according to December 31, 2011 FOCUS Report data. Of these registrants, 4,404 brokers and dealers claimed exemptions from Rule 15c3–3 on their FOCUS Reports. Accordingly, the Commission estimates that there are approximately 301 carrying brokers and dealers (4,705 minus 4,404 equals 301).

send certain notifications to unresponsive payees.[101] However, we estimate that only approximately 3,035 entities accept payments from an issuer of a security and distribute those payments to the holders of the security, thereby qualifying as ''paying agents'' for purposes of paragraph (c).[102] In general, the Commission believes that in this specialized area most paying agents will consist of the large brokers and dealers and large transfer agents (including bank transfer agents), firms that typically serve as financial intermediaries between issuers and securityholders.

All brokers, dealers, and paying agents—an estimated total of 7,439 entities [103]—also will be subject to the recordkeeping provisions of paragraph (d) of Rule 17Ad–17, which requires maintaining records to demonstrate compliance with Rule 17Ad–17, including written procedures that describe the entity's methodology for compliance. Such records must be retained for not less than three years, the first year in an easily accessible place.

D. Revisions to Reporting and Burden Estimates

In the Proposing Release, the Commission initially estimated for the purposes of Rule 17Ad–17 that, on an annual basis: (1) Approximately 250,000 searches by brokers and dealers would be required by paragraph (a) of Rule 17Ad–17 as proposed, with each search taking approximately five minutes; and (2) approximately 50,000 notifications by an estimated 1,000 paying agents would be required by paragraph (c) of Rule 17Ad–17 as proposed, with each notification taking approximately three minutes. We further estimated that these searches and notifications would require, respectively, 500 and 100 hours of recordkeeping time. Accordingly, we estimated that the total estimated burden of the proposed amendments to Rule 17Ad–17 would be 23,933 hours.[104]

In response to the Proposing Release, we received comments that costs stated in the Proposing Release ''likely are greater than estimated,'' [105] that the ''hours of work'' and ''estimated costs are low,'' [106] and that ''costs may be higher'' than estimated.[107] In light of these comments and similar ones, the Commission has reexamined the estimates in the Proposing Release and revised them as described below.

1. Paragraph (a) of Rule 17Ad–17 (Application of Rule 17Ad–17 to Brokers and Dealers)

Under paragraph (a) of the amendments to Rule 17Ad–17, brokers and dealers will now be required to conduct certain database searches for lost securityholders. Such database searches must be conducted without charge to the lost securityholders. In the Proposing Release, the Commission stated that much of the information required to be collected in order to effectuate such searches (such as the TINs of lost securityholders) is already maintained by brokers and dealers; accordingly, in many cases there should not be an additional cost to the broker or dealer to obtain the required information. We initially assumed that, with automated equipment and much of the information required to be collected already in the possession of brokers and dealers, lost securityholder searches could be performed in about two minutes. We increased the estimated search time in the Proposing Release to five minutes to allow for additional contingencies that may occur in connection with database searches.

In the Proposing Release, the Commission initially estimated that there were 5,063 broker-dealers registered with the Commission, who would perform approximately 250,000 searches per year—that is, approximately 49 searches for lost securityholders per broker or dealer per year (250,000 divided by 5,063 equals 49 searches per broker-dealer), or less than one search per broker-dealer per week. However, as noted in section III.C above, we anticipate—and the Proposing Release assumed—that Rule 17Ad–17 will as a practical matter apply mainly to brokers and dealers that carry securities accounts for customers (*i.e.,* carrying firms), which tend to be the larger firms.

In reviewing these estimates, some commenters noted that burdens generally may be higher than anticipated in the Proposing Release. Wells Fargo noted that some project costs, such as printing and operating databases, tend to include associated expenses that are not included in the broader categories such as ''labor.'' [108] The ABA commented that the ''costs may be higher than estimated,'' noting further that searches for lost securityholders will apply to all brokers and dealers, of which there are more than 5,000, and, while they are assumed to be already performing such work on their own, the ABA questioned whether some of them may lack the necessary systems and may need to make additional financial outlays in this connection.[109]

The Commission continues to believe that carrying firms, which we estimate to number approximately 301,[110] represent the population of brokers and dealers most likely to be affected by the burdens associated with paragraph (a) of Rule 17Ad–17. In addition, such brokers and dealers tend to be larger than the overall population of firms and are the ones most likely to have the systems and processes in place for dealing with searches for securityholders, including lost securityholders. In fact, members of the broker-dealer community have stated that these new requirements are unnecessary because broker and dealers already know how to keep track of their customers. We also note that brokers and dealers may enter into commercial arrangements among themselves—such as those between an introducing and a carrying firm—to help ensure compliance with the requirements of Rule 17Ad–17 without unnecessarily burdensome system builds, just as they do in other aspects of their business.[111]

[101] As discussed in Sections IV and V.C.2 of the Proposing Release and in Section III.D.2 below, the 28,577 entities comprise approximately 10,379 issuers that file reports with the Commission, 4,705 brokers and dealers registered with the Commission (*see supra* note 100), 536 transfer agents registered with the Commission, 11,797 investment advisors registered with the Commission, 264 indenture trustees, and 896 custodians.

[102] As discussed below at Section III.D.2, the estimate of 3,035 paying agents comprises 1,038 issuers, 301 brokers and dealers, 536 transfer agents, 264 indenture trustees, and 896 custodians. While approximately 10,379 issuers file reports with the Commission, we interpret the statutory definition of ''paying agent'' to include only such issuers that ''accept[] payments from an issuer of a security and distributes payments to the holders of the security,'' a clause that the Commission's experience with the mechanics of such payments indicates will exclude the vast majority of issuers. Accordingly, we estimate that the definition will exclude approximately 90% of issuers, leaving 10%—or approximately 1,038 issuers—as paying agents. Similarly, based on the Commission's experience with payments to holders of securities, we expect that not all broker-dealers will act as paying agents; rather, such functions will largely be performed by carrying firms. Accordingly, we assume that all estimated 301 carrying firms will be paying agents. *See supra* note 100.

[103] The estimate of 7,439 entities comprises 1,038 issuers, 4,705 brokers and dealers (both carrying firms and non-carrying firms), 536 transfer agents, 264 indenture trustees, and 896 custodians.

[104] 250,000 searches of five minutes apiece would require 20,833 hours and 50,000 notifications of three minutes apiece would require 2,600 hours. Accordingly, the total burden would be 23,933 hours (20,833 hours + 2,600 hours + 600 hours of recordkeeping time). Proposing Release, *supra* note 13, at 16,710.

[105] Letter from Wells Fargo, *supra* note 14.

[106] Letter from SIFMA, *supra* note 14.

[107] Letter from ABA, *supra* note 14.

[108] Letter from Wells Fargo, *supra* note 14.

[109] Letter from ABA, *supra* note 14.

[110] *See supra* note 100.

[111] *See supra* note 33 and accompanying text.

With respect to specific burden estimates, commenters did not address the five minute estimate for the search time under paragraph (a) of Rule 17Ad–17, but instead suggested that we should increase our estimates of the number of searches that would be required. In particular, SIFMA stated, ''SIFMA member firms estimate that the number of searches and notifications could be significantly more than the Commission's stated estimates—perhaps as much as four times more.'' [112] After evaluating these comments, the Commission is retaining the estimated search time but has determined to increase the estimated number of searches per year by brokers and dealers in paragraph (a) of Rule 17Ad–17 from 250,000 to 650,000,[113] which increases the estimated total annual hourly burden from 20,833 hours (250,000 searches times five minutes, divided by 60 minutes) to 54,160 hours (650,000 searches times five minutes, divided by 60 minutes).[114] The revised hourly burden estimate is the equivalent—on average—of approximately 42 searches per carrying firm per week (650,000 searches divided by 301 carrying firms divided by 52 weeks equals 41.5 searches per carrying firm per week) or approximately 9 searches per carrying firm per business day (650,000 searches divided by 301 carrying firms divided by 250 business days equals 8.6 searches per carrying firm per day).[115]

2. Paragraph (c) of Rule 17Ad–17 (Requirements Applicable to Paying Agents)

Under amended paragraph (c) of Rule 17Ad–17, a paying agent must provide not less than one written notification to each unresponsive payee no later than seven months after such securityholder has been sent a check that has not yet been negotiated. The notification may be sent with a check or other mailing subsequently sent to the unresponsive payee but must be provided no later than seven months after the sending of the not yet negotiated check. In the Proposing Release, the Commission stated that the burden for issuing a notification to an unresponsive payee would be modest, approximately three minutes, given the existence of automated systems that can be used for these purposes in the entities expected to be affected by the amendments to Rule 17Ad–17.[116]

In the Proposing Release, the Commission initially estimated that there would be 1,000 entities acting as paying agents that would be affected by paragraph (c) of Rule 17Ad–17, and that those entities would issue approximately 50,000 notifications per year is equivalent—that is, 50 notifications per paying agent per year (50,000 notifications per year divided by 1,000 paying agents equals 50 notifications per paying agent per year), or fewer than one notification per paying agent per week (50 notifications per paying agent per year divided by 52 weeks per year equals 0.96 notifications per week).

Based on the comments described above about burdens being higher than estimated in the Proposing Release,[117] the Commission has determined to increase both its estimate of the number of paying agents and its estimate of the number of notifications that would be issued by such paying agents. The Commission's initial estimate that only 1,000 entities would be affected by paragraph (c) of Rule 17Ad–17 is equivalent to approximately 3.5% of the total estimate of 28,577 paying agent candidates estimated in the Proposing Release (1,000 divided by 28,577 equals 3.5%).[118] To better account for the perspective of commenters and drawing on Commission experience with the mechanics of payments to securityholders, we have increased the estimate of paying agents to 3,035 by assuming that: (1) All estimated 536 transfer agents, estimated 264 indenture trustees, and estimated 896 custodians included in the 28,577 entities will be paying agents; (2) only the estimated 301 brokers and dealers that are carrying firms (who are typically the largest firms with the capacity to manage payments to securityholders) will be paying agents; and (3) only an estimated 1,038 of issuers that file reports with the Commission will be paying agents (10,379 multiplied by 0.10 equals 1,038).[119]

In addition, based on the comments received regarding the potential burden of paragraph (c) of Rule 17Ad–17 and the increased estimate in the number of paying agents, we are also increasing the estimated number of annual notifications by paying agent. Commenters did not address our estimated time of three minutes for each unresponsive payee notification, and the Commission has determined to retain this notification time. Accordingly, the Commission is increasing the number of notifications that it estimates will be issued by paying agents each year from 50,000 to 758,750, which is the equivalent of approximately one notification being made per paying agent per business day (1 notification multiplied by 3,035 paying agents multiplied by 250 business days).[120] The revised number of notifications results in an increase in the estimated total annual hourly burden on paying agents from 2,500 hours (50,000 notifications times three minutes, divided by 60 minutes) to 37,938 hours (758,750 notifications times three minutes, divided by 60 minutes).

3. Paragraph (d) of Rule 17Ad–17 (Recordkeeping)

Amended paragraph (d) of Rule 17Ad–17 will now requires brokers, dealers, and paying agents that are subject to paragraph (a) and/or paragraph (c) of the rule to maintain records to demonstrate their compliance with the rule, including written procedures which describe their

[112] Letter from SIFMA, *supra* note 14.

[113] The estimate of 250,000 searches was based on initial discussions with participants in the securities industry. *See* Proposing Release, *supra* note 13, Section IV.A. The increase to 650,000 searches is based on the subsequent feedback from commenters, who suggested that the estimates might be ''as much as four times more.'' See, *e.g.,* letter from SIFMA, *supra* note 14.

[114] *See* Proposing Release, *supra* note 13, Section IV.A.

[115] While calculating averages for purposes of this analysis, the Commission recognizes that searches may in fact be clustered around certain dates, such as dates established by a firm's internal policies and procedures for conducting searches or dates established by Rule 17Ad–17 itself.

[116] Proposing Release, Section IV.C, *supra* note 13. The estimate was based on discussions with industry participants.

[117] Letters from ABA, SIFMA, and Wells Fargo, *supra* note 14.

[118] The 28,577 entities comprise approximately 10,379 issuers that file reports with the Commission, 4,075 brokers and dealers registered with the Commission, 536 transfer agents registered with the Commission, 11,797 investment advisors registered with the Commission, 264 indenture trustees, and 896 custodians. With the exception of the estimate of brokers and dealers, which is based on December 31, 2011, FOCUS Report data (*see supra* note 100), these estimates are drawn from various Commission sources as of January 2011. The Proposing Release estimated a total paying agent population of 28,935 entities because it used an older estimate of 5,063 brokers and dealers.

We emphasize that all of these populations they can be subject to substantial variations over time. The Commission also notes that the statutory definition of ''paying agent'' includes ''any other person'' after specifying all of the categories of financial entities already included in the Commission's estimate of the potential universe of paying agents. Accordingly, we anticipate that only a *de minimis* number of entities not already covered by one of the named categories would be deemed ''paying agents'' and have therefore assumed no such persons for purposes of this analysis.

[119] While approximately 10,379 issuers file reports with the Commission, we interpret the statutory definition of ''paying agent'' to include only such issuers that ''accept[] payments from an issuer of a security and distributes payments to the holders of the security,'' a clause that the Commission's experience with the mechanics of such payments indicates will exclude the vast majority of issuers.

[120] *See supra* note 114 regarding the clustering of these notifications in practice.

methodology for complying. The records required by the amended rule must be maintained for a period of not less than three years, with the first year in an easily accessible place, consistent with Rule 17Ad-7(i) under the Exchange Act.

Based on discussions with market participants, we initially estimated in the Proposing Release that the annual burden for making and keeping these records, which should be processed electronically, would be approximately one hour for every 500 lost securityholder accounts and one hour for every 500 unresponsive payee accounts. Based on this incremental burden, we estimated that the total recordkeeping burden would be approximately 600 hours (250,000 lost securityholders searches divided by 500 accounts plus 50,000 notifications to unresponsive payees divided by 500 accounts, times 1 hour).

We received no specific comment on this incremental burden estimate of one hour, and we continue to believe it appropriate. As described above, however, the Commission is increasing its estimate of the number of searches that will be undertaken for lost securityholders to 650,000 searches and is increasing its estimate of the number of notifications that will be sent to unresponsive payees to 758,750. Accordingly, we are increasing our estimate of the total recordkeeping burden as a result of the amendments to Rule 17Ad–17 from approximately 600 hours to approximately 2,818 hours: 1,300 hours with respect to searches for lost securityholders (650,000 searches divided by 500 accounts, times 1 hour) and 1,518 hours with respect to notifications to unresponsive payees (758,750 notifications divided by 500 accounts, times 1 hour).

4. Total Revised Estimated Burden

In summary, the total revised estimated burden resulting from the amendments to Rule 17Ad–17 and based on the assumptions and estimates described above would be 94,916 hours: 54,160 hours associated with the 650,000 searches expected to be undertaken by brokers and dealers pursuant to the amendments to paragraph (a) of Rule 17Ad–17; 37,938 hours associated with the 758,750 notifications to unresponsive payees expected to be made by paying agents pursuant to the amendments to paragraph (c) of Rule 17Ad–17; and 2,818 hours associated with the making and keeping of records anticipated to be necessary for brokers, dealers, and paying agents to comply with the amendments to Rule 17Ad–17 under paragraph (d) of the rule (54,160 hours plus 37,938 hours plus 2,818 hours).

E. Collection of Information Is Mandatory

All collections of information pursuant to Rule 17Ad–17 will be mandatory.

F. Confidentiality

The information collected under the amendments to Rule 17Ad–17 would be generated mainly from the internal records of brokers, dealers, and paying agents. The Commission expects that some of this information, if included in a filing with the Commission, would be deemed confidential to the extent permitted by law with respect to such filing. Additionally, with respect to other information collected under the amendments and included in a filing with the Commission, a broker, dealer, or paying agent can request to the Commission that the information be kept confidential.[121] If such a request is made, the Commission will ordinarily keep the information confidential to the extent permitted by law.[122]

G. Record Retention Period

Brokers, dealers, and paying agents will be required to retain records and information under Rule 17Ad–17 for a period of three years, with the first year in an easily accessible place.[123]

IV. Economic Analysis

A. Introduction

Exchange Act Section 23(a)(2) requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking under the Exchange Act where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As described above, the Commission is adopting amendments to Rule 17Ad–17 under congressional directive. As originally adopted, Rule 17Ad–17 requires transfer agents to conduct database searches for lost securityholders. Such loss of contact can be harmful to securityholders because they no longer receive corporate communications or interest and dividend payments; in certain cases, securities, cash, and other property may be placed at risk of being deemed abandoned.

As discussed above in detail, Section 929W of the Dodd-Frank Act amended Section 17A of the Exchange Act to extend to brokers and dealers the requirement of Rule 17Ad–17 to search for ''lost securityholders.'' Separately, the statute requires ''paying agents'' to provide written notification to each unresponsive payee that the securityholder has been sent a check that has not been negotiated, and defines ''paying agent'' to include, ''any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.'' The Commission is adopting amendments to Rule 17Ad–17 to address these statutory requirements and to require brokers, dealers, and paying agents subject to the amended rule to make and keep records to demonstrate compliance with the amended rule, including written procedures that describe their methodology for complying.

While the Commission is adopting amendments to Rule 17Ad–17 specifically to implement the statutory mandate, the Commission recognizes that there may be costs and benefits resulting from the statute and amendments to Rule 17Ad–17. Extending the requirements of Rule 17Ad–17 to brokers and dealers represents a new regulatory obligation for brokers and dealers, and these entities will face associated costs of complying with the new obligations. Furthermore, paying agents—including transfer agents, brokers, and dealers—will incur costs associated with the new requirements of Rule 17Ad–17 to provide certain notifications to unresponsive payees. The definition of ''paying agent'' is sufficiently broad that these costs will also be incurred by entities that do not register with—and have not historically been regulated by—the Commission. At the same time, lost securityholders and unresponsive payees may benefit by receiving

[121] *See* 17 CFR 200.83. Additional information about how to request confidential treatment of information submitted to the Commission is available on the Commission's Web site at: *http://www.sec.gov/foia/howfo2.htm#privacy.*

[122] *See, e.g.,* Exchange Act Section 24, 15 U.S.C. 78x (governing the public availability of information obtained by the Commission) and 5 U.S.C. 552 *et seq.*

[123] The recordkeeping requirements are found in paragraph (d) of Rule 17Ad–17, 17 CFR 240.17Ad–17(d).

securities, cash, or other property as a result of the searches and notifications required by the statute and the resulting amendments to Rule 17Ad–17.

These costs and benefits are discussed below. Additionally, the Commission has considered alternative ways of implementing the statute suggested by commenters, including narrowing the scope of ''brokers and dealers'' and shortening the definition of ''paying agent.'' We discuss aspects of these alternative proposals below as well.

B. Economic Baseline

Originally adopted in 1997, Rule 17Ad–17 requires recordkeeping transfer agents to conduct database searches for lost securityholders. At the time, the Commission staff estimated that 1.34% of total accounts held by such transfer agents were lost, representing around $450 million in lost assets.[124] An informal survey by the Commission staff in 2000 of seven large transfer agents (representing about 75% of shareholder accounts), found that 2.23% of total accounts were lost securityholder accounts.[125] Under state escheatment laws, an account that becomes ''lost'' may result in the assets in the account being deemed abandoned. In the same 2000 survey, the Commission estimated that 0.87% of shareholder accounts, representing an average of $243 per account and over $93 million in total, were remitted to the states as unclaimed property.

As required by the Dodd-Frank Act, the Commission is extending the obligation under Rule 17Ad–17 to search for lost securityholders to brokers and dealers. While brokers and dealers house and manage certain securityholder accounts, there are good economic reasons to believe the likelihood of accounts becoming lost is lower for brokers and dealers than for transfer agents. Brokers and dealers rely on their customers and account holders as a source of revenue, so have an economic incentive to maintain up-to-date records. Additionally, because the customers' and account holders' assets are held by brokers and dealers, and because most of their contact in the ordinary course of business is with the broker or dealer (not a transfer agent), customers have a stronger incentive to keep their account information updated with the brokers and dealers than with transfer agents, so as to not lose contact with their assets. Indeed, though recent data are scarce because the Commission has not to date formally tracked the number of lost securityholder accounts at brokers and dealers, there are studies that support this hypothesis to some extent.

In a 2001 survey of transfer agents and broker-dealers by the Government Accountability Office (''GAO'') (then called the General Accounting Office), the GAO found that, similar to Commission surveys, approximately 2% of accounts at transfer agents and brokers-dealers were classified as lost. While the GAO concluded that few differences may exist between transfer agents and broker-dealers in the ratio of lost securityholder accounts to total accounts, they did find that 95% of brokers-dealers reported less than 1% of accounts as lost, while for transfer agents, 75% reported less than 1% of accounts as lost. Similarly, a less formal 2000 survey of 17 brokers-dealers by SIFMA (then called the Securities Industry Association) found that lost securityholders accounted for 0.79% of total accounts held at brokers-dealers.[126]

Nevertheless, while the overall incidence of lost securityholder accounts relative to total securityholder accounts held may be lower at brokers and dealers than transfer agents, the absolute magnitude, in terms of both number of lost accounts and dollar amount of assets at risk of being abandoned, may still be economically meaningful. Transfer agents serve as an intermediary between issuers and owners of securities, passing along dividends, interest payments, and other corporate communications and distributions to a company's investors. However, a Commission Briefing Paper from 2007 on proxy voting mechanics noted that, at the time, approximately 85% of exchange-traded securities were held in street name, as opposed to investor name.[127] Because transfer agents typically only see the street name on their records, the broker or dealer holding the securities on behalf of investors effectively becomes the intermediary. That is, a transfer agent's searches for lost securityholders likely will not identify lost securityholders who hold securities at a broker or dealer in street name since only the broker's or dealer's internal records will show such securityholders. Rule 17Ad–17 was originally adopted to minimize instances where lost property is claimed by the states, by establishing minimum search requirements for lost securityholders. Because brokers and dealers now serve as the effective intermediary for a large majority of securities holdings, they may be in a position to identify a greater number of lost accounts than transfer agents and find lost securityholders with a greater amount of securities and other assets than transfer agents.

In addition to extending the requirement to search for lost securityholders to brokers and dealers, the amendments to Rule 17Ad–17 also require paying agents to notify unresponsive payees in writing when they have unnegotiated checks outstanding. The Commission currently lacks accurate data—including any informal survey or other incomplete dataset that may be indicative—on the number of unresponsive payees, as well as whether a securityholder has not negotiated a check due to, for example, lost or stolen property or investor inattention. However, based on initial estimates in the Proposing Release we provided for public comment and adjusted based on such comment as described in section III above,[128] the Commission estimates that approximately 800,000 notifications would be sent per year.

C. Benefits and Impact on Efficiency, Competition, and Capital Formation

As mentioned in the discussion of the economic baseline, the general purpose of Rule 17Ad–17 is to reduce the number of securityholder accounts that become lost, and therefore to minimize the risk that lost property is claimed by the states under escheatment laws. This risk can be economically significant—in 2000, the Commission staff estimated that over $93 million in assets, or an average of $243 per account, were remitted to the states as unclaimed property.[129] Extending the rule to brokers and dealers provides another mechanism for minimizing such remittances. A large majority of securities are held in street name rather than investor name—up to 85% of securities, by one Commission estimate—and because transfer agents record only the street name in such cases, brokers and dealers effectively serve as the intermediary between issuers and investors for these holdings

[124] Testimony of Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, U.S. Securities & Exchange Commission, before the House Subcommittee on Finance and Hazardous Materials, Committee on Commerce, *available at http://www.sec.gov/news/testimony/ts162000.htm* (''Bergmann Testimony'').

[125] *Id.*

[126] ''Lost Security Holders: SEC Should Use Data to Evaluate Its 1997 Rule,'' GAO Report GAO–01–978, September 2001, *available at http://www.gao.gov/assets/240/232703.pdf (''GAO Report'').*

[127] ''Roundtable on Proxy Voting Mechanics,'' Commission Briefing Paper, 2007, *available at http://www.sec.gov/spotlight/proxyprocess/proxyvotingbrief.htm.*

[128] *See, e.g.,* Letters from SIFMA and Wells Fargo, *supra* note 14.

[129] *See* Bergmann Testimony, *supra* note 127.

and are in a better position than transfer agents in those cases to identify and find lost securityholders. Therefore, the rule should reduce the number of lost securityholders, which would benefit the securityholders ''found'' by restoring to them their lost securities and other assets that might otherwise be lost to them or escheated.

The Commission recognizes that brokers and dealers already have an economic incentive to search for lost securityholders, since they rely on securityholders for revenue. Therefore, it is possible that the benefits of the rule, in terms of a reduction in the number of lost securityholders, will be relatively modest. However, the Commission believes that establishing minimum search requirements will facilitate the realization of such incentives for identifying and finding lost securityholders, as was apparently intended by Congress.

In the case of unresponsive payees, the Commission believes that, due to instances of lost or stolen property, there may exist a subset of investors who are unaware that an unnegotiated check has gone missing. The rule should benefit these investors by invoking the services of paying agents to reduce the number of unnegotiated checks. While these benefits are difficult to quantify, the Commission estimates that paying agents would send approximately 800,000 notifications per year; accordingly, if even a relatively small percentage of notifications result in checks that would not otherwise have been negotiated being negotiated, there may be a significant aggregate monetary benefit to investors.

The Commission also expects the amendments to Rule 17Ad–17 to modestly improve the efficient allocation and use of resources to the extent that the new rules reduce the number of lost securityholders and unresponsive payees. Fewer lost securityholders and unresponsive payees should reduce the amount of property that is effectively idle and not being used deliberately for an economic purpose because the securityholder is unaware of the existence of the property, as well as reduce the costs securityholders face when attempting to track down and claim lost assets. Furthermore, by identifying lost securityholders and finding lost and idle property, there may be beneficial trades that occur as found accountholders rebalance their portfolios, to the extent that it is optimal to do so. This result should in turn lead to enhanced liquidity and improved price efficiency as assets become available for trade.

The Commission also expects that identification of lost accountholders may lead to better corporate governance, either through improved proxy voting rates or through trades that place the securities in the hands of more active investors. Both channels could result in enhanced managerial monitoring and corporate governance, which in turn would promote capital formation as firms make investment choices that are expected to be more closely aligned with the interests of investors.

Finally, the Commission expects that the amendments will have a marginal, if any, impact on competition. Fundamentally, the regulatory problem that Congress addressed in directing the amendment of Rule 17Ad–17 is about efficiency losses associated with lost property that is ultimately claimed by the state, and not about uncompetitive capital markets. We generally expect the benefits of the rule to be realized in terms of the efficient allocation of resources of securityholders and corresponding effects on capital formation through improved monitoring and governance, and not improved competition.

D. Costs and Impact on Efficiency, Competition, and Capital Formation

The amendments to Rule 17Ad–17 create new regulatory obligations for brokers, dealers, and paying agents (which include transfer agents, brokers, dealers, and other entities). Brokers and dealers must conduct searches for lost securityholders, while paying agents must provide notifications to an unresponsive payee that he or she is the holder of an unnegotiated check. Furthermore, because the definition of ''paying agent'' captures certain entities that distribute cash flows from issuers to investors, the amendments create obligations under the Exchange Act for entities that have not historically been regulated by the Commission and for issuers that have had to file only disclosures. To the extent that brokers and dealers and paying agents do not already have systems in place to perform these functions and make and keep the records required to demonstrate compliance (including the written procedures to describe their methodology for complying), these entities will incur costs for any necessary modifications to information gathering, management, recordkeeping, and reporting systems or procedures.

As already discussed, brokers and dealers have an economic incentive to search for lost accounts. While the new rule imposes costs on brokers and dealers, they may already be shouldering some of these costs voluntarily, minimizing the incremental costs of the rule. Nevertheless, in their 2001 study cited above, the GAO found that approximately 40% of transfer agents and brokers and dealers spent less than $10 per lost account to search for lost securityholders, though larger firms were likely to spend more, and about 10% of firms spent greater than $40.[130] The Commission believes this finding provides a reasonable range of cost estimates to brokers and dealers for their obligation to search for lost securityholders since there appears to be no technology, market, or other development over the last decade that would have materially increased the per-securityholder cost.

The costs incurred by paying agents in fulfilling their obligations to notify unresponsive payees are less certain, and the Commission currently lacks accurate data—including any informal survey or other incomplete dataset that may be indicative—on the number of unresponsive payees. Since unresponsive payees are not lost but merely unresponsive, paying agents do not incur search costs; variable costs should be limited to identifying and recording when a check has gone unnegotiated, and providing the required written notification. However, certain paying agents may not have the same existing economic incentives to identify and notify unresponsive payees as brokers and dealers already have to search for lost securityholders. Therefore, unlike brokers and dealers that conduct such searches voluntarily being required to do so under the amendments to Rule 17Ad–17, certain paying agents may temporarily face higher fixed costs to set up the systems and procedures to perform their new regulatory obligations. Furthermore, if fixed costs meaningfully outweigh variable costs, there could be competitive burdens placed on smaller entities.

In addition to these search and notification costs, brokers, dealers, and paying agents will incur costs in making and retaining the records required under the amendments to Rule 17Ad–17, including the requirement to maintain written procedures describing their methodology for complying with such amendments. These costs may be moderated for regulated entities like brokers and dealers, who must already maintain extensive sets of records regarding securityholders, including

[130] *See* GAO Report, *supra* note 129. Even though Rule 17Ad–17 covered only transfer agents at the time of the 2001 GAO report, the report surveyed transfer agents, brokers, and dealers in order to ascertain their activities in dealing with lost securityholders.

their contacts with such persons. However, the Commission recognizes that these recordkeeping costs may be higher for paying agents who have not been previously regulated by the Commission in this regard, including issuers and certain custodians.

E. Alternatives Considered

The Commission requested comment on the costs and benefits of the amendments to Rule 17Ad–17 in the Proposing Release, and has considered the comments as well as alternative ways to implement the statute where possible. Several commenters offered alternative interpretations of the phase ''brokers and dealers,'' suggesting that the statute be read in such a way that the rule does not apply to all brokers and dealers, as a means to mitigate some of the burden of the amendments.[131] Furthermore, one commenter suggested the Commission could use exemptive authority under Section 36 of the Exchange Act to narrow the scope of the phrase ''brokers and dealers.'' [132] While the Commission appreciates these comments, as explained above, we believe that the Dodd-Frank Act constrains their implementation, particularly in light of the relatively recent adoption of the statute by Congress, and that applying the rule to all brokers and dealers is the appropriate approach at this time, even though the costs of compliance may fall primarily on those brokers and dealers that carry customers' accounts (*i.e.,* carrying firms). As described above, however, the Commission is not imposing any requirements as to the means by which brokers and dealers comply with their obligations under Rule 17Ad–17, and brokers and dealers may of course negotiate among themselves the most efficient allocation of the costs associated with the rule.

Similarly, several commenters suggested that the Commission revise or shorten the definition of ''paying agent,'' since the definition captures entities that do not register with the Commission and have not historically fallen under the Commission's regulatory purview.[133] As with the interpretations of ''brokers and dealers,'' the Commission at this time believes that following the statutory language is the appropriate approach. Moreover, to apply rules to only a subset of entities that were specified by Congress as ''paying agents'' may create unnecessary competitive differences among paying agents, while not fully realizing the benefits of notifying certain classes of unresponsive payees of unnegotiated checks.

Finally, as discussed above, it is not clearly stated in the statute whether the paying agent must provide: (1) A single written notification to *each unresponsive payee* who has been sent a check that has not yet been negotiated; or (2) a single written notification to the unresponsive payee for *each check* that has been sent but has not yet been negotiated. While the Commission considered requiring a written notification for each check that is not yet negotiated, the Commission has determined that the Dodd-Frank Act permits it to allow paying agents to decide how best to comply with the statutory mandate. Under the final rules, a paying agent has the option to send a single notification for multiple unnegotiated checks, provided that the single notification sufficiently identifies each unnegotiated check and is sent no later than seven months after the initial sending of the oldest unnegotiated check in the notification. The Commission believes that the regulatory benefits associated with the statutory mandate can be achieved with a single notification for multiple checks; requiring a separate written notification for each check would impose additional regulatory costs on paying agents without realizing corresponding regulatory benefits.

V. Final Regulatory Flexibility Act Analysis (''FRFA'')

A FRFA has been prepared in accordance with Section 4(a) of the Regulatory Flexibility Act.[134] The Commission prepared the Initial Regulatory Flexibility Act Analysis in conjunction with the Proposing Release on March 18, 2011.[135]

A. Need for and Objectives of the Rule

This rulemaking action was expressly directed Section 929W of the Dodd-Frank Act, which added paragraph (g) to Section 17A of the Exchange Act. The objectives of this rulemaking, as discussed above in Sections I and II, are to help reduce the number of lost securityholders and unresponsive payees, and to further the Commission's mission of protecting investors. The legal basis for the rulemaking is set forth in Section 17A(g) of the Exchange Act.[136]

B. Significant Issues Raised by Public Comment

Comments from the public suggested that certain cost estimates included in the Proposing Release were too low.[137] Accordingly, as discussed in more detail above, especially in Section IV, we have revised the rule's cost estimates.

C. Small Entities Subject to the Rule

1. Brokers and Dealers

The amendments to Rule 17Ad–17 will apply to all brokers and dealers. However, as described above, we anticipate that the amendments will as a practical matter apply mainly to brokers and dealers that carry securities for customer accounts (*i.e.,* carrying firms), which tend to be larger broker and dealer firms. There are 301 brokers and dealers registered with the Commission that we believe act as carrying firms, none of which qualifies as a small entity.[138] According to Exchange Act Rule 0–10(c),[139] a broker or dealer is a small entity if it: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Section 240.17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.[140] Of the 4,705 brokers and dealers registered with the Commission, the Commission estimates that approximately 812 are classified as ''small'' entities for purposes of the Regulatory Flexibility Act. There are 301 brokers and dealers registered with the Commission that we believe act as carrying firms, none of which qualifies as a small entity. Accordingly, we do not expect that the amendments to Rule 17Ad–17 will have any significant effect on small brokers or dealers.[141]

[131] Letters from Mr. Barnard, Annuity Committee, and SIFMA, *supra* note 14.

[132] Letter from ABA, *supra* note 14.

[133] Letters from ABA, Annuity Committee, and American Bankers, *supra* note 14.

[134] 5 U.S.C. 603(a). We note that neither the amendments to Rule 17Ad–17 nor the adoption of technical Rule 15b1–6 requires analysis under the Regulatory Flexibility Act.

[135] *Supra* note 13, at Section VI.

[136] 15 U.S.C. 78q–1(g).

[137] Letters from ABA, SIFMA, and Wells Fargo, *supra* note 14.

[138] *See supra* note 100.

[139] 17 CFR 240.0–10(c).

[140] Paragraph (i) of Rule 0–10, 17 CFR 240.0–10, discusses the meaning of ''affiliated person'' as referenced in Paragraph (c) of Rule 0–10.

[141] 17 CFR 240.17Ad–17.

2. Paying Agents

Certain amendments to Rule 17Ad–17 will apply to all paying agents. Section 17A(g)(D)(ii) defines the term ''paying agent'' to include ''any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payment from the issuer of a security and distributes the payments to the holder of the security.'' With respect to data for the entities who could potentially qualify as ''paying agents'' under this definition: (1) Of the 10,379 issuers that file reports with the Commission, 1,207 qualify as small businesses; [142] (2) of the 536 transfer agents registered with the Commission or with the Federal banking agencies, 135 qualify as small businesses; [143] (3) of the 4,075 brokers and dealers registered with the Commission, 812 qualify as small businesses, as discussed above; [144] (4) of the 11,797 investment advisers registered with the Commission, 718 qualify as small businesses; [145] (5) of the 264 indenture trustees, four qualify as small businesses; [146] and (6) of the 896 custodians, 11 qualify as small businesses.[147] The Commission has no supportable basis to estimate the number of small entities with respect to other persons that potentially may be included in the definition under the ''any other person'' provision. As noted in Section IV, while approximately 28,577 entities have been identified as potential paying agents, the Commission estimates that only approximately 3,035 such entities will actually qualify as paying agents under Rule 17Ad–17.

We believe that a high proportion of paying agent services will be provided by: (1) brokers and dealers that carry customer securities (which, as discussed above in Section V.C.1, would not be small entities) and (2) transfer agents (including bank transfer agents) that provide such services. These firms that typically serve as intermediaries between issuers and securityholders are not typically small businesses as defined in Exchange Act Rule 0–10(c).[148]

D. Reporting, Recordkeeping, and Other Compliance Requirements

New paragraph (d) of Rule 17Ad–17 requires brokers, dealers, and paying agents maintain records to demonstrate compliance with the amendments to Rule 17Ad–17, including written procedures that describe their methodology for complying with the amendments. Such records are required to be maintained for not less than three years, the first year in an easily accessible place in accordance with Rule 17Ad–17(i).[149] Records are subject to examination by the appropriate regulatory agency as defined by Section 3(a)(34)(B) of the Exchange Act.[150]

E. Agency Action To Minimize Effect on Small Entities

As required by Section 604 of the Regulatory Flexibility Act,[151] with respect to small entities, the Commission considered whether viable alternatives to the rulemaking exist that could accomplish the stated objectives of Section 17A(g) of the Exchange Act and whether they would minimize any significant economic impact of the rules on small entities. Specifically, the Commission considered the following alternatives: (1) The establishment of differing compliance requirements that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the new rules insofar as they affect small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Section 929W of the Dodd-Frank Act, which added Section 17A(g) to the Exchange Act, expressly requires the amendments to Rule 17Ad–17. We believe that small entities should be included under the amendments because, as discussed above, the statutory language does not suggest that Congress intended to exclude or exempt any class of brokers, dealers, or paying agents from compliance. Rather, furthering the apparent goal of Congress—reuniting securityholders and payees with their property—requires the searches and notifications contemplated by Section 929W to be made by entities regardless of their size. In addition, as noted in Section V.C above, we believe that a significant majority of the entities affected by the amendments will be brokers, dealers, and transfer agents that are not small entities. We expect that, in practice, most brokers and dealers conducting searches for lost securityholders will be carrying firms, which are not small entities, and likewise we expect that most paying agents providing notifications to unresponsive payees will be carrying firms and the larger transfer agents (including bank transfer agents).[152]

A copy of the FRFA may be obtained by contacting Thomas C. Etter, Jr., Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010, telephone no. (202) 551–5713.

VI. Statutory Basis and Text of Amendments

Statutory Basis

Pursuant to Section 17A(g) of the Exchange Act, 15 U.S.C. 78q-1(g), the Commission has amended § 240.17Ad-7 and § 240.17Ad–17 and added § 240.15b1–6 under the Exchange Act in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of the Amendments

In accordance with the foregoing, the Commission amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

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

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

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

* * * * *

Section 240.17Ad–17 is also issued under Pub. L. 111–203, section 929W, 124 Stat. 1869 (2010).

* * * * *

■ 1. Add Section 240.15b1–6 to read as follows:

§ 240.15b1–6 Notice to brokers and dealers of requirements regarding lost securityholders and unresponsive payees.

Brokers and dealers are hereby notified of Rule 17Ad–17 (§ 240.17Ad–

[142] Exchange Act Rule 0–10(a), 17 CFR 240.0–10(a).

[143] Exchange Act Rule 0–10(h). 17 CFR 240.0–10(h).

[144] Exchange Act Rule 0–10(c). 17 CFR 240.0–10(c).

[145] Investment Advisers Act Rule 0–7(a). 17 CFR 275.0–7(a).

[146] Trust Indenture Act Rule 0–7, 17 CFR 260.0–7.

[147] Small Business Administration Act Rule 201, 13 CFR 121.201.

[148] 17 CFR 240.0–10(c).

[149] 17 CFR 240.240.17Ad–17(i).

[150] 15 U.S.C. 78c(a)(34)(B).

[151] 5 U.S.C. 604.

[152] *See supra* Section V.C.1 and Section V.C.2.

17), which addresses certain requirements with respect to lost securityholders and unresponsive payees that may be applicable to them.

■ 2. Section 240.17Ad–7(i) is amended by removing ''240.17Ad–17(c)'' and adding in its place ''240.17Ad–17(d)''.

■ 3. Section 240.17Ad–17 is amended by:
■ a. Revising the heading.
■ b. Revising paragraph (a)(1).
■ c. In paragraph (a)(2) adding the phrase '', broker, or dealer'' following the word ''agent''.
■ d. Revising paragraph (a)(3).
■ e. In paragraph (b)(2)(i) adding the phrase ''or customer security account records of the broker or dealer'' following the word ''file'' and adding the phrase ',broker, or dealer'' following the phrase ''securityholder, the transfer agent''.
■ f. In paragraph (b)(2)(ii) adding the phrase '', broker, or dealer'' following the word ''agent''.
■ g. Redesignating paragraph (c) as paragraph (d), and adding new paragraph (c).
■ h. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 240.17Ad–17 Lost securityholders and unresponsive payees.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders and every broker or dealer that has customer security accounts that include accounts of lost securityholders shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain such lost securityholders' correct addresses, each such recordkeeping transfer agent and each such broker or dealer shall conduct two database searches using at least one information database service. The transfer agent, broker, or dealer shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such database searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder; and

(ii) Between six and twelve months after the first search for such lost securityholder by the transfer agent, broker, or dealer.

* * * * *

(3) A transfer agent, broker, or dealer need not conduct the searches set forth in paragraph (a)(1) of this section for a lost securityholder if:

(i) It has received documentation that such securityholder is deceased; or

(ii) The aggregate value of assets listed in the lost securityholder's account, including all dividend, interest, and other payments due to the lost securityholder and all securities owned by the lost securityholder as recorded in the master securityholder files of the transfer agent or in the customer security account records of the broker or dealer, is less than $25; or

(iii) The securityholder is not a natural person.

* * * * *

(c)(1) The paying agent, as defined in paragraph (c)(2) of this section, shall provide not less than one written notification to each unresponsive payee, as defined in paragraph (c)(3) of this section, stating that such unresponsive payee has been sent a check that has not yet been negotiated. Such notification may be sent with a check or other mailing subsequently sent to the unresponsive payee but must be provided no later than seven (7) months (or 210 days) after the sending of the not yet negotiated check. The paying agent shall not be required to send a written notice to an unresponsive payee if such unresponsive payee would be considered a lost securityholder by a transfer agent, broker, or dealer.

(2) The term *paying agent* shall include any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

(3) A securityholder shall be considered an *unresponsive payee* if a check is sent to the securityholder by the paying agent and the check is not negotiated before the earlier of the paying agent's sending the next regularly scheduled check or the elapsing of six (6) months (or 180 days) after the sending of the not yet negotiated check. A securityholder shall no longer be considered an *unresponsive payee* when the securityholder negotiates the check or checks that caused the securityholder to be considered an *unresponsive payee.*

(4) A paying agent shall be excluded from the requirements of paragraph (c)(1) of this section where the value of the not yet negotiated check is less than $25.

(5) The requirements of paragraph (c)(1) of this section shall have no effect on state escheatment laws.

(d) Every recordkeeping transfer agent, every broker or dealer that has customer security accounts, and every paying agent shall maintain records to demonstrate compliance with the requirements set forth in this section, which records shall include written procedures that describe the transfer agent's, broker's, dealer's, or paying agent's methodology for complying with this section, and shall retain such records in accordance with Rule 17Ad–7(i) (§ 240.17Ad–7(i)).

By the Commission.

Dated: January 16, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–01269 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 514

Fees

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Correcting amendment.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) corrects its fee regulations in order to reference the Commission's recently finalized appeal rules contained in another subchapter.

DATES: *Effective Date:* February 7, 2013.

FOR FURTHER INFORMATION CONTACT: Armando Acosta, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Email: *armando_acosta@nigc.gov*; telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act established an agency funding framework whereby gaming operations licensed by tribes pay a fee to the Commission for each gaming operation that conducts Class II or Class III gaming activity that is regulated by IGRA. 25 U.S.C. 2717(a)(1). These fees are used to fund the Commission in carrying out its statutory duties. Fees are based on the gaming operation's assessable gross gaming revenues, which are defined as the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures. 25

U.S.C. 2717(a)(6). The rate of fees is established annually by the Commission and is payable on a quarterly basis. 25 U.S.C. 2717(a)(3). IGRA limits the total amount of fees imposed during any fiscal year to .08 percent of the gross gaming revenues of all gaming operations subject to regulation under IGRA. Failure of a gaming operation to pay the fees imposed by the Commission's fee schedule can be grounds for a civil enforcement action. 25 U.S.C. 2713(a)(1). The purpose of part 514 is to establish how the NIGC sets and collects those fees, to establish a basic formula for tribes to utilize in calculating the amount of fees to pay, and to advise tribes of the potential consequences for failure to pay the fees.

On February 2, 2012, the Commission published a final rule amending part 514 to provide for the submittal of fees and fee worksheets on a quarterly basis rather than bi-annually; to provide for operations to calculate fees based on the gaming operation's fiscal year rather than a calendar year; to amend certain language in the regulation to better reflect industry usage; to establish an assessment for fees submitted 1–90 days late; and to establish a fingerprinting fee payment process. 77 FR 5178, Feb. 2, 2012. In its final rule, the Commission also provided tribes with rights to appeal proposed late fee assessments in accordance with 25 CFR part 577.

On September 25, 2012, the Commission published a final rule consolidating all appeal proceedings before the Commission into a new subchapter H (Appeal Proceedings Before the Commission), thereby removing former parts 524, 539, and 577. 77 FR 58941, Sept. 25, 2012. Thus, any reference in part 514 to appeal rights in former part 577 is obsolete and must be revised to reference the new subchapter H.

Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, *et seq.,* and assigned OMB Control Number 3141–0007. The OMB control number expires on November 30, 2015.

Text of the Rules

For the reasons discussed in the Preamble, the Commission amends its regulations at 25 CFR part 514 as follows:

PART 514—FEES

■ 1. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2710, 2717, 2717a.

■ 2. In part 514, revise all references to ''part 577'' to read ''subchapter H''.

Dated: January 14, 2013.

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2013–00942 Filed 1–22–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket No. USCG–2012–0952]

RIN 1625–AB95

Inland Waterways Navigation Regulation: Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is removing the Decker Island restricted anchorage area in the Sacramento River. The restricted anchorage area was needed in the past to prevent non-government vessels from transiting through or anchoring in the United States Army's tug and barge anchorage zones. The United States Army relinquished control of the island in 1975, and the restricted anchorage area is no longer necessary.

DATES: This rule is effective April 23, 2013, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before March 25, 2013 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by March 25, 2013, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0952 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call Lieutenant Lucas Mancini, Coast Guard District Eleven; telephone 510–437–3801, email *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0952), 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. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and type ''USCG–2012–0952'' in the ''Search'' box and click ''Search.'' On the line for this docket, click ''Comment.'' If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type ''USCG–2012–0952'' and click ''Search.'' If you do not have access to the Internet, you may also 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., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting to the docket using one of the methods specified under **ADDRESSES.** In your request, explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment on removal of this unused anchorage. This rule would remove a restriction that is not currently needed or enforced. If no adverse comment or notice of intent to submit an adverse comment is received by March 25, 2013, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Basis and Purpose

The purpose of this rule is to remove 33 CFR 162.205(c) because the restricted anchorage described in that paragraph has not been needed or enforced since the United States Army vacated Decker Island in 1975. The authority to conduct this rulemaking is found in 33 U.S.C. 1231.

IV. Discussion of the Rule

Prior to 1953 the United States Army acquired 114.02 acres of Decker Island. The Army used the land for boat landing and storage activities. The purpose of 33 CFR 162.205(c) was to keep vessels and other craft not associated with the United States government from navigating or anchoring within 50 feet of any moored government vessel in the area. In 1974 the United States Army began to vacate Decker Island, officially terminating its lease in January of 1975. With the Army's release of the 114.02 acres of Decker Island the intended use of the restricted anchorage was no longer needed. We believe that no member of the public will be adversely affected by

removal of the restriction. This rule will update the inland waterways navigation regulations by removing the Decker Island restricted anchorage.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. For the reasons stated in section IV., ''Discussion of the Rule,'' this rule does not impose any additional costs on the public or government.

B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in section II., ''Regulatory Information,'' and therefore is not required to publish a regulatory flexibility analysis.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult Lieutenant Lucas Mancini via the **ADDRESSES** section of the rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

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

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(f) of the Instruction. This rule involves removal of the restricted anchorage area at Decker Island in the Sacramento River. Under figure 2–1, paragraph (34)(f) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 162

Navigation (water) and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

■ 1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 162.205, remove paragraph (c) consisting of the paragraph heading and paragraphs (c)(1) and (c)(2).

Dated: January 13, 2013.

K.L. Schultz,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2013–01238 Filed 1–22–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2013–0019

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Ninth Coast Guard District; Stay (Suspension)

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Ninth Coast Guard District is staying (suspending) reporting requirements under the Regulated Navigation Area (RNA) established for barges loaded with certain dangerous cargoes (CDC barges) in the inland rivers of the Ninth Coast Guard District. This stay (suspension) extension is necessary because the Coast Guard continues to analyze future reporting needs and evaluate possible changes in CDC reporting requirements. This stay (suspension) of the CDC reporting requirements in no way relieves towing vessel operators and fleeting area managers responsible for CDC barges in the RNA from their dangerous cargo or vessel arrival and movement reporting obligations currently in effect under other regulations or placed into effect under appropriate Coast Guard authority.

DATES: This rule is effective in the CFR on January 23, 2013 until 11:59 p.m. on September 30, 2013. This rule is effective with actual notice for purposes of enforcement at 12:01 a.m. on January 15, 2011 until 11:59 p.m. on September 30, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2013–0019. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions about this temporary rule, call or email LCDR David Webb, U.S. Coast Guard; telephone 216–902–6050, email: *David.M.Webb@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CDC Certain Dangerous Cargo
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable, unnecessary, and contrary to the public interest.

The contract for the CDC barge reporting system at the Inland River Vessel Movement Center (IRVMC) expired in January 2011. Due to the expiration of this contract, the Coast Guard would not be able to receive and process reports, therefore, in late December 2010, the Coast Guard decided to suspend the IRVMC reporting requirements for a two-year period. This suspension was published in the **Federal Register** at 76 FR 2829 (January 18, 2011), and expired on January 15, 2013.

At this time, the contract for the CDC barge reporting system has not been renewed, and the Coast Guard is still considering whether to enter into a new contract and lift the suspension, modify the reporting requirements in the RNA, or repeal the RNA completely. An extension of the stay is necessary while the Coast Guard continues to consider these options.

We believe prior notice and comment is unnecessary because we expect the affected public will have no objection to resuming the stay (suspension) of regulatory requirements that expired on January 15, 2013. The Coast Guard received no public comment or objection regarding the suspension that was in effect from 2011 until January 15, 2013. Prior notice and comment is also contrary to the public interest because there is no public purpose served by continuing to require reports when there is no mechanism for receiving or processing those reports.

Under 5 U.S.C. 553(d)(1), a substantive rule that relieves a restriction may be made effective less than 30 days after publication. This temporary final rule, suspending the reporting requirements and thereby relieving the regulatory restriction on towing vessel operators and fleeting area managers provided by 33 CFR 165.921, is effective in the CFR on January 23, 2013 and, for purposes of enforcement, is effective at 12:01 a.m. on January 15, 2011.

B. Basis and Purpose

The legal basis for this rulemaking is the Coast Guard's authority to establish regulated navigation areas, under 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. An RNA is a water area within a defined boundary for which regulations for vessels navigating within the area have been established, to control vessel traffic in a place determined to have hazardous conditions. 33 CFR 165.10; Commandant Instruction Manual M16704.3A, 1–6.

The purpose of this temporary final rule is to resume the suspension of reporting requirements that was in place between January 2011 and January 15, 2013. This temporary rule relieves the towing vessel operators and fleeting area managers responsible for CDC barges from the 33 CFR 165.921 reporting requirements for a nine month period.

C. Discussion of the Final Rule

During the suspension of reporting requirements, towing vessel operators and fleeting area managers responsible for CDC barges will be relieved of their obligation to report their CDCs under 33 CFR 165.921(d), (e), (f), (g), and (h). This suspension in no way relieves towing vessel operators and fleeting area managers responsible for CDC barges

from their dangerous cargo or vessel arrival and movement reporting obligations currently in effect under other regulations or placed into effect under appropriate Coast Guard authority.

D. Regulatory Analyses

We developed this temporary final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. This rule is temporary and limited in nature by extending the previously published suspension of CDC barge reporting requirements for an additional nine-month period, creating no undue delay to vessel traffic in the regulated area.

2. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some which may be small entities: Owners or operators of CDC barges intending to transit the Inland Rivers in the Ninth Coast Guard District during this nine month period. This rule will not have a significant economic impact on those entities or a substantial number of any small entities because this rule suspends reporting requirements for nine months.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the nine-month extension of a previously

published suspension of reporting requirements established for CDC barges transiting the inland rivers of the Ninth Coast Guard District. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.921 by staying paragraphs (d), (e), (f), (g), and (h) from January 23, 2013 until 11:59 p.m. on September 30, 2013.

Dated: January 11, 2013.

Michael N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2013–01234 Filed 1–22–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0938]

RIN 1625–AA87

Security Zone, Potomac and Anacostia Rivers; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac River and Anacostia River. This action is necessary to safeguard persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore. This action is intended to temporarily restrict vessel traffic in portions of the Potomac and Anacostia Rivers during the event.

DATES: This rule is effective from January 15, 2013 until January 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0938]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald L. Houck, at Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On October 24, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone, Potomac and Anacostia Rivers; Washington, DC'' in the **Federal Register** (77 FR 64943). After the NPRM was published in the **Federal Register,** however, the Coast Guard determined that the boundary of the proposed security zone on the south between the Virginia shoreline and the District of Columbia shoreline along latitude 38°51′00″ N needed to be relocated farther downstream to and along latitude 38°50′00″ N. On November 28, 2012, we published a supplemental notice of proposed rulemaking (SNPRM) entitled ''Security Zone, Potomac and Anacostia Rivers; Washington, DC'' in the **Federal Register** (77 FR 70964). We received one comment on the proposed rules. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event and its associated activities, and enhancing public and maritime safety.

B. Basis and Purpose

On January 20, 2013, the U.S. Presidential Inauguration swearing-in ceremony will take place at the U.S. Capitol in Washington, DC. Activities associated with the Presidential Inauguration include several Inaugural ceremonies, balls, parades and receptions in the District of Columbia, which are scheduled to occur from January 15, 2013 through January 24, 2013. During these activities, gatherings of high-ranking United States officials and the public-at-large are expected to take place. These activities are located along navigable waterways within the Captain of the Port Baltimore's Area of Responsibility. The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the large gatherings of high-ranking United States officials, the public-at-large, and surrounding waterfront areas and communities would have. The security zone is necessary to safeguard life and property on the navigable waters before, during, and after activities associated with the Presidential Inauguration and will help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the events and engaging in waterborne terrorist actions during the highly-publicized events.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received one comment in response to the NPRM. No public meeting was requested and none was held. What follows is a review of,

and the Coast Guard's response to, the issue that was presented by the commenter concerning the proposed regulations.

The commenter, Mr. David A. Bell, a resident of Hamburg, NY, stated his support for the Coast Guard's proposed temporary security zone.

The security zone is tailored to impose a minimum adverse affect on port operations and waterway users located within certain waters of the Potomac River and Anacostia River at Washington, DC during the event and its associated activities.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. There is no vessel traffic associated with recreational boating and commercial fishing expected during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the security zone during the enforcement period. Although the security zone will apply to the entire width of the Potomac and Anacostia Rivers, traffic may be allowed to pass through the zone with the permission of the Captain of the Port Baltimore. Before the effective period, maritime advisories will be widely available to the maritime community. Additionally, given the time of year this event is scheduled, the vessel traffic is expected to be minimal.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT,** above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary security zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0938 to read as follows:

§ 165.T05–0938 Security Zone, Potomac and Anacostia Rivers; Washington, DC.

(a) *Location.* The following area is a security zone:

(1) All waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge at mile 113.0, downstream to and bounded on the south between the Virginia shoreline and the District of Columbia shoreline along latitude 38°50′00″ N, including the waters of the Georgetown Channel Tidal Basin; and

(2) All waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the 11th Street (I–295) Bridge at mile 2.1, downstream to and bounded on the south by its confluence with the Potomac River. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary section, § 165.T05–0938.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. Permission may be requested prior to activation of the zone. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(e) *Effective period.* This section will be enforced from 8 a.m. on January 15, 2013 through 10 p.m. on January 24, 2013.

Dated: January 10, 2013.

Kevin C. Kiefer,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2013–01239 Filed 1–22–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0615; FRL–9364–6]

Epoxy Polymer; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of polymers of one or more diglycidyl ethers of bisphenol A, resorcinol, glycerol, cyclohexanedimethanol, neopentyl glycol, and polyethylene glycol, with one or more of the following: Polyoxypropylene diamine, polyoxypropylene triamine, N-aminoethyl-piperazine, trimethyl-1,6-hexanediamine isophorone diamine, *N,N*-dimethyl-1,3-diaminopropane, nadic methyl anhydride, 1,2-cyclohexane-dicarboxylic anhydride and 1,2,3,6-tetrahydrophthalic anhydride; also referred to as epoxy polymer, when used as an inert ingredient in a pesticide chemical formulation. Syngenta Crop Protection, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of polymers of one or more of the epoxy polymers.

DATES: This regulation is effective January 23, 2013. Objections and requests for hearings must be received on or before March 25, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0615, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30

a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; email address: *leifer.kerry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0615 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 25, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0615, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of September 28, 2012, (77 FR 59578) (FRL–9364–6), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 2E7986) filed by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of polymers of one or more diglycidyl ethers of bisphenol A, resorcinol, glycerol, cyclohexanedimethanol, neopentyl glycol, and polyethylene glycol with one or more of the following: Polyoxypropylene diamine, polyoxypropylene triamine, N-aminoethyl-piperazine, trimethyl-1,6-hexanediamine isophorone diamine, *N,N*-dimethyl-1,3-diaminopropane, nadic methyl anhydride, 1,2-cyclohexane-dicarboxylic anhydride and 1,2,3,6-tetrahydrophthalic anhydride. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances, will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the

case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). The epoxy polymer conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 400,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, the epoxy polymer meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in Unit III. 1. through 7., no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to the epoxy polymer.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that the epoxy polymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of the epoxy polymer is 400,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since the epoxy polymer conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found the epoxy polymer to share a common mechanism of toxicity with any other substances, and the epoxy polymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the epoxy polymer does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of the epoxy polymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of the epoxy polymer.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established an MRL for the epoxy polymer.

IX. Conclusion

Accordingly, EPA finds that exempting residues of the epoxy polymer from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve

any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

Although this action does not require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As add such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 10, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, add alphabetically the following polymer to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Polymer of one or more diglycidyl ethers of bisphenol A, resorcinol, glycerol, cyclohexanedimethanol, neopentyl glycol, and polyethylene glycol with one or more of the following: Polyoxypropylene diamine, polyoxypropylene triamine, N-aminoethyl-piperazine, trimethyl-1,6-hexanediamine isophorone diamine, *N,N*-dimethyl-1,3-diaminopropane, nadic methyl anhydride, 1,2-cyclohexanedicarboxylic anhydride and 1,2,3,6-tetrahydrophthalic anhydride, minimum number average molecular weight (in amu), 400,000.	None.
* * * * * * *	

[FR Doc. 2013–01196 Filed 1–22–13; 8:45 am]

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Proposed Rules

Federal Register
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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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0837; FRL–9771–4]

Approval and Promulgation of Implementation Plans; South Carolina: New Source Review—Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to the South Carolina State Implementation Plan (SIP) submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) to EPA in five separate SIP submittals dated May 1, 2012, July 18, 2011, February 16, 2011, December 23, 2009, and December 4, 2008. The SIP revisions make changes to South Carolina's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to adopt federal PSD requirements regarding fine particulate matter ($PM_{2.5}$) and changes to the State's provisions related to the national ambient air quality standards (NAAQS) and volatile organic compounds (VOC). EPA is proposing to approve portions of the submittals as revisions to South Carolina's SIP because the Agency has preliminarily determined that they are consistent with section 110 of the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before February 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0837 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0837, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2012–0837.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the South Carolina SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR or PSD, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; email address: *adams.yolanda@epa.gov.* For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

EPA is proposing to approve portions of SIP submittals provided by SC DHEC to EPA on May 1, 2012,[1] July 18, 2011, February 16, 2011, December 23, 2009, and December 4, 2008, to adopt NSR permitting requirements for implementing the $PM_{2.5}$ NAAQS, federal changes to the NAAQS, an update to the federal definition for VOC, and an administrative correction to the State's VOC rule. South Carolina's May 1, 2012, SIP submittal amends the State's PSD regulations at Regulation 61–62.5, Standard No. 7—*Prevention of Significant Deterioration* to adopt the $PM_{2.5}$ PSD increments promulgated in the rule entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),'' Final Rule, 75 FR 64864, (October 20, 2010) (hereafter referred to as ''$PM_{2.5}$ PSD Increments-SILs-SMC Rule'').[2] The December 4, 2008, December 23, 2009, and July 18, 2011, SIP submissions, as well as the May 1, 2012, submission, all update South Carolina's ambient air quality standards table at 61–62.5, Standard No. 2—*Ambient Air Quality Standards* to be consistent with EPA's NAAQS at 40 CFR part 50 and table at *http://www.epa.gov/air/criteria.html*. Also, South Carolina's December 4, 2008, and February 16, 2011, SIP submittals amend the State's definition for VOC to be consistent with the federal definition at 40 CFR 51.100(s). Lastly, the December 4, 2008, submittal makes an administrative correction to Regulation 61–62.5, Standard 5—*Volatile Organic Compounds.* Details concerning each SIP submittal are summarized below.

II. What is the background for EPA's proposed action?

Today's proposed action regarding the PSD provisions relate to EPA's $PM_{2.5}$ PSD Increments-SILs-SMC Rule. Today's proposed actions on administrative changes to South Carolina's ambient air quality standards and to South Carolina's definition for VOC relate to other federal rule changes including the federal VOC definition at 40 CFR 51.100(s). More detail on the $PM_{2.5}$ PSD Increments-SILs-SMC Rule can be found in EPA's October 20, 2010, final rule and is summarized below. *See* 75 FR 64864.

A. $PM_{2.5}$ PSD Increments-SILs-SMC-Rule

On October 20, 2010, EPA finalized the $PM_{2.5}$ PSD Increments-SILs-SMC Rule to provide additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR.[3] Specifically, the rule establishes: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC (also a screening tool) used by a major source subject to PSD to determine if a source must submit to the permitting authority one year of pre-construction air quality monitoring data prior to constructing or modifying a facility. South Carolina's May 1, 2012, SIP submittal adopts the $PM_{2.5}$ increments portion of the $PM_{2.5}$ PSD Increments-SILs-SMC Rule to be consistent with the federal NSR regulations and to appropriately implement the State's NSR program for the $PM_{2.5}$ NAAQS. South Carolina's May 1, 2012, SIP submittal did not adopt the SILs and SMC screening tools also promulgated in the October 20, 2010, rule as the screening tools are not required by the Act as part of an approvable SIP program.[4] EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No 10–1413 (D.C. Circuit Court).[5]

1. What are PSD increments?

As established in part C of title I of the CAA, EPA's PSD program protects public health from adverse effects of air pollution by ensuring that construction of new or modified sources in attainment or unclassifiable areas does not lead to significant deterioration of air quality while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.'' In other words, when a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the ''maximum allowable increase'' of an air pollutant allowed to occur above the applicable baseline concentration[6] for that pollutant. PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate ''significant deterioration'' of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable area in which the source is located as well as any other attainment or unclassifiable area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 microgram per meter cubed ($\mu g/m^3$) (annual average). *See* 40 CFR 52.21(b)(15)(i). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application and is based on the location of the proposed source and its emissions impact on the

[1] South Carolina's May 1, 2012 submission to EPA also included changes to Regulation 61–62.63—National Emissions Standards for Hazardous Air Pollutants which is not part of the South Carolina federally approved SIP.

[2] South Carolina's May 1, 2012, SIP submittal did not include the SILs-SMC screening tools also promulgated in the $PM_{2.5}$ PSD Increments-SILs-SMC Rule. Furthermore, EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No 10–1413 (D.C. Circuit Court).

[3] EPA's May 16, 2008, Rule entitled ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers,'' Final Rule (73 FR 28321) and the $PM_{2.5}$ PSD Increments-SILs-SMC Rule establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS. EPA approved South Carolina's SIP submittal to adopt the May 16, 2008, $PM_{2.5}$ NSR requirements on June 23, 2011. *See* 76 FR 36875.

[4] As part of the response to comments on the October 20, 2010, final rulemaking, EPA explained that the Agency agrees that the SILs and SMCs used as *de minimis* thresholds for the various pollutants are useful tools that enable permitting authorities and PSD applicants to screen out ''insignificant'' activities; however, these values are not required by the Act as part of an approvable SIP program. EPA believes that most states are likely to adopt the SILs and SMCs because of the useful purpose they serve regardless of EPA's position that the values are not mandatory. Alternatively, states may develop more stringent values if they desire to do so. In any case, states are not under any SIP-related deadline for revising their PSD programs to add these screening tools. *See* 75 FR 64864, 64900.

[5] On April 6, 2012, EPA filed a brief with the D.C. Circuit Court defending the Agency's authority to implement SILs and SMC for PSD purposes.

[6] Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

area. Once the baseline area is established, subsequent PSD sources locating in that area need to consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the operative ''baseline date'' after which new sources must evaluate increment consumption.[7] On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available. *See* 75 FR 64864. As described in the $PM_{2.5}$ PSD Increments-SILs-SMC Rule, and pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for $PM_{2.5}$ as a new pollutant[8] for which NAAQS were established after August 7, 1977,[9] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the ''contingent safe harbor'' approach. *See* 75 FR 64864 at 64869 and ambient air increment table at 40 CFR 51.166(c)(1) and 52.21(c).

In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increments-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for *''major source baseline date''* and *''minor source baseline date''* (including trigger dates) to establish the $PM_{2.5}$ NAAQS specific dates associated with the implementation of $PM_{2.5}$ PSD increments. *See* 75 FR 64864. In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans to EPA for approval (to adopt the $PM_{2.5}$ PSD increments) within 21 months from promulgation of the final rule (by July 20, 2012). Regardless of when a state submits its revised SIP, the emissions from major sources subject to PSD for $PM_{2.5}$ for which construction commenced after October 20, 2010 (major source baseline date), consume $PM_{2.5}$ increment and should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state's revised PSD program. *See* 75 FR 64864. As discussed in detail in Section III, South Carolina's May 1, 2012, SIP submission adopts the $PM_{2.5}$ PSD increment permitting requirements promulgated in the $PM_{2.5}$ PSD Increments-SILs-SMC Rule.

III. What is EPA's analysis of South Carolina's SIP submittals?

South Carolina currently has a SIP-approved NSR program for new and modified stationary sources. SC DHEC's PSD preconstruction rules are found at Regulation 61–62.5, Standard No. 7–*Prevention of Significant Deterioration* and apply to major stationary sources or modifications constructed in areas designated attainment or unclassifiable/attainment as required under part C of title I of the CAA with respect to the NAAQS. EPA is proposing to approve changes to South Carolina's SIP to adopt the $PM_{2.5}$ PSD increments, administrative updates to the State's NAAQS table at Regulation 61–62.5, Standard No. 2, and a revision to the VOC definition at Regulation 61–62.1—*Definitions and General Requirements—VOC.* See below for more details on South Carolina's changes to its SIP.

A. Regulation 62–62.5, Standard No. 7—Prevention of Significant Deterioration

South Carolina's May 1, 2012, SIP submittal adopts $PM_{2.5}$ PSD increments for the $PM_{2.5}$ annual and 24-hour NAAQS (pursuant to section 166(a) of the CAA) into the South Carolina SIP (at Regulation 61–62.5, Standard No. 7) as promulgated in the October 20, 2010, and includes: (1) Addition of $PM_{2.5}$ PSD increments at SC DEHC's increments at Regulation 61–62.5, Standard No. 7 (c) and (p)(5) (for Class I variances) (consistent with the tables at 40 CFR 51.166(c)), including replacing the term ''particulate matter'' with ''PM_{10}'' in the tables at Regulation 61–62.5, Standard No. 7 paragraphs (c) and (p)(5) (for Class I Variances) and replacing the term ''particulate matter'' with ''$PM_{2.5}$, PM_{10}'' in the text at Regulation 61–62.5, Standard No. 7 paragraph (p)(5) (for Class I Variances); (2) revision to the definition at Regulation 61–62.5, Standard No. 7, paragraph (b)(31)(i)(a)–(c) for ''major source baseline date'' (consistent with 40 CFR 51.166(b)(14)(i)(a) and (c)), to establish major source baseline date for $PM_{2.5}$ and removing the term ''particulate matter'' to distinguish between PM_{10} and $PM_{2.5}$; Regulation 61–62.5, Standard No. 7, paragraph (b)(31)(ii)(a)–(c) for ''minor source baseline date,'' to establish the $PM_{2.5}$ ''trigger date'' (consistent with 40 CFR 51.166(b)(14)(ii)(c)) and remove the term ''particulate matter'' to distinguish between PM_{10} and $PM_{2.5}$; (3) revisions to Regulation 61–62.5, Standard No. 7, paragraph (5)(i) for ''baseline area'' (consistent with 40 CFR 51.166(b)(15)(i) and (ii)) to specify pollutant air quality impact annual averages and amend the regulatory reference for section 107(d) of the CAA at paragraph (5)(ii); and (4) amendment to Regulation 61–62.5, Standard No. 7 paragraph (b)(31)(iii)(a) to also amend the regulatory reference for section 107(d) of the CAA and to add a reference to 40 CFR 51.166. These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in South Carolina's PSD program. In today's action, EPA is proposing to approve South Carolina's May 1, 2012, SIP submittal to address $PM_{2.5}$ PSD increments. As mentioned above, South Carolina's May 1, 2012, SIP submittal did not propose to adopt the SILs and SMC screening tools also promulgated in the $PM_{2.5}$ PSD Increments-SILs-SMC Rule.

B. Regulation 61.62.5, Standard No. 2—Ambient Air Quality Standards

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR part 50—*National Primary and Secondary Ambient Air Quality Standards.* In this rulemaking, EPA is proposing to approve portions of multiple South Carolina SIP submissions amending the State's NAAQS table for $PM_{2.5}$, PM_{10}, ozone and lead that are found at Regulation 61.62–5, Standard No. 2. The four SIP submittals amending SC DEHC's NAAQS table can be found in the Docket for this proposed rulemaking at *www.regulations.gov* and are summarized below.

[7] Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

[8] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2010).

[9] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

1. South Carolina's December 4, 2008, SIP Submittal [10]

On October 17, 2006, EPA revised the 24-hour primary NAAQS for $PM_{2.5}$ from a level of 65 micrograms per cubic meter (μg/m³) to 35 μg/m³. *See* 71 FR 61144. Accordingly, South Carolina's December 4, 2008, SIP submittal amends the State's NAAQS table to address the amendment to the 24-hour primary NAAQS for $PM_{2.5}$ from 65 μg/m³ to 35 μg/m³. EPA is proposing to approve this change to South Carolina's NAAQS table at Regulation 61.62–5, Standard No. 2, based on a preliminary determination that this change is consistent with EPA's regulations for the 24-hour primary NAAQS for $PM_{2.5}$.

2. South Carolina's December 23, 2009, SIP Submittal [11]

On March 27, 2008, EPA revised the primary and secondary NAAQS for the 8-hour ozone to 75 parts per billion (ppb) to provide increased protection of public health and welfare, respectively. *See* 73 FR 16436. Accordingly, South Carolina's December 23, 2009, SIP submittal amends the State's NAAQS table to: (1) add the 2008 8-hour ozone NAAQS of 75 ppb, and (2) remove the 1-hour ozone NAAQS, which EPA revoked on June 15, 2005, one year after the effective date of the 1997 8-hour ozone designations. *See* 70 FR 44470 (August 3, 2005), 69 FR 23858 and 69 FR 23951 (April 30, 2004).[12] Additionally, on November 12, 2008, EPA revised the lead NAAQS from 1.5 μg/m³ to 0.15 μg/m³ based on a rolling 3-month average for both the primary and secondary standards. *See* 73 FR 66964. South Carolina's December 23, 2009, SIP submittal amends the State's NAAQS table to adopt the 2008 lead NAAQS of 0.15 μg/m³ based on a rolling 3-month average for both the primary and secondary standards.

EPA is proposing to approve these change to South Carolina's NAAQS table at Regulation 61.62–5, Standard No. 2, based on a preliminary determination that these changes are consistent with EPA's regulations for the 2008 8-hour ozone NAAQS and the 2008 lead NAAQS. Further, EPA is proposing to approve South Carolina's removal of the 1-hour ozone NAAQS from its SIP at Regulation 61.62–5, Standard No. 2, because this NAAQS has been revoked by the Agency for South Carolina areas.

3. South Carolina's July 18, 2011, SIP Submittal [13]

South Carolina's July 18, 2011, SIP submittal removes the annual total suspended particulate (TSP) standard from South Carolina's NAAQS table.[14] This SIP submittal also clarifies that the carbon monoxide 1-hour and 8-hour average concentrations are not to be exceeded more than once a year (in accordance with 40 CFR 50.8) and adds a footnote referencing 40 CFR 50.16 for detailed explanation concerning calculation of the rolling 3-month average for the lead NAAQS. However, these two revisions are superseded by SC's DHEC's May 1, 2012, SIP submittal which streamlines and reformats the State's NAAQS table. See discussion below.

4. South Carolina's May 1, 2012, SIP Submittal [15]

South Carolina's May 1, 2012, submittal removes from the State's NAAQS table the PM_{10} annual standard to be consistent with EPA's October 17, 2006, revocation of the annual PM_{10} NAAQS. *See* 71 FR 61144. Additionally, this SIP submittal reformats SC DEHC's NAAQS table in an effort to ensure information found therein is consistent with EPA's NAAQS at 40 CFR 50 and the table at *http://www.epa.gov/air/criteria.html* including (1) removing the table's footnotes and instead adding a column referencing the federal CFR for each NAAQS; (2) streamlining the units column; and (3) updating test method references.

C. Regulation 61–62.1—Definitions and General Requirements

South Carolina's December 4, 2008, and February 16, 2011,[16] SIP submittals revise the definition for VOC at Regulation 61–62.1—*Definitions and General Requirements* to include additional compounds 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE–7300) (as amended on January 18, 2007 (72 FR 2193)) and propylene carbonate and dimethyl carbonate (amended on January 21, 2009 (74 FR 3437)) respectively to the list of compounds excluded from the definition of VOC on the basis that they have a negligible contribution to tropospheric formation of ozone.[17] EPA has preliminarily determined that these changes are consistent with EPA's federal regulations at 40 CFR 51.100 and as such is proposing to approve these changes into the South Carolina SIP.

D. Regulation 61–62.5, Standard 5—Volatile Organic Compounds

South Carolina's December 4, 2008, SIP submittal makes an administrative correction to subparagraphs 2.a.(i)(a) and (b) of Regulation 61–62.5, Standard 5, Section II, Part Q (*Manufacture of Synthesized Pharmaceutical Products*)

[10] This SIP submittal also included changes to SC DHEC's Regulation 61.62–96—*Nitrogen Oxides* (NO_X) and Sulfur Dioxide (SO_2) *Budget Trading Program General Provisions.* EPA took final action to approve this portion of the December 4, 2008, submittal on October 16, 2009 (74 FR 53167).

[11] This submittal also make changes to South Carolina's State Regulations 61–62.60, 62.61, 62.63 and 62.72 regarding New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and Acid Rain, respectively. However, these regulations are not part of South Carolina's federally approved SIP; therefore, EPA is not proposing action on these changes.

[12] On June 15, 2005 (one year after the effective date of the 1997 8-hour ozone designations), EPA revoked the 1-hour ozone NAAQS for all areas except the 8-hour ozone nonattainment-deferred Early Action Compact Areas (EAC) areas. The 1-hour ozone NAAQS for the EAC nonattainment-deferred areas including those in South Carolina (Greenville-Spartanburg-Anderson, SC and Central Midlands Columbia Area) was revoked on April 15, 2009 (one year after the effective date of the EAC areas 8-hour ozone designations to attainment). *See* 64 FR 17897 (April 2, 2008), 69 FR 23858 and 69 23951 (April 30, 2004).

[13] This SIP submittal also make changes to South Carolina's SIP at Regulations 61–62.1—*Definitions and General Requirements;* 61–62.5, Standard 1—*Emissions from Fuel Burning Operations;* 61–62.5, Standard No. 4—*Emissions from Process Industries;* and 61–62.5, Standard 6—*Alternative Emission Limitation Options (''Bubble'').* EPA will consider action on these changes to South Carolina SIP in a separate rulemaking.

[14] EPA initially established NAAQS for PM in 1971 measured by the TSP indicator. On July 1, 1987, EPA revised the PM NAAQS by changing the indicator to PM_{10} (establishing an annual and 24-hour standard) and revoking the TSP NAAQS. *See* 52 FR 24634.

[15] This submittal also make changes to South Carolina's regulations 61–62.63—*National Emission Standards for Hazardous Air Pollutants.* However, these regulations are not part of South Carolina's federally approved SIP; therefore, EPA is not proposing action on these changes.

[16] This submittal also make changes to South Carolina's State Regulations 61–62.60, 62.61, 62.63 and 62.72 regarding NSPS, NESHAP, NESHAP for Source Categories, and Acid Rain, respectively. However, these regulations are not part of South Carolina's federally approved SIP; therefore, EPA is not proposing action on these changes.

[17] Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxide (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOC and NO_X that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent. It has been EPA's policy that compounds of carbon with a negligible level of reactivity need not be regulated to reduce ozone (42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

by adding the term and symbol ''minus (−)'' to express the outlet gas temperature threshold for surface condensers.

IV. Proposed Action

EPA is proposing to approve multiple submissions revising South Carolina's SIP to adopt the $PM_{2.5}$ increments as amended in the October 20, 2010, $PM_{2.5}$ PSD Increments-SILs-SMC Rule, to adopt federal NAAQS updates and VOC definition updates, and to make an administrative correction. EPA has made the preliminary determination that these SIP submittals, with regard to the aforementioned proposed actions, are approvable because they are consistent with section 110 of the CAA and EPA regulations regarding NSR permitting.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 F43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is being proposed for approval to apply PSD permitting program statewide including the Catawba Indian Nation. Accordingly, EPA and the Catawba Indian Nation discussed South Carolina's SIP submittals prior to today's proposed action. EPA notes that this rulemaking will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–01205 Filed 1–22–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2009–0449; A–1–FRL–9773–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of State Implementation Plan revisions submitted by the State of Connecticut. These SIP revisions consist of a demonstration that Connecticut meets the requirements of reasonably available control technology for oxides of nitrogen and volatile organic compounds set forth by the Clean Air Act with respect to the 1997 8-hour ozone standard. Additionally, we are proposing approval of three single source orders. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before February 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0449 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2009–0449,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2009–0449. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made

available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittals are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1046, fax number (617) 918–0046, email *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Summary of Connecticut's SIP Revision
III. EPA's Evaluation of Connecticut's SIP Revision
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Background and Purpose

On December 8, 2006, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of information documenting how Connecticut complied with the reasonably available control technology (RACT) requirements for the 1997 8-hour ozone standard.[1] On July 20, 2007, Connecticut submitted three single source RACT orders controlling volatile organic compound (VOC) emissions to EPA and requested that the orders be incorporated into the Connecticut SIP.

Sections 172(c)(1) and 182(b)(2) of the Clean Air Act (CAA) require states to implement RACT in areas classified as moderate (and higher) non-attainment for ozone, while section 184(b)(1)(B) of the Act requires RACT in states located in the ozone transport region (OTR). Specifically, these areas are required to implement RACT for all major VOC and nitrogen oxide emissions sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for NO_X control requirements. States must submit rules or negative declarations for CTG source categories, but not for sources in ACT categories. However, RACT must be imposed on major sources of NO_X, and some of those major sources may be within a sector covered by an ACT document.

In 1997, EPA revised the health-based National Ambient Air Quality Standards (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma.

On November 29, 2005, EPA published a final rule in the **Federal Register** that outlined the obligations that areas found to be in nonattainment of the 1997 8-hour ozone standard needed to address (see 70 FR 71612). This rule, referred to as the ''Phase 2 Implementation rule,'' contained, among other things, a description of EPA's expectations for states with RACT obligations. The Phase 2 Implementation rule indicated that states could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or with a combination of these two approaches. In addition, a State must submit a negative declaration in instances where there are no CTG sources.

II. Summary of Connecticut's SIP Revisions

On December 8, 2006, Connecticut submitted a demonstration that its regulatory framework for stationary sources meets the criteria for RACT as defined in EPA's Phase 2 Implementation rule. The state held a public hearing on the RACT program on October 18, 2006. Connecticut's RACT submittal notes that their prior designation as a nonattainment area for the 1-hour ozone standard resulted in the adoption of stringent controls for major sources of VOC and NO_X, including RACT level controls. Therefore, as allowed for within EPA's Phase 2 Implementation rule, much of Connecticut's submittal consists of a review of RACT controls adopted under the 1-hour ozone standard and an indication of whether those previously adopted controls still represent RACT. Additionally, Connecticut notes that as a member state of the Ozone Transport Commission (OTC) it works with that organization to identify and adopt, as deemed appropriate, regulations on additional VOC and NO_X categories beyond those for which EPA has issued CTGs or ACT documents.

The state's submittal identifies the specific control measures that have been previously adopted to control emissions from major sources of VOC emissions, reaffirms negative declarations for some CTG categories, and describes updates made to two existing rules to strengthen them so that they will continue to represent VOC RACT. Table 3 of Connecticut's submittal contains a summary of the previously-adopted measures for each of the CTG categories

[1] The Connecticut submittal was made to address RACT for the 1997 8-hour ozone standard and does not address the 0.075 parts per million 2008 ozone standard.

that EPA issued prior to 2006.[2] The table identifies the specific state rule, where relevant, that is in place, the date of state adoption, and the date that EPA approved the rule into the Connecticut SIP. Connecticut notes that sections 22a–174–20 and 22a–174–32 of the Regulations of Connecticut State Agencies, which are the principal regulations that apply to stationary sources of VOC emissions, generally cover sources emitting 25 or more tons of VOC per year in the state's ''severe'' 1-hour ozone nonattainment area and those emitting 50 or more tons of VOC per year in the rest of the state. However, for some CTG categories such as surface coating sources, Connecticut's rules include lower applicability thresholds consistent with the relevant CTGs.

In addition, Connecticut's submittal notes that no sources exist in the state for some CTG categories. Specifically, Table 3 of Connecticut's submittal makes negative declarations for the following CTG sectors:

1. Automobile coating.
2. Large petroleum dry cleaners.
3. Large appliance coating.
4. Natural gas and gas processing plants.
5. Flat wood paneling coating.
6. Control of VOC leaks from petroleum refineries.

Finally, Connecticut updated two existing VOC rules in order to continue their status as representing RACT. Namely, these are rules limiting emissions from cutback asphalt paving and solvent cleaning (metal degreasing). The original version of the state's cutback asphalt rule allowed use of cutback asphalt, with some restrictions, during the ozone season and provided exemptions for penetrating prime coat products and for long-term storage of asphalt. The state's updated rule removed these provisions and was submitted to EPA on January 8, 2009 and approved by EPA into the Connecticut SIP on August 22, 2012 (77 FR 50595). Additionally, Connecticut updated its solvent cleaning rule to more closely reflect the OTC's 2001 model rule for this activity. The update included a limit on the vapor pressure used in cold cleaning solvents and operating practices to further reduce VOC emissions. Connecticut submitted its updated solvent cleaning rule to EPA on February 1, 2008, and EPA approved the revised rule into the Connecticut SIP within the August 22, 2012 **Federal Register** rulemaking noted above.

[2] This rulemaking does not address Connecticut's response to the CTGs that EPA issued in 2006, 2007, and 2008.

As required, Connecticut's submittal addresses NO_X emissions as well as VOC emissions. In particular, the submittal's Table 4 lists all major sources of NO_X (and VOC) in the state, and Connecticut identifies several regulations previously approved by EPA which represent RACT for NO_X. Connecticut notes that all facilities in the state with the potential to emit 50 tons or more of NO_X per year (or 25 tons or more in the ''severe'' 1-hour ozone area of the state) are subject to Regulations of Connecticut State Agencies section 22a–174–22, ''Control of Nitrogen Oxide Emissions.'' In addition, section 22a–174–38 regulates NO_X emissions from Connecticut's six municipal waste combustors (MWCs), which constitute roughly thirty percent of the state's annual NO_X emissions from major NO_X sources. Connecticut indicates that section 22a–174–38 is as stringent as the maximum achievable control technology (MACT) requirements EPA promulgated in 2006, and that this rule thus represents RACT for MWCs in Connecticut.

Connecticut's submittal also points out that NO_X emissions have been reduced due to the implementation of several NO_X trading programs. Connecticut's SIP includes regulations implementing the OTC and Federal NO_X Budget Programs and the subsequent Clean Air Interstate Rule (CAIR) Program. All three of these programs and their corresponding regulations (Regulations of Connecticut State Agencies section 22–174–22a, 22–174–22b, and 22–174–22c, respectively) were submitted to EPA and approved into the Connecticut SIP. Connecticut explains that when its CAIR program, section 22–174–22c, became effective, its Federal NO_X Budget Program contained in section 22–174–22b was repealed.

In addition to these general, state-wide NO_X and VOC rules, Connecticut's submittal addresses certain individual sources in the state. Table 4 of Connecticut's submittal identifies the major NO_X and VOC sources in the state that are not covered by an ACT or CTG document. The state has issued source-specific orders containing control requirements for the facilities listed in Table 4 of the state's submittal, all of which have been previously approved into the Connecticut SIP. Additionally, on July 20, 2007, Connecticut submitted VOC RACT orders for the Curtis Packaging Corporation in Newtown, Sumitomo Bakelite North America, Incorporated, located in Manchester, and Cyro Industries in Wallingford.

Connecticut's review of its control program for major sources of VOC and NO_X thus concludes that, with the adoption of revised rules for cutback asphalt and solvent cleaning, all major sources in the state are subject to RACT.

III. EPA's Evaluation of Connecticut's SIP Revision

EPA has reviewed Connecticut's determination that it has adopted VOC and NO_X control regulations for stationary sources that constitute RACT, and determined that the set of regulations cited by the state constitute RACT for purposes of the 1997 8-hour ozone standard. Additionally, we are proposing to approve the three VOC RACT orders submitted by the state on July 20, 2007.

Connecticut's submittal documents the state's VOC and NO_X control regulations that have been adopted to ensure that RACT level controls are required in the state. These requirements include the following Regulations of Connecticut State Agencies: section 22a–174–20, Control of Organic Compound Emissions; section 22a–174–22, Control of Nitrogen Oxide Emissions; section 22a–174–30, Dispensing of Gasoline/Stage I and Stage II Vapor Recovery; section 22a–174–32, RACT for Organic Compound Emissions; and 22a–174–38, Municipal Waste Combustors. Additionally, Connecticut has adopted numerous single source RACT orders for major sources of VOC and NO_X that are not covered by one of EPA's CTGs or ACTs, and these orders have been submitted to EPA and incorporated into the SIP. Also, as noted above, Connecticut adopted and EPA has approved into the Connecticut SIP updates to the state's existing asphalt paving and solvent metal cleaning regulations that strengthened these two VOC control regulations.

Furthermore, Connecticut notes that its participation within several NO_X budget trading programs also acted to reduce NO_X emissions in the state. Between 1999 and 2002, Connecticut participated in the OTC's NO_X Budget Program. Connecticut implemented this program by adopting section 22a–174–22a, the NO_X Budget Program, and submitted this regulation to EPA which we incorporated into the Connecticut SIP on September 28, 1999 (64 FR 52233). In 2003, these NO_X budget sources were transitioned to the Federal NO_X budget program which Connecticut implemented by adopting section 22a–174–22b, the Post-2002 NO_X Budget Program. Connecticut submitted this regulation to EPA, and we approved it into the Connecticut SIP on December 27, 2000 (65 FR 81743).

The state's submittal documents a substantial downward trend in NO_X and

VOC emissions from stationary sources between 1990 and 2007, although part of that decline is attributable to RACT controls implemented by Connecticut in the early and mid 1990s to help it meet the older 1-hour ozone standard. Of more relevance is the decline in point source emissions that occurred since EPA promulgated the 1997 8-hour ozone standard. Data collected by Connecticut from its annual survey of industrial point source emitters reveals that between 1999 and 2005, VOC emissions from industrial point sources declined by 66%, and NO_X emissions declined by 38%. This decline in emissions was brought about, in part, by the RACT program implemented by Connecticut.

We have determined that these regulatory elements and the resulting reduction in VOC and NO_X emissions from major sources demonstrate that a RACT level of control for both pollutants has been implemented in the state. Additionally, EPA has determined that Connecticut's two 8-hour ozone nonattainment areas attained the 1997 ozone standard by their attainment date, based on quality assured air monitoring data. This determination was published on August 31, 2010 (75 FR 53219) for the Greater Connecticut area, and on June 18, 2012 (77 FR 36163) for the New York City area. The improvements in air quality represented by these clean data determinations were brought about, in part, by the RACT program implemented by Connecticut.

EPA does not anticipate any difficulties with enforcing the state's standards, as EPA has previously approved the rules Connecticut cites as the means by which RACT is implemented. Additionally, Connecticut acted to further reduce NO_X emissions by adopting section 22a–174–22c, the Clean Air Interstate NO_X Ozone Season trading program. Connecticut submitted this program to EPA, and we approved it into the SIP on January 4, 2008 (73 FR 4105). Although the CAIR program was subject to a number of court challenges, a recent decision by the U.S. Court of Appeals for the District of Columbia issued on August 21, 2012 which vacated the Cross State Air Pollution Rule provided that until the CSAPR litigation is resolved, the CAIR program remains in effect. (EME Homer City Generation, L.P., v. EPA, No. 11–1302. (D.C. Cir. 2012)).

EPA has evaluated the VOC and NO_X stationary source control regulations which Connecticut contends meets RACT for the 1997 8-hour standard, and determined that a level of control consistent with RACT has been implemented in the state. Therefore, we are proposing to approve Connecticut's December 8, 2006 RACT certification.

Additionally, we are proposing approval of the VOC RACT orders for the following three companies described below:

Cyro Industries

Cyro Industries manufactures extruded polymer pellets that are molded into various shapes by the end user at its facility located in Wallingford. The facility operates VOC emitting process equipment including raw material storage tanks, monomer preparation equipment, polymer production extrusion lines, grafted rubber equipment, dye preparation and post coloring operations. Additionally, VOC emissions occur from fugitive leaks, and from a number of small process and space heaters.

Cyro Industries took ownership of the facility from American Cyanamid in 2005. Pursuant to Connecticut's section 22a–174–32(e)(6), Cyro submitted an alternative RACT compliance plan to the Connecticut Department of Environmental Protection. The facility essentially requested that the VOC RACT requirements that had formerly been imposed on American Cyanamid pursuant to Connecticut RACT order 8012 be maintained as RACT. Connecticut reviewed this request and essentially agreed, issuing RACT order 8268 to Cyro Industries on February 28, 2007. The new order updated the equipment and process lines described in the prior order and ensures that VOC emissions are reduced by no less than 85%.

Sumitomo Bakelite North America

Sumitomo Bakelite, formerly named Vyncolit North American, Incorporated, produces fiberglass impregnated and resinous pellets at its facility in Manchester. There are seven separate process lines in use at the facility. The company submitted a request that their emissions be controlled via an alternative RACT compliance plan under section 22a–174–32(e)(6). Connecticut reviewed the facility's request and, on October 11, 2006, issued order 8245 to the facility. The order requires, among other things, that the facility comply with the following requirements: actual emissions may not exceed 45 tons of VOC for any consecutive 12 month period or exceed 8,889 pounds per month for any given month; process lines identified as EXT2 and EXT3 are not allowed to use VOC containing components except during the mixing process, and the vapor pressure of all materials used during the blending process shall be less than or equal to 1.0 millimeters of mercury measured at 18.5 degrees Centigrade; only non-VOC materials can be used in the manufacture of ''DAP'' products or in process line EXT1; and, emissions of VOC from new, non-extruded products shall not exceed 0.006 pounds of VOC per pound of non-extruded product produced. These requirements will yield a VOC reduction of approximately 76% at the facility.

Curtis Packaging Corporation

The Curtis Packaging Corporation manufactures custom designed paperboard and cardboard packaging at its facility in Newtown using three sheet-fed offset lithographic printing presses. The facility is subject to EPA's 2006 CTG for lithographic printing. In an effort to comply with the requirements of that CTG, the company reformulated many of its fountain solutions with non-alcohol additives and ultra violet (UV) light cured inks seeking to meet the CTG's requirements. However, the facility was not able to meet the CTG's overall emission reduction requirement, and so submitted an alternative RACT compliance plan to the Connecticut Department of Environmental Protection.

Connecticut reviewed the company's request, and on May 1, 2007, issued order 8270 to the facility. The order requires, among other things, the following: fountain solutions must contain no alcohol additives, and must have a VOC content of 5% or less by weight, as applied; UV cured inks must be used instead of oil based inks; and, cleaning solutions are limited to 30% VOC by weight.

EPA has reviewed these single source VOC RACT orders, and agrees with Connecticut that they represent a RACT level of control for each facility. Therefore, EPA is proposing approval of these orders.

IV. Proposed Action

EPA is proposing approval of Connecticut's December 8, 2006 SIP submittal that demonstrates that the state has adopted air pollution control strategies that represent RACT for purposes of compliance with the 1997 8-hour ozone standard. Additionally, we are proposing approval of orders submitted by Connecticut on July 20, 2007 for Cyro Industries, Sumitomo Bakelite North America, and Curtis Packaging, as representing RACT for these three facilities.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final

action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 11, 2013.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2013–01340 Filed 1–22–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0712; FRL–9772–4]

Revision to the Washington State Implementation Plan; Tacoma-Pierce County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Washington Department of Ecology (Ecology) dated November 28, 2012. This SIP revision consists of two elements proposed for EPA approval. First, EPA is proposing to approve the ''2008 Baseline Emissions Inventory and Documentation'' included as Appendix A to the SIP revision. The emissions inventory was submitted to meet Clean Air Act (CAA) requirements related to the Tacoma-Pierce County nonattainment area for the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). Second, EPA is proposing to approve updated rules submitted by Ecology on behalf of the Puget Sound Clean Air Agency (PSCAA), contained in Appendix B, ''SIP Strengthening Rules.'' The updated PSCAA rules help implement the recommendations of the Tacoma-Pierce County Clean Air Task Force, an advisory committee of community leaders, citizen representatives, public health advocates, and other affected parties, formed to develop $PM_{2.5}$ reduction strategies.

DATES: Written comments must be received on or before February 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0712, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0712. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at telephone number: (206) 553–0256, email address: *hunt.jeff@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. Background
II. Summary of SIP Revision
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, EPA promulgated the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (62 FR 38652). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$. On October 17, 2006, EPA revised the $PM_{2.5}$ 24-hour standard from 65 μg/m³ to 35 μg/m³ based on additional evidence and health studies (71 FR 61144).

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. Effective December 14, 2009, EPA designated Tacoma-Pierce County (partial county designation) as a nonattainment area for the revised 2006 24-hour $PM_{2.5}$ standard (74 FR 58688; published on November 13, 2009). Under the CAA, states are required to submit a revision to the SIP to meet nonattainment requirements within three years of the effective date of designation.

Prior to Washington's SIP revision submittal, EPA issued a proposed finding on July 5, 2012, called a clean data determination, based upon certified ambient air monitoring data showing that the Tacoma-Pierce County nonattainment area had met the 2006 $PM_{2.5}$ NAAQS for the most recent 2009–2011 monitoring period (77 FR 39657). EPA received no comments on the proposal and subsequently issued a final clean data determination on September 4, 2012 (77 FR 53772). In accordance with 40 CFR 51.1004(c), the September 4, 2012 clean data determination suspends the requirements for Washington to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and most other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 2006 $PM_{2.5}$ NAAQS. However, 40 CFR 51.1004(c) does not suspend the obligation under CAA section 172(c)(3) for submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

II. Summary of SIP Revision

Ecology's November 28, 2012 SIP revision contains two elements for proposed EPA approval, Appendix A and Appendix B. Appendix A, titled ''2008 Baseline Emissions Inventory and Documentation,'' was submitted to meet the obligation under CAA section 172(c)(3) for an emissions inventory. The 2008 base year emissions inventory includes emissions estimates that cover the general source categories of stationary point sources, stationary nonpoint sources, nonroad mobile sources, and onroad mobile sources. The pollutants that comprise the inventory include $PM_{2.5}$ and precursors to the formation of $PM_{2.5}$ including nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2). EPA reviewed the results, procedures and methodologies for the 2008 base year emissions inventory in accordance with current EPA guidance, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' August 2005. The year 2008 was selected by Ecology as the base year for the emissions inventory in accordance with 40 CFR 51.1008(b). Ecology's SIP revision contained a discussion of the emissions inventory development process and relevant requirements, as well as the emissions inventory. EPA agrees that the process used to develop this emissions inventory meets the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories.

Appendix B of the SIP revision, titled ''SIP Strengthening Rules,'' contains the most recent version of *Regulation 1—Article 13: Solid Fuel Burning Device Standards,* adopted by the PSCAA Board on October 25, 2012. These rule changes were adopted to help implement the recommendations of the Tacoma-Pierce County Clean Air Task Force. This task force was an advisory committee of community leaders, citizen representatives, public health advocates, and other affected parties convened from May 2011 through December 2011 to develop $PM_{2.5}$ reduction strategies for the Tacoma-Pierce County area. The task force had three primary recommendations:

- *Strategy #1:* Enhancing enforcement of burn bans—This strategy is intended to ensure that those who are contributing the most to the fine particle pollution during periods of the poorest air quality reduce their emissions.
- *Strategy #2:* Requiring removal of uncertified wood stoves and inserts—The intent of this strategy is to reduce pollution by removing the older, more polluting wood stoves and inserts from the nonattainment area.
- *Strategy #3:* Reducing fine particle pollution from other sources—Approximately one-quarter to one-third of the reductions needed to meet the federal fine particle pollution standard will be achieved through new federal regulations and local initiatives related to gasoline and diesel engines, ships, and industry.

The SIP revision submitted by Ecology requests EPA approval of the revised PSCAA *Regulation 1—Article 13: Solid Fuel Burning Device Standards* as a regulation that strengthens the SIP. Specifically, the revised PSCAA regulation implements the task force strategies of enhancing the enforcement of burn bans and requiring the removal of uncertified wood stoves and inserts. Strategy #3 is not included as part of this SIP revision because the emission reductions will be achieved primarily through changes to the federal regulations as well as ongoing efforts such as those funded under the Diesel Emissions Reduction Act. While these strategies were recommended by the task force specifically to address $PM_{2.5}$ pollution in the Tacoma-Pierce County nonattainment area, the rule revisions contained in PSCAA *Regulation 1—Article 13* apply throughout the jurisdiction of Puget Sound Clean Air Agency.

III. Proposed Action

EPA is proposing to approve Washington's SIP revision dated November 28, 2012, specifically Appendix A, ''2008 Baseline Emissions Inventory and Documentation'' and Appendix B, ''SIP Strengthening Rules.'' We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments which will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed approval does not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated December 11, 2012. EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 7, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–01339 Filed 1–22–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2011–0941; FRL–6369–9]

RIN 2070–AB27

Proposed Significant New Use Rule on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for four chemical substances which were the subject of premanufacture notices (PMNs). This action would require persons who intend to manufacture, import, or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

DATES: Comments must be received on or before February 22, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0941, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2011–0941. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0941. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard

copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed rule. The following list of North American Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR, are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for four chemical substances which were the subject of PMNs P–07–204, P–10–58, P–10–59, and P–10–60. These SNURs would require persons who intend to manufacture, import, or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** issue of September 21, 2012 (77 FR 58666) (FRL–9357–2), EPA issued direct final SNURs on these four chemical substances in accordance with the procedures at § 721.160(c)(3)(i). EPA received notice of intent to submit adverse comments on these SNURs. Therefore, as required by § 721.160(c)(3)(ii), EPA has removed the direct final SNURs in a separate final rule published in the **Federal Register**, and is now issuing this proposed rule on the four chemical substances. The record for the direct final SNURs on these chemical substances was established as docket EPA–HQ–OPPT–2011–0941. That docket includes information considered by the Agency in developing the direct final rule and the notice of intent to submit adverse comments.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses

occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the four chemical substances that are the subject of this proposed rule, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for four chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for TSCA non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this proposed rule.

The regulatory text section of this proposed rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this proposed rule, may be claimed as CBI. See Unit IX.

This proposed rule includes PMN substances P–10–58, P–10–59, and P–10–50 that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. These consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''TSCA section 5(e) SNURs'' on these PMN substances are proposed pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The TSCA section 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

This proposed rule also includes a SNUR on PMN substance P–07–204 that was not subject to a consent order under TSCA section 5(e). In this case, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' This so-called ''TSCA non-section 5(e) SNUR'' is proposed pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all TSCA non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Number P–07–204

Chemical name: Pentane, 1,1,1,2,3,3-hexafluoro-4-(1,1,2,3,3,3-hexafluoropropoxy)-.

CAS number: 870778–34–0.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a heat transfer fluid. Based on test data on the PMN substance and structure activity relationship (SAR) analysis of test data on analogous perfluorinated substances, EPA identified concerns for neurotoxicity and liver effects from exposures to the PMN substance. For the uses described in the amended PMN, EPA does not expect significant worker exposures due to the use of impervious gloves. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without impervious gloves, where there is a potential for dermal exposure; or any use of the substance other than as described in the amended PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i) and (ii).

Recommended testing: EPA has determined that the results of a 28-day dermal toxicity test (OPPTS Test Guideline 870.3200) in rats, a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465), and a test using the ''Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact'' (American Society for Testing and Materials (ASTM) International Standard F739–12) as reported in the ''Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing'' (ASTM International Standard F1194–99 (2010)) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10509.

PMN Numbers P–10–58, P–10–59, and P–10–60

Chemical names: Partially fluorinated alcohol substituted glycols (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) consent order: October 8, 2010.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) uses of the PMN substances will be as intermediates (P–10–58 and P–10–59) and a surface active agent (P–10–60). EPA has concerns for potential incineration or other decomposition products of the PMN substances. These perfluorinated decomposition products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, which suggests that, under some conditions, the PMN substances could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including perfluorooctanoic acid (PFOA) and other perfluorinated alkyls, including the presumed environmental degradant. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these exposures and risks, the consent order requires submission of testing on the PMN substance P–10–60 at five identified aggregate manufacture and importation volumes; requires analysis of raw materials; and restricts the use of P–10–58 and P–10–59 as intermediates to make P–10–60. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the TSCA section 5(e) consent order would help characterize possible effects of the PMN substances and their degradation products. The TSCA section 5(e) consent order contains five production volume limits. The PMN submitter has agreed not to exceed the confidential production volume limits without performing the specified testing on PMN substance P–10–60. Additional testing is included in the preamble to the TSCA section 5(e) consent order, but this testing is not required at any specified time or production volume. However, the TSCA section 5(e) consent order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substance will remain in effect until the TSCA section 5(e) consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10515.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the four chemical substances that are subject to these proposed SNURs, EPA concluded that for three of the substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health and environmental effects of the chemical substances. For one of the four substances, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met. The basis for these findings is outlined in Unit IV.

Based upon comments received from the September 21, 2012 direct final rule, the proposed SNUR for P–10–58, P–10–59, and P–10–60 has been amended to be consistent with the provisions of the TSCA section 5(e) consent order and the proposed SNUR for P–07–0204 has been amended to clarify the restriction at 721.80(j). This proposed rule includes the following changes:

1. Revision of paragraph (a)(2)(i) for the proposed SNUR on P–10–58, P–10–69, and P–10–60.
2. Revision of paragraph (a)(2)(ii) for the proposed SNUR for P–07–0204.

B. Objectives

EPA is proposing these SNURs for specific chemical substances that have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA would ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Applicability of the Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for three chemical substances and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the final rule, when chemical substances identified in these SNURs are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this proposed rule before the effective date of the final rule.

As discussed in the SNURs published in the **Federal Register** issue of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the September 21, 2012 direct final rule rather than as of the effective date of the final rule for this proposed rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for

EPA to establish SNUR notification requirements because a person could defeat the SNUR by initiating the significant new use before the proposed rule became an effective final rule, and then argue that the use was ongoing before the effective date of the final rule based on this proposed rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through these SNURs will have to cease any such activity before the effective date of the final rule based upon this proposed rule. To resume their activities, these persons would have to comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions expires.

EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date of the final rule. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for TSCA non-section 5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' ASTM International standards are available at *http://www.astm.org/Standard/index.shtml.*

In the TSCA section 5(e) consent orders for three of the chemical substances in this proposed rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study before reaching the specified production limit. The SNURs contain the same production volume limits as the TSCA section 5(e) consent order. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture, import, or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances during the development of the direct final rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2011–0941.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would establish SNURs for four chemical substances that were the subject of PMNs, and in three cases, a TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection

techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this proposed rule.

This proposed rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit IX. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of these SNURs would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action would not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), would not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 14, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution, Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10509 to subpart E to read as follows:

§ 721.10509 Pentane, 1,1,1,2,3,3-hexafluoro-4-(1,1,2,3,3,3-hexafluoropropoxy)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as pentane, 1,1,1,2,3,3-hexafluoro-4-(1,1,2,3,3,3-hexafluoropropoxy)-(PMN P–07–204; CAS No. 870778–34–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0%), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (applies specifically to the confidential uses identified in the amended premanufacture notice (PMN)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph. (1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 3. Add § 721.10515 to subpart E to read as follows:

§ 721.10515 Partially fluorinated alcohol substituted glycols (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as partially fluorinated alcohol substituted glycols (PMN P–10–58, P–10–59, and P–10–60) are subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (manufacture and import of the PMN substances according to the chemical synthesis and composition section of the TSCA section 5(e) consent order, including analysis, reporting, and limitations of maximum impurity levels of certain fluorinated impurities; manufacture and import of P–10–58 and P–10–59 only as intermediates for the manufacture of P–10–60), and (q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances, except the recordkeeping requirements for § 721.125(b) and (c) do not apply to importers or processors when any one of the substances are contained in a formulation at less than 3 weight percent.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2013–01194 Filed 1–22–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0063: FXES11130900000–134–FF09E32000]

RIN 1018–AV29

Endangered and Threatened Wildlife and Plants; Removal of the Valley Elderberry Longhorn Beetle From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 2, 2012, 12-month petition finding and proposed rule to remove the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) from the List of Endangered and Threatened Wildlife. The 60-day comment period for our proposed rule ended on December 3, 2012. This notice announces a 30-day reopening of the comment period to allow all interested parties an additional opportunity to comment on the proposed rule and to submit information on the status of the species. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider all comments received or postmarked on or before February 22, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and related documents on the Internet at *http://www.regulations.gov* under Docket Number FWS–R8–ES–2011–0063, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2011–0063, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to ''Open'' to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a Microsoft Excel spreadsheet.

(2) *By Hard Copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0063; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments in **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Jan Knight, Deputy Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our October 2, 2012, 12-month finding and proposed rule to remove the valley elderberry longhorn beetle from the List of Endangered and Threatened Wildlife, and to remove the designation of critical habitat (77 FR 60237). For more information on the specific information we are seeking, please see the October 2, 2012, proposed rule. You may obtain copies of the proposed rule and related documents on the Internet at *http://www.regulations.gov* under Docket Number FWS–R8–ES–2011–0063, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax, or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

All comments for this reopening of the public comment period must be received or postmarked on or before the date shown in **DATES**. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule. We intend that any final action resulting from this proposal be as accurate as possible and based on the

best available scientific and commercial data. We will consider information and recommendations from all interested parties. Your comments are part of the public record, and we will fully consider them in the preparation of our final determination.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On October 2, 2012 (77 FR 60237), we published, in the **Federal Register**, a combined 12-month finding and proposed rule to remove the valley elderberry longhorn beetle from the List of Endangered and Threatened Wildlife, and to remove the designation of critical habitat. That proposal had a 60-day comment period, ending December 3, 2012. We have not received any requests for a public hearing; therefore, no public hearings are planned at this time.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we subjected the proposed rule to peer review. This peer review will be provided to the Service during this reopened public comment period, and once available, we will post the peer review comments online at *http://www.regulations.gov* under Docket Number FWS–R8–ES–2011–0063.

We will consider all comments and information provided by the public and peer reviewers during this comment period in preparation of a final determination on our proposed delisting. Accordingly, the final decision may differ from our proposal.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 31, 2012.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–01155 Filed 1–22–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2012–0087: FXES11130900000C3–123–FF09E30000]

RIN 1018–AY45

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Topeka Shiner in Northern Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to establish a nonessential experimental population (NEP) of the Topeka shiner (*Notropis topeka*), a federally endangered fish, under the authority of section 10(j) of the Endangered Species Act of 1973, as amended (Act). This proposed rule provides a plan for reintroducing Topeka shiners into portions of the species' historical range in Adair, Gentry, Harrison, Putnam, Sullivan, and Worth Counties, Missouri and provides for allowable legal incidental taking of the Topeka shiner within the defined NEP area. Topeka shiners will not be reintroduced into the NEP area until after we issue a final regulation that establishes the NEP.

DATES: *Written comments:* We will accept comments received or postmarked on or before March 25, 2013. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 11, 2013.

Public Meetings: We will hold a public meeting on February 19, 2013, from 6:00 p.m. to 8:30 p.m. (Central Standard Time), in Eagleville, Missouri, and on February 21, 2013, from 6:00 p.m. to 8:30 p.m. (Central Standard Time), in Green City, Missouri (see **ADDRESSES**).

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter FWS–R3–ES–2012–0087, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to ''Open'' to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By Hard Copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2012–0087; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Copies of Documents: The proposed rule is available on *http://www.regulations.gov* and available from our Web site at *http://www.fws.gov/midwest/endangered.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Columbia, Missouri, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Meetings: We will hold a public meeting on February 19, 2013, from 6:00 p.m. to 8:30 p.m. (Central Standard Time), at the Eagleville Community Center, 10028 10th St., Eagleville, Missouri 64442, and on February 21, 2013, from 6:00 p.m. to 8:30 p.m. (Central Standard Time), at the Green City City Hall, 4 South Green St., Green City, Missouri 63545.

FOR FURTHER INFORMATION CONTACT: Dr. Paul McKenzie, Fish and Wildlife Biologist, telephone: 573–234–2132; facsimile: 573–234–2181. Direct all questions or requests for additional information to: TOPEKA SHINER QUESTIONS, U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVille Dr., Suite B, Columbia, MO 65203. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend any final rule resulting from this proposal to be as effective as

possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

Prior to issuing a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in the **DATES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Columbia, Missouri, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Meetings

We will hold two public meetings on the dates listed in the **DATES** section at the addresses listed in the **ADDRESSES** section. Persons needing reasonable accommodations in order to attend and participate in a public meeting should contact the Columbia, Missouri, Ecological Services Field Office, at the address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the meeting. Information regarding this proposal is available in alternative formats upon request.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework

The Topeka shiner was listed as endangered throughout its range on December 15, 1998 (63 FR 69008), and critical habitat was designated in Iowa, Minnesota, and Nebraska on July 27, 2004 (69 FR 44736), under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population, a population of an endangered or threatened species that has been or will be released into suitable habitat outside the species' current range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Section 4(d) of the Act allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species so the treatment of an NEP as a threatened species allows us broad discretion in devising management programs and special regulations for such a population. In these situations, the general regulations that extend most section 9 prohibitions to threatened species (50 CFR 17.31(a)) do not apply to the NEP, and the 10(j) rule contains the prohibitions and exemptions necessary and advisable to conserve the NEP.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released,

and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this proposed experimental population would not be essential to the continued existence of the species in the wild. This determination has been made because populations of Topeka shiner in the northern part of the species' range in Minnesota and South Dakota are considered secure and some have concluded that the fish is resilient to many threats identified at the time of listing (Service 2009, pp. 32–33). Therefore, the Service proposes to designate a nonessential experimental population for the species located in three areas in northern Missouri.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or unit of the National Park Service, and section 7(a)(1) and the Federal agency conservation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the NEP is, by definition, not essential to the continued existence of the species, the effects of proposed actions on the NEP will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for Topeka shiners established within the NEP area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Biological Information

The Topeka shiner is a small, stout minnow. This shiner species averages 1.5 to 2.5 inches (in.) (3.81–6.35 centimeters (cm)) in length at maturity, with a maximum size around 3 in. (7.62 cm) (Service 1993, p. 4; Service 1998, p. 69008; Missouri Department of Conservation (MDC) 2010, p. 9). The head is short, and the mouth does not extend beyond the front of the eye. The eye diameter is equal to or slightly longer than the snout. All fins are plain except for the tail fin, which has a chevron-shaped black spot at its base. Dorsal and pelvic fins each contain 8 rays (Service 1993, p. 4; Service 1998, p. 69008; MDC 2010, p. 9). The anal and pectoral fins contain 7 and 13 rays respectively, and there are 32 to 37 lateral line scales. Dorsally, the body is olive with a distinct dark stripe preceding the dorsal fin. A dusky stripe runs along the entire length of the lateral line (Service 1993, p. 4; Service 1998, p. 69008; MDC 2010, p. 9). The scales above this line are darkly outlined with pigment, appearing cross-hatched. Below the lateral line, the body lacks pigment, appearing silvery-white (Pflieger 1975, pp. 161–162; Pflieger 1997, p. 154; Service 1993, p. 4; Service 1998, p. 69008). Males in breeding condition have orange-red fins and ''cheeks,'' and the dark lateral stripe diffuses. A distinct chevron-like spot exists at the base of the caudal fin (Pflieger 1975, pp. 161–162; Pflieger 1997, p. 154; Service 1993, p. 4; Service 1998, p. 69008).

Topeka shiners spawn in pool habitats over green sunfish (*Lepomis cyanellus*) and orangespotted sunfish (*L. humilis*) nests from late May through July in Missouri and Kansas (Pflieger 1975, p. 162; Pflieger 1997, p. 154; Kerns 1983, pp. 8–9; Kerns and Bonneau 2002, p. 139; Stark *et al.* 2002, pp. 147–149). Males establish small territories on the periphery of these nests. It is unclear to what extent Topeka shiners are obligated to spawn over sunfish nests, or whether they can successfully utilize other silt-free areas as spawning sites. In a fish hatchery pond environment, Topeka shiner production was greatly enhanced by the introduction of orangespotted sunfish (Cook 2011, pers. comm.). Topeka shiners feed primarily on insects, such as midges (chironomids), true flies (dipterans), and mayflies (ephemeropterans), but they also are known to feed on zooplankton such as cladocera and copepoda (Kerns and Bonneau 2002, p. 138). Studies from Minnesota found Topeka shiners to be omnivorous, ingesting a significant amount of plant material and detritus along with animal matter (Dahle 2001, pp. 30–32; Hatch and Besaw 2001, pp. 229–230).

Topeka shiners are a schooling species found in mixed species schools consisting primarily of redfin (*Lythrurus umbratilis*), sand (*Notropis stramineus*), common (*Luxilus cornutus*), and red shiners (*Cyprinella lutrensis*), and central stonerollers (*Campostoma anomalum*) (Pflieger 1997, p. 155; Kerns and Bonneau 2002, p. 139). Topeka shiners live a maximum of 3 years, although few survive to their third summer (Kerns 1983, p. 16; Dahle 2001, pp. 30–31; Kerns and Bonneau 2002, p.

138). Topeka shiner populations appear to be more tolerant than other native fish species to drought conditions in Kansas (Minckley and Cross 1959, p. 215; Barber 1986, pp. 70–71; Kerns and Bonneau 2002, p. 138). The Topeka shiner is tolerant of high water temperatures and low dissolved oxygen levels (Koehle 2006, p. 26), which may in part account for the Topeka shiner's apparent drought condition tolerance. Topeka shiners are typically found in small, low order, prairie streams with good water quality and cool temperatures. These streams generally flow all year; however, some may become intermittent during late summer and fall. Pool water levels and cool temperatures are maintained by percolation through the stream bed, spring flow, or groundwater seepage when surface water flow ceases in these stream reaches (Minckley and Cross 1959, p. 212; Pflieger 1975, p. 162; Service 1993, p. 5; Service 1998, p. 69008). Topeka shiners generally inhabit streams with clean gravel, cobble, or sand bottoms. However, bedrock and clay hardpan covered by a thin layer of silt are not uncommon (Minckley and Cross 1959, p. 212).

Topeka shiners are found in pools and runs, and only rarely in riffles. In the northern portion of its range (Iowa, Minnesota, and South Dakota), the Topeka shiner is frequently found in off-channel aquatic habitat (Clark 2000, p. 7; Dahle 2001, p. 8; Berg *et al.* 2004, p. 1). These habitats are characterized by lack of flow, moderate depth, and substrate composed of a thick silt and detritus layer (Dahle 2001, p. 9; Hatch 2001, p. 41). However, such off-channel habitat is rarely found along prairie headwater streams in Missouri. Occasionally, Topeka shiners have been found in larger streams, downstream of known populations, presumably as migrants (Pflieger 1975, p. 162; Service 1993, pp. 5–9; Service 1998, p. 69008). Dahle (2001, p. 39) noted that the Topeka shiner is a multiple clutch spawner and reported that relative abundance was higher in off-channel habitat than instream habitat.

The Topeka shiner was once widespread and abundant in headwater streams throughout the Central Prairie Region of the United States. The species' range historically included much of Missouri, Iowa, and Kansas, as well as portions of Nebraska, South Dakota, and Minnesota (Bailey and Allum 1962, pp. 68–70; Cross 1970, p. 254; Gilbert 1988, p. 317). In Missouri, Topeka shiners historically occurred in most of the prairie and Ozark border portions of north and central Missouri. With the exception of a population known from Cedar Creek, a tributary of the Des Moines River in Clark County (Mississippi River basin), all Topeka shiner populations in Missouri are known from the Missouri River basin. The species once occupied portions of the Missouri, Grand, Lamine, Chariton, Crooked, Des Moines, Loutre, Middle, Hundred and Two, and Little Blue river basins (MDC 2010, p. 10). Since 1940, the species has been extirpated from many Missouri River tributaries, including Perche Creek, Petite Saline Creek, Tavern Creek, Auxvasse Creek, Middle River, Moreau River, Splice Creek, Slate Creek, Crooked River, Fishing River, Shoal Creek, Hundred and Two River, and Little Blue River watersheds (Bailey and Allum 1962, pp. 69–70; Pflieger 1971, p. 360; MDC 2010, p. 10). Topeka shiners were last observed in the following Missouri streams: Moniteau Creek headwaters in Cooper and Moniteau Counties (2008), Clear Creek (1992) and a tributary of Heath's Creek (1995) in Cooper and Pettis Counties, Bonne Femme Creek watershed in Boone County (1997), Sugar Creek and tributaries in Daviess and Harrison Counties (2008), Dog Branch in Putnam County (1990), and Cedar Creek in Clark County (1987) (MDC 2010, p. 10; Novinger 2011, pers. comm.). It is presumed Topeka shiners are extirpated from the Bonne Femme Creek watershed (MDC 2010, p. 10).

The Topeka shiner in Missouri exists in highly disjunct populations in a small fraction of its historical range. Sampling specifically for Topeka shiners during the early 1990s found this species at only 19 percent (14 of 72) of historical sites, and at only 15 percent (20 of 136) of the total sites sampled in Missouri (Gelwicks and Bruenderman 1996, p. 5). Additionally, the remaining populations were found to be smaller than they had been recorded historically. For example, over 300 Topeka shiners were recorded among 7 locations in Bonne Femme Creek from 1961 to 1983. However, during comparable surveys within the same watershed, in the 1990s, only six Topeka shiners were identified at two locations (Wiechman, MDC 2012, pers. comm.). The isolation and small size of the remaining populations makes them highly vulnerable to extirpation. Currently, remaining viable populations of Topeka shiners can be consistently found in only two Missouri stream systems: Moniteau Creek headwaters in Cooper and Moniteau Counties, and Sugar Creek headwaters in Daviess and Harrison Counties. Several other streams have produced samples of a few individuals in the past 25 years, but these occurrences are based on a very limited number of fish (MDC 2010, p. 10).

Effects of Establishing the Proposed Nonessential Experimental Population on Recovery of the Species

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of the Service's endangered species program. Although a Service recovery plan has not been issued for the Topeka shiner, the MDC devised State-specific recovery criteria for the species in their 10-year Strategic Plan for the Recovery of the Topeka Shiner in Missouri (MDC 2010, p. 8). The recovery goal of this plan is to stabilize and enhance Topeka shiner numbers in Missouri by securing populations in seven streams. Seven populations would be equivalent to one half of the known populations sampled in Missouri since 1960. Two main criteria were established to accomplish the goal: (1) Reduce or eliminate major threats and restore suitable habitat in Moniteau Creek and Sugar Creek watersheds, and (2) introduce (or reintroduce) and establish secure populations in five additional streams (MDC 2010, p. 8). According to fisheries experts with the Missouri Department of Conservation and as outlined in MDC's strategic plan, the designation of a Topeka shiner NEP in Missouri is necessary to establish new populations in the State (MDC 2010, p. 26).

The MDC (2011a, pp. 1–2; 2011b, pp. 2–3; 2011c, p. 3) established six criteria for identifying possible reintroduction sites in Missouri: (1) Propagation and release sites are to be under public ownership; (2) ownership involves a partner committed to conservation; (3) proposed release sites are within relatively close proximity to existing Topeka shiner populations; (4) proposed release sites are within the overall historical range of the species in Missouri; (5) the overall condition of the stream (*e.g.,* land use, environmental parameters, stream bank and channel stability, ecological and biological integrity) and watershed is suitable; and (6) the perceived likelihood of success of the reintroduction is high because there are no physical barriers that will prevent the species from inhabiting these sites. We have selected high quality streams for proposed reintroduction that will support growth, survival, and natural reproduction. Sites selected are also deemed to be adequate to facilitate expansion of reintroduced populations.

Location of the Proposed Nonessential Experimental Population

Based on criteria outlined above for reintroduction sites, Little Creek headwaters in Harrison County; East Fork Big Muddy Creek in Gentry, Harrison, and Worth Counties; and tributaries of Spring Creek in Adair, Putnam, and Sullivan Counties have been identified for initial release efforts (MDC 2010, pp. 27–31). Although no historical records exist of Topeka shiner in the selected reintroduction sites, it is likely that the species once inhabited these waters. Our conclusion is based on the following: (1) The species was historically known from adjacent watersheds—Little Creek and Big Muddy Creek are located approximately 16–19 air miles (mi.) (25.75–30.58 air kilometers (km)) from extant sites in Harrison County, Missouri (Wiechman 2012, pers. comm.), and the Spring Creek watershed in Adair, Putnam, and Sullivan Counties is located approximately 11 air mi. (17.7 air km) (Novinger 2012, pers. comm.) from a historical location in Putnam County, Missouri; (2) habitat is identical or similar to currently occupied sites in Harrison County, Missouri; and (3) the proposed reintroduction sites have suitable habitat necessary for the successful establishment of the species (MDC 2011a, pp. 1–2).

The reintroduction areas would include both pond (similar to off-channel habitats used by the species elsewhere within its range) and stream habitats. Initial donor populations of Topeka shiner would originate from extant sites in Sugar Creek, Harrison County, and be propagated at MDC's Lost Valley Hatchery in Warsaw, Missouri. Future captive-breeding of the Topeka shiner would occur in pond habitats, and the progeny would be used to stock the NEP streams rather than continual use of the Lost Valley Hatchery (Novinger 2012, pers. comm.). The subsequent use of pond fish for ongoing reintroduction efforts would be dependent upon the success of propagation efforts at The Nature Conservancy's Dunn Ranch, MDC's Pawnee Prairie Natural Area (NA), and MDC's Union Ridge Conservation Area (CA) (see below) (Novinger 2012, pers. comm.).

Little Creek

Little Creek is a tributary to West Fork Big Creek in the greater Grand River drainage. The proposed NEP portion of the watershed is located in the headwaters of Little Creek and is estimated at 7,600 acres (ac) (3075 hectares (ha)). The area extends from the backwaters of Harrison County Lake, upstream to the headwaters of Little Creek, and includes all tributaries in this reach from the reservoir to headwaters. Specific reintroduction sites would be located in select ponds (greater than 8 feet (2.44 m) deep) and in headwater stream reaches on Dunn Ranch, which is owned and operated by The Nature Conservancy (TNC). Dunn Ranch comprises the upper half of the watershed, and it has several characteristics that promote a successful reintroduction program (*e.g.,* land management within the watershed is excellent) (MDC 2011a, p. 2). Harrison County Lake (280 ac) (113.1 ha) is identified as the downstream extent of the proposed NEP because it supports a popular sport fishery with abundant predator fishes (largemouth bass, crappie, channel catfish), which greatly limit the potential for downstream migration of cyprinid species (MDC 2011a, p. 2). Little Creek is approximately 16 air miles (mi.) (25.75 air kilometers (km)) from extant sites in Harrison County, Missouri (Wiechman 2012, pers. comm.). A physical barrier in Harrison County Lake downstream of the proposed reintroduction site would prevent the mixing of wild and reintroduced populations of Topeka shiners (MDC 2011a, p. 7).

Big Muddy Creek

Big Muddy Creek is a tributary to the East Fork Grand River drainage and its watershed covers 44,339 ac. Land use is predominately grassland (60 percent), containing minor components of cropland (16 percent) and deciduous forest (15 percent). Cropland is concentrated in the bottomland along the mainstem of Big Muddy Creek. Grassed uplands are mostly used for cattle grazing and hay production. Headwaters of Big Muddy Creek (upper 33 percent of watershed) lie within the Grand River Grasslands Conservation Opportunity Area (GRGCOA). Two notable properties within the GRGCOA portion of Big Muddy Creek include MDC's Pawnee Prairie Natural Area (NA) (476 ac) (192 ha) and TNC's Pawnee Prairie (500 ac) (202 ha), which are cooperatively managed for native prairie and associated wildlife (MDC 2011b, pp. 1–2).

The 10-year-old GRGCOA covers approximately 70,000 ac (28,327 ha) in northern Missouri and southern Iowa, with approximately 14,800 ac (5,989 ha) (21 percent) located within the Big Muddy Creek basin. In northern Missouri, GRGCOA is believed to have the greatest potential to restore a functioning tallgrass prairie ecosystem on a landscape scale. The MDC, TNC, the Iowa Department of Natural Resources, the Natural Resources Conservation Service, the Service, and interested private landowners are working cooperatively to restore prairie, promote soil conservation practices, and enhance habitat for prairie chickens in this area. Prescribed burning is commonly used to help meet these objectives. Experimental patch-burn grazing on Pawnee Prairie NA is also being evaluated by MDC and Iowa State University (MDC 2011b, p. 2).

The eastern side of MDC's Emmet and Leah Seat Memorial (Seat) Conservation Area (CA) (2,030 ac) (821 ha) is located within the Little Muddy Creek basin, a lower sub-basin to Big Muddy Creek. Little Muddy Creek basin is located outside the GRGCOA. Seat CA is a mixture of old field, grasslands, cropland, and woodland habitats. The area features public hunting (deer, turkey, quail, small game), primitive camping, an archery range, 16 fishable ponds (totaling 13 ac), and a permanent stream. The area is managed primarily for upland game hunting (MDC 2011b, p. 2).

The Big Muddy Creek watershed, from its confluence with East Fork Grand River upstream through all headwaters, is included in the proposed NEP area for the following reasons: (1) There are no known fish barriers; (2) there are no reservoirs (except small farm ponds) with abundant predator fishes; and (3) stream size remains relatively small with habitat conditions comparable to those found in reaches of Sugar Creek where Topeka shiners occur. Big Muddy Creek is approximately 19 air miles (mi.) (30.58 air kilometers (km)) from extant sites in Harrison County, Missouri (Wiechman 2012, pers. comm.). East Fork Grand River is believed to effectively limit the potential for downstream migration of cyprinids given its higher densities of predator fishes (predominantly channel catfish) and minimal cover for small fish (MDC 2011b, p. 2). A physical barrier in the East Fork of the Grand River downstream of the proposed reintroduction site would prevent mixing of wild and reintroduced populations of Topeka shiners (MDC 2011b, p. 9).

Spring Creek

Spring Creek is a tributary to the Chariton River, and its watershed covers 60,869 ac (24,632 ha). Land use is essentially limited to deciduous woodlands (41 percent) and grassland (39 percent), with only 10 percent cropland. Cropland is concentrated in the bottomland along the mainstem of Spring Creek and in the upper

watershed in the Unionville Plains. Grassed uplands are mostly used for cattle grazing and hay production. The Union Ridge Conservation Opportunity Area (URCOA) and the Spring Creek Priority Watershed (SCPW) encompass roughly 75 percent of the Spring Creek watershed. MDC ownership within the watershed includes Morris Prairie CA (167 ac) (67 ha), Dark Hollow NA (315 ac) (127 ha), Union Ridge CA (8,110 ac) (3,282 ha), and Shoemaker CA (259 ac) (104 ha). Morris Prairie NA (47 ac) (19 ha) and Spring Creek Ranch NA (1,769 ac) (716 ha) are located within the boundaries of Morris Prairie CA and Union Ridge CA, respectively. These properties are managed for native prairie-savanna-woodland and associated wildlife (MDC 2011c, p. 1).

The Spring Creek watershed, from its confluence with the Chariton River upstream through all headwaters is included in the proposed NEP area for the following reasons: (1) There are no known fish barriers; (2) there are no reservoirs (except small farm ponds) with abundant predator fishes; and (3) stream size remains relatively small, with habitat conditions comparable to those found in reaches of Sugar Creek where Topeka shiners occur. The Spring Creek watershed in Adair, Putnam, and Sullivan Counties is located approximately 47 air mi. (75.64 air km) (Wiechman 2012, pers. comm.) from extant sites in Harrison County, and the Spring Creek locations are not in any watershed where there are extant records of Topeka shiner (MDC 2011c, pp. 8–11). The Chariton River is believed to effectively limit the potential for downstream migration of Topeka shiners given its higher densities of predator fishes (predominantly channel catfish) and minimal cover for small fish (MDC 2011c, p. 2).

Initial reintroduction sites for Topeka shiners would be in at least six ponds and all suitable stream reaches on MDC's Union Ridge CA. Subsequent monitoring of Topeka shiners would be restricted to the middle-Spring Creek sub-basin of the Spring Creek watershed. Within Spring Creek, this sub-basin is believed to offer the greatest potential to establish a self-sustaining population of Topeka shiners, and the smaller size of the middle-Spring Creek sub-basin also allows for regional Fisheries staff to reasonably complete monitoring efforts and evaluate success (MDC 2011c, p. 2).

Likelihood of Population Establishment and Survival

A subset of the ponds on Dunn Ranch, Pawnee Prairie, and Union Ridge CA determined to be suitable for the propagation of Topeka shiners would be treated with rotenone to remove potential predators prior to stocking (MDC 2011a, p. 2; MDC 20011b, p. 2; MDC 2011c, p. 3). Spawning gravel would also be added to littoral areas (0–1 meter deep). The success of reproduction in these ponds would be compared to ponds with bare soil bottom types that did not receive spawning gravel. Reducing predators and increasing spawning success should increase the likelihood of population establishment and survival.

Addressing Causes of Extirpation

There are apparently numerous reasons for the decline of the Topeka shiner throughout its range. Reductions and disappearance of many Topeka shiner populations appear to be related to a combination of physical degradation of habitat and species interactions (MDC 2010, p. 11). Physical degradation of habitat is primarily related to patterns of land use including destruction, modification and fragmentation of habitat resulting from siltation, reduced water quality, tributary impoundment, and reduction of water levels (MDC 2010, p. 11). These habitat alterations may have been caused by intensive agriculture, urbanization, and highway construction (Minckley and Cross 1959, p. 216; Cross and Moss 1987, p. 165; Pflieger 1997, p. 199; Tabor 1992, pp. 38–39; MDC 2010, p. 11). Bayless *et al.* (2003, p. 47) found that generally good water quality and habitat prevailed in the Moniteau Creek watershed, where the largest remaining populations of the Topeka shiner persist. No overall pattern relating Topeka shiner distribution and water quality was detectable; however, the Topeka shiner has never been observed in sub-basins of the watershed characterized by chronically extreme levels of urbanization, nutrient additions, and turbidity. Construction of watershed impoundments that limit sediment-flushing flows and provide a source of piscivorous predators, low-water crossings that obstruct animal and particle passage, and reduction of groundwater levels resulting from irrigation may have also contributed to the Topeka shiner's decline (Layher 1993, pp. 15–17; Tabor 1992, p. 39; Pflieger 1997, p. 155; Schrank *et al.* 2001, p. 419; Mammoliti 2002, p. 2; MDC 2010, p. 11). Species interactions, such as predation and competition with other fishes, have likely played a role in the decline of the Topeka shiner in portions of its range. Stocking piscivores such as largemouth bass (*Micropterus salmoides*), crappie (*Pomoxis* spp.), and bluegill (*Lepomis macrochirus*) in ponds constructed in watersheds containing the Topeka shiner has probably accelerated the decline of the Topeka shiner through predation (MDC 2010, p. 11). Additionally, Pflieger (1997, p. 155) suggested that the introduced blackstripe topminnow (*Fundulus notatus*) and western mosquitofish (*Gambusia affinis*) likely compete with the Topeka shiner for food.

The Topeka shiner in Missouri has declined in the presence of largemouth bass, bluegill, and blackstripe topminnow, and this decline coincided with the decline of other fishes considered generally tolerant of poor physical and chemical conditions but intolerant of species interactions (Winston 2002, p. 249). Schrank *et al.* (2001, p. 413) noted that sites where the Topeka shiner had been extirpated in Kansas had a greater number of small impoundments in the watershed, longer pools, higher catch per effort of largemouth bass, and higher species diversity by trophic guild and richness compared to sites where the Topeka shiner was extant. Dahle and Hatch (2002, p. 3) determined the threat of predation of Topeka shiners by piscivorous fish (including largemouth bass) in southwest Minnesota streams was low due to the rarity of such predators.

Other unidentified factors may be responsible for the loss of the Topeka shiner from some streams and for localized undocumented fish kills. Further study is needed to determine the relative significance of habitat degradation versus species interactions as causes for the decline of the Topeka shiner. Koehle (2006, p. 26) found Topeka shiners to be tolerant of high water temperatures and low dissolved oxygen levels. Additional experimental studies would be particularly useful to elucidate the physiological tolerances and behavior of the Topeka shiner in addition to comparisons of the hydrology, water chemistry, physical habitat, land use practices, and fish communities in areas where the species persists and where it has been extirpated (MDC 2010, p. 11).

All proposed reintroduction sites are on public land, and are properly managed to prevent potential causes of extirpation (Pflieger 1997, pp. 154–155). In addition to implementing management techniques that will sustain headwater prairie stream habitat, efforts have been undertaken to eliminate potential predation by nonnative piscivorous fish (MDC 2010, pp. 26–31). Ponds on Dunn Ranch, Pawnee Prairie NA, and Union Ridge CA determined to be suitable for the

propagation of Topeka shiners were treated with rotenone during the summer of 2011, to remove potential piscivorous predators prior to stocking (MDC 2011a, p. 2; MDC 20011b, p. 2; MDC 2011c, p. 3). Ponds would be regularly monitored to assess success of removal operations. Additional treatments would be provided if needed to ensure ponds are free of fish predators before any stocking takes place. Such actions should improve the probability of success of reintroduction efforts. Ponds on proposed reintroduction areas used in propagation efforts would likely duplicate off-channel habitats occupied by Topeka shiners elsewhere within the species' range (MDC 2010, p. 26). The use of such ponds in propagation efforts would serve as refugia for Topeka shiners during extreme drought and may provide excellent sources of intra-basin transfers to promote population expansion (MDC 2011a, p. 2).

Release Procedures

Initial donor populations of Topeka shiner would originate from extant sites in Sugar Creek, Harrison County, and from fish propagated at MDC's Lost Valley Hatchery in Warsaw, Missouri. Proposed NEP reintroductions would include pond and stream habitats within the Little Creek, Big Muddy Creek, and Spring Creek watersheds. Captive-reared fish would be stocked into stream and pond habitats by MDC fisheries personnel. Cooperators include MDC, TNC, and the Service. Topeka shiners that are subsequently and successfully reared in ponds on Dunn Ranch, Pawnee Prairie NA, and the Union Ridge CA would be placed into proposed stream habitats following established stocking protocols described in the reintroduction plans (MDC 2011a, 2011b, and 2011c). We do not anticipate that the removal of fish would have a deleterious effect on the genetics of the species, because only a sample of Topeka shiners in Sugar Creek would be collected.

Parameters To Assess the Success of the Reintroduction

Sampling Sites

Information on fish species composition and simple stream habitat conditions would be collected at sites throughout the proposed NEP portion of the Little Creek, Big Muddy Creek, and Spring Creek watersheds prior to initial stockings. Twenty-five sites with 3 pools per site that are at least 200 meters (m) in length would be selected using a Generalized Random Tessellation Stratified (GRTS) design (*http://www.epa.gov/nheerl/arm/designing/design_intro.htm*).

Fish Sampling

Each pool would be sampled once with a 15-foot (ft) (4.57-m) x 6-ft (1.83-m), one-eighth-inch (0.32-centimeters (cm)) mesh drag seine to collect fish. To be more effective in narrow pools (width less than 6 m), the net may be shortened to facilitate sampling. Two nets hauled side-by-side would be used for wide pools between 10 and 20 m in width. All species present in a catch would be identified and categorized by apparent relative abundance: ''low'' is defined by low approximate number (fewer than 10 fish) and low approximate percent of total catch (less than 5 percent); ''medium'' (10–50 fish, less than 25 percent); or ''high'' (greater than 50 fish, greater than 25 percent). Presence of juvenile Topeka shiners (less than 40 millimeters (mm) total length) would be noted as an indication of spawning at each site.

Habitat—Habitat variables to be measured in the field in each pool include: Global Positioning System (GPS) coordinates at the downstream edge of the pool using Universal Transverse Mercator North American Datum of 1983 (UTM NAD83); water temperature and conductivity (measured with a handheld meter, indicates ion concentration and relative degree of water replenishment); pool length and representative pool width (measured with rangefinder or meter stick), and maximum depth (via meter stick or similar); visual assessments of the relative amount of silt or organic debris covering the stream bottom (1 = almost none, 2 = thin layer, 3 = thick layer) and overall substrate type/coarseness (1 = clay or bedrock, 2 = small rock less than 128 mm diameter/cobble, 3 = large rock greater than 128 mm); degree of pool isolation (1 = intermittent or isolated, 2 = continuous or interconnected by flowing water habitat); and overall level of seining difficulty (1 = not difficult, 2 = difficult). Visual assessments and level of difficulty would be based on consensus of the sampling crew. An adaptive monitoring approach would be used to assess the NEP population numbers and habitat variables; adjustments would be made, if necessary, after assessing the monitoring techniques.

Initial Stocking

Ponds—Topeka shiners would be stocked at a rate of 500 fish per acre in designated ponds at proposed reintroduction sites on public properties. All fish would come from either Sugar Creek (Harrison County) or those propagated at MDC's Lost Valley Hatchery. Additionally, orangespotted sunfish would be stocked in each pond at a rate of 25 to 50 fish per acre. The source of the sunfish would preferably be from Sugar Creek broodstock propagated at MDC's Lost Valley Hatchery or another local basin within the greater Grand River watershed. Green sunfish (also from local basins) may be substituted to meet desired stocking rates for sunfish if adequate numbers of orangespotted sunfish cannot be reasonably collected.

Stream Reaches—Topeka shiners would also be stocked in suitable stream reaches within the NEP area on public properties at a minimum rate of 5,000 fish per mile. Based on monitoring data, a need for stocking sunfish would be determined for selected stream reaches on public properties. Sources of Topeka shiners and sunfish would be the same as described above for the ponds.

Supplemental Stocking

Supplemental stockings of Topeka shiners or sunfish would be conducted for ponds or selected stream reaches on public properties within the greater NEP portion of Little, Big Muddy, and Spring creeks, if necessary. Criteria for such stockings would be determined by MDC fisheries personnel as needed and necessary to meet reintroduction goals outlined in MDC's 10-year Action Plan for the Topeka Shiner (MDC 2010, pp. 29–35). Supplemental stocking rates in ponds and streams would occur at the same rates described for initial stockings above.

Effects on Extant Populations

Individual Topeka shiners used to establish an experimental population would be supplied by MDC's Lost Valley Hatchery in Warsaw, MO, propagated under the Federal Fish and Wildlife Permit #TE71730A. The donor population for the Lost Valley Hatchery is from sites in Sugar Creek, Harrison County, Missouri. Sugar Creek's Topeka shiner population is closest to the proposed reintroduction sites. Typical gear used for small cyprinids would be used to collect Topeka shiners, and they would be held at Lost Valley Hatchery until they could be stocked into pond and stream habitats at proposed reintroduction sites.

The 10-year Strategic Plan for the Recovery of the Topeka Shiner in Missouri (MDC 2010, pp. 29–35) and reintroduction plans for Topeka shiner in the Little Creek, Big Muddy Creek, and Spring Creek watersheds (MDC 2011a, pp. 1–9; MDC 2011b, pp. 1–11; MDC 2011c, pp. 1–11) contain

additional information on the release procedures and monitoring protocols (see **FOR FURTHER INFORMATION CONTACT** for copies of this document or go to *http://www.regulations.gov*).

Status of Proposed Population

We would ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of Topeka shiner from the donor population within the Sugar Creek Basin for releases into Little Creek, Big Muddy Creek, and Spring Creek is not likely to jeopardize the continued existence of the species in the wild.

The proposed special rule that accompanies this section 10(j) proposed rule is designed to broadly exempt, from the section 9 take prohibitions, any take of Topeka shiners that is incidental to otherwise lawful activities. We propose to provide this exemption because we believe that such incidental take of members of the NEP associated with otherwise lawful activities is necessary and advisable for the conservation of the species.

This designation is justified because no adverse effects to extant wild or captive Topeka shiner populations would result from release of progeny from the Sugar Creek population. There is no possibility of any transfer of disease or mixing of wild and reintroduced populations due to the distances involved between the donor population and proposed reintroductions, the watersheds involved, and the physical barriers associated with the Little Creek and Big Muddy Creek watersheds. The majority of the reintroductions would occur on managed public land, and exemptions from prohibition for activities on private land are not likely to result in the loss of the proposed NEP. Successful propagation of Topeka shiners in ponds at Dunn Ranch, Pawnee Prairie NA, and Union Ridge CA would provide a continual reservoir of Topeka shiners for supplemental stocking as needed. We expect that the reintroduction effort into Little, Big Muddy, and Spring creeks would result in the successful establishment of a self-sustaining population of Topeka shiners, which would contribute to the recovery of the species.

Extent to Which the Reintroduced Population May Be Affected by Land Management Within the Proposed NEP Watersheds

We conclude that the effects of Federal, State, or private actions and activities would not pose a substantial threat to Topeka shiner establishment and persistence in the Little Creek, Big Muddy Creek, and Spring Creek watersheds, because most activities currently occurring in the proposed NEP area are compatible with Topeka shiner recovery, and there is no information to suggest that future activities would be incompatible with Topeka shiner recovery. Most of the area containing suitable release sites with high potential for Topeka shiner establishment is managed by MDC or TNC through the following mechanisms:

(1) There are existing best management practices (BMPs) for Topeka shiners that are followed by MDC and TNC; these practices include recommendations to maintain the water quality and headwater stream habitat (MDC 2000, p. 1).

(2) Reintroduction plans have been developed for all proposed NEP sites (MDC 2011a, pp. 1–9; MDC 2011b, pp. 1–11; MDC 2011c, pp. 1–9).

(3) All proposed reintroduction sites are managed to maintain Topeka shiner habitat (MDC 2011a, pp. 1–9; MDC 2011b, pp. 1–11; MDC 2011c, pp. 1–9).

Management issues related to the proposed Topeka shiner NEP that have been considered include:

(a) *Incidental take:* The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities and other rural development, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. Experimental population special rules contain specific prohibitions and exceptions regarding the taking of individual animals. If this 10(j) rule is finalized, incidental take of Topeka shiners within the NEP area would not be prohibited, provided that the take is unintentional and is in accordance with the special rule that is a part of this 10(j) rule. However, if there is evidence of intentional take of an individual Topeka shiner within the NEP that is not authorized by the special rule, we would refer the matter to the appropriate law enforcement entities for investigation.

(b) *Special handling:* In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service, any other Federal land management agency, or State personnel, designated for such purposes, may in the course of their official duties, handle individual Topeka shiners to aid sick or injured individual Topeka shiners, or to salvage dead individual Topeka shiners. Other persons would need to acquire permits from the Service for these activities.

(c) *Coordination with landowners and land managers:* The Service and our cooperators have identified issues and concerns associated with the proposed Topeka shiner nonessential experimental population establishment. The proposed NEP establishment was discussed with potentially affected State agencies, Tribal entities, local governments, businesses, and landowners within the proposed reestablishment area. Affected State agencies, landowners, and land managers have either indicated support for, or no opposition to, the proposed NEP establishment, provided an NEP is designated and a special rule is promulgated to exempt incidental take from the prohibitions under section 9.

(d) *Public awareness and cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the Topeka shiner in Missouri. We will host public meetings after the publication of this proposed rule and inform the public of the purpose of the reintroduction, while emphasizing that the proposed NEP would not impact activities on private property (see Public Meetings). Additionally, MDC fisheries and private land biologists and the Service will highlight the same issues while working with private landowners on various landowner incentive programs or when providing technical assistance within the proposed NEP watersheds. The designation of the NEP within Little Creek, Big Muddy Creek, and Spring Creek would provide greater flexibility in the management of the reintroduced Topeka shiner individuals.

(e) *Potential impacts to other federally listed species:* No other federally listed species are present within streams where the NEP is proposed; therefore, Topeka shiner reintroductions would not impact any other federally listed species.

(f) *Monitoring and evaluation:* Monitoring of changes in the distribution of Topeka shiners would be undertaken using occupancy modeling or a similar approach following procedural guidelines described in MacKenzie *et al.* (2006, pp. 183–224). Monitoring would be undertaken annually by personnel of the MDC, and results would be communicated to the public during future public meetings and through the use of outreach documents. If monitoring of released individuals indicates that reintroductions have been successful, additional release areas may be identified in a proposed rule in the **Federal Register** at a future date, following guidelines outlined in MDC's 10-year Strategic Plan for Recovery of

the Topeka Shiner in Missouri (MDC 2010, p. 8). We project that it will be necessary to establish Topeka shiners in seven reintroduced populations to achieve recovery of the species in Missouri (MDC 2010, p. 26). However, this proposed rule covers only three of the seven reintroductions because the potential establishment of the remaining four populations will be contingent upon the success of initial propagation and release efforts. Reintroduction into the remaining sites would also follow the same protocols and guidelines conducted under this 10(j) rule, including the opportunity for the public to comment on such reintroductions in a possible future proposed rule.

Reintroduction Effectiveness Monitoring

Evaluations of our reintroduction goal and objectives will require monitoring for at least 10 years following initial stockings. Initial success of the reintroduction efforts would be evaluated through annual sampling of ponds and selected stream reaches on public properties during the first 3 years following initial stockings. Pond sampling would include fall seining with at least five, one-fourth arc pulls around the shore. Catch rates (fish per pull) would be recorded for shiners and sunfish, and a subsample of up to 100 Topeka shiners would be used to evaluate natural reproduction. Topeka shiners that are less than 40 mm (1.6 inches) in length would be considered juveniles. Minnow traps may also be used as a comparison to seining data. Stream sampling would follow the methods described earlier for ''Baseline Data'' sampling. After the first 3 years, ponds stocked with Topeka shiners would be monitored biennially for 10 years. Stream monitoring would be continued annually for 10 years to measure changes in the distribution of Topeka shiners, other fishes in the watershed, and trends in stream habitat conditions. Program Presence (Hines 2006) software to estimate patch occupancy and related parameters would be used to evaluate changes in occupancy and determine Topeka shiner use of Little Creek, Big Muddy, and Spring Creek watersheds.

Donor Population Monitoring

The MDC would continue to monitor the donor population of Topeka shiners in Sugar Creek. Monitoring of the donor population would follow guidelines established in the 10-Year Strategic Plan for the Recovery of Topeka Shiner in Missouri (MDC 2010, pp. 55–60); however, occupancy modeling would follow the protocols and principles in MacKenzie *et al.* (2006, pp. 183–224) to assess the status of the species. If monitoring detects a significant decline in donor populations, appropriate management action would be taken.

Monitoring Impacts to Other Listed Species

No other federally listed species occur within ponds or streams proposed for reintroductions; therefore, this monitoring would not be necessary.

Findings

Our regulations at 50 CFR 17.81(b) specify four elements that should be considered and support this finding: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area. The above analysis (see Background) addresses these required components.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing Topeka shiner into Little Creek, Big Muddy Creek, and Spring Creek would further the conservation of the species but that this population is not essential to the continued existence of the species in the wild.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this proposed NEP designation. The purpose of such review is to ensure that the proposed NEP designation is based on the best scientific information available. We will invite these peer reviewers to comment during the public comment period and will consider their comments and information on this proposed rule during preparation of a final determination.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that, if adopted as proposed, this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected if this proposed rule is adopted includes the release areas in northern Missouri and adjacent areas into which Topeka

shiners may disperse, which over time could include significant portions of the NEP. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and because of the exemption for incidental take in the proposed special rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. In regard to section 7(a)(2), the population is treated as proposed for listing and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the Topeka shiner, but we do not expect projects would be halted or substantially modified as a result of these regulations.

If adopted, this proposal would broadly authorize incidental take of the Topeka shiner within the NEP area, when such take is incidental to an otherwise lawful activity, such as agricultural activities, animal husbandry, grazing, ranching, road and utility maintenance and construction, other rural development, camping, hiking, fishing, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be permitted. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the proposed NEP area are agriculture, rural development, and recreation. We conclude the presence of the Topeka shiner would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the Topeka shiner, and Federal agencies would only have to comply with sections 7(a)(1) and 7(a)(4) of the Act in these areas. Therefore, if adopted as proposed, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) If adopted, this proposal will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designation will not place additional requirements on any city, county, or other local municipalities.

(2) This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed NEP designation for the Topeka shiner would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This rule would allow for the take of reintroduced Topeka shiners when such take is incidental to an otherwise legal activity, such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations. Therefore, we do not believe that establishment of this NEP would conflict with existing or proposed human activities or hinder public use of the Little Creek, Big Muddy Creek, and Spring Creek or its tributaries.

A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a federalism impact summary statement is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Missouri. Achieving the recovery goals for this species in Missouri would contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The special rule would operate to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Missouri. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a federalism impact summary statement under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new information collections that require approval. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095, which expires on May 31, 2014. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

National Environmental Policy Act

The reintroduction of native species into suitable habitat within their historical or established range is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4, 43 CFR 46.205, 43 CFR 46.210, and 516 DM 8.5 B(6).

Government-to-Government Relationship With Tribes

In accordance with the presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 (65 FR 67249), and the Department of Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no tribal lands within the areas proposed for reintroductions. Therefore, no tribal lands would be affected by this rule.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Rule (E.O. 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comment should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2012–0087 or upon request from the Columbia, Missouri, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Service's Columbia, Missouri, Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Shiner, Topeka'' under ''FISHES'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	
FISHES							
Shiner, Topeka	*Notropis topeka=tristis.*	U.S.A. (IA, KS, MN, MO, NE, SD).	Entire, except where listed as an experimental population..	E	654	17.95(e)	NA
Shiner, Topeka	*Notropis topeka=tristis.*	U.S.A. (IA, KS, MN, MO, NE, SD).	U.S.A. (MO—specified portions of Little Creek, Big Muddy Creek, and Spring Creek watersheds in Adair, Gentry, Harrison, Putnam, Sullivan, and Worth Counties; see 17.84(n)(1)(i)).	XN	.....	NA	17.84(n)
*	*	*	*	*	*	*	

■ 3. Amend § 17.84 by adding paragraph (n) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(n) Topeka shiner (*Notropis topeka*).

(1) *Where is the Topeka shiner designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the Topeka shiner is within the species' historical range and includes those waters within the Missouri counties of Adair, Gentry, Harrison, Putnam, Sullivan, and Worth identified in paragraph (n)(5) of this section.

(ii) The Topeka shiner is not known to currently exist in Adair, Gentry, Putnam, Sullivan, and Worth Counties in Missouri, or in those portions of Harrison County, Missouri, where the NEP is proposed. Based on its habitat requirements and potential predation by other fish predators, we do not expect this species to become established outside this NEP area, although there is a remote chance it may.

(iii) We will not change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (n)(3) of this section, all the prohibitions of § 17.21 apply to the Topeka shiner NEP.

(ii) Any manner of take not described under paragraph (n)(3) of this section is prohibited in the NEP area.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, Topeka shiners, or parts thereof, that are taken or possessed in violation of paragraph (n)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (n)(2)(iii) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is incidental to an otherwise legal activity, such as agriculture, forestry and wildlife management, land development, recreation, and other activities, is allowed provided that the activity is not in violation of any applicable State fish and wildlife laws or regulations.

(4) *How will the effectiveness of these reintroductions be monitored?* We will monitor reintroduction efforts to assess changes in distribution within each watershed by sampling ponds and streams where releases occur for 10 years after reintroduction. Streams will be sampled annually, and ponds will be sampled annually for the first 3 years and biennially thereafter.

(5) **Note:** Map of the NEP areas [Big Muddy Creek (Gentry, Harrison, and Worth Counties), Little Creek (Harrison County), and Spring Creek (Adair, Putnam, and Sullivan Counties)] for the Topeka shiner, follows:

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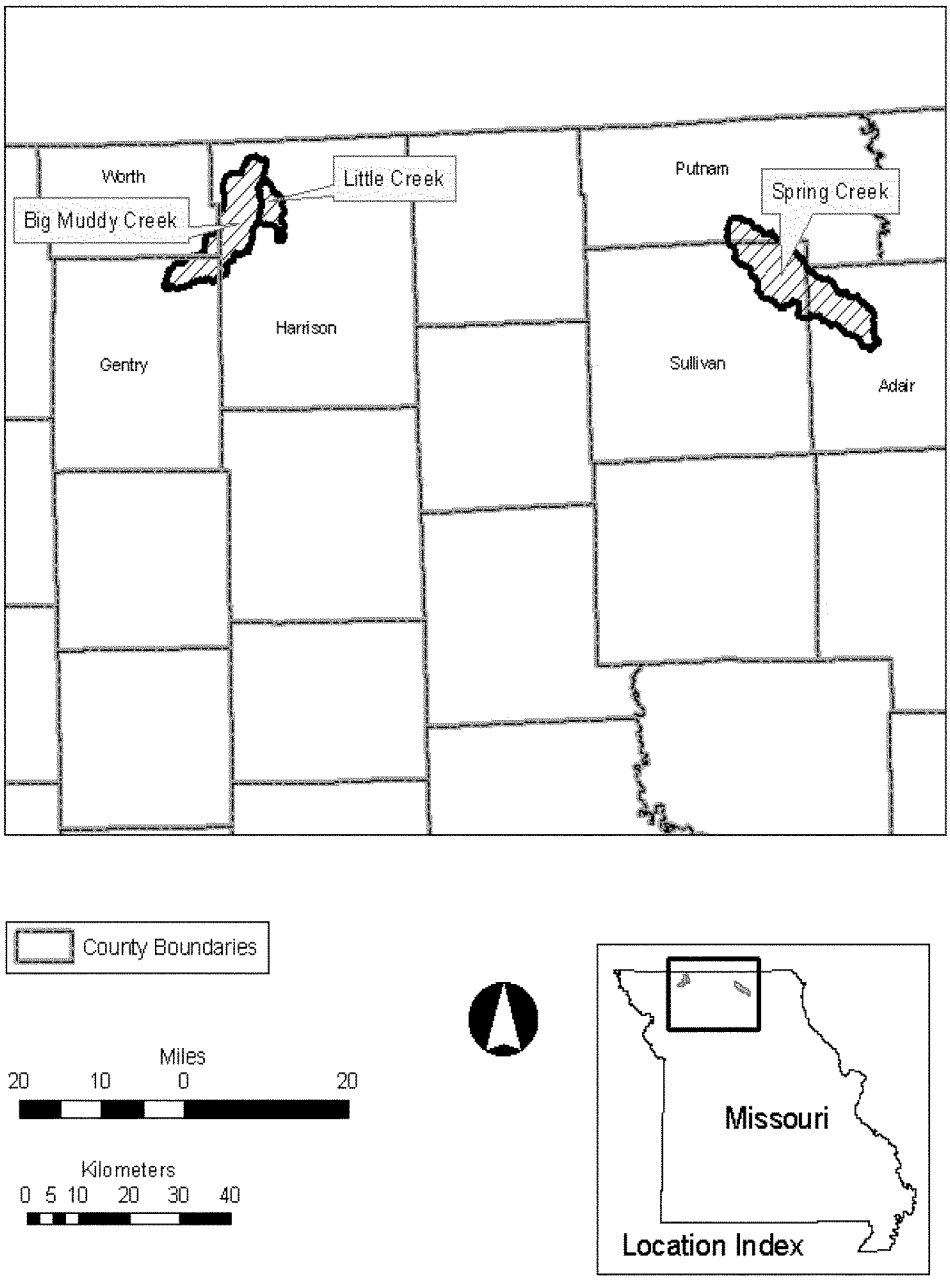
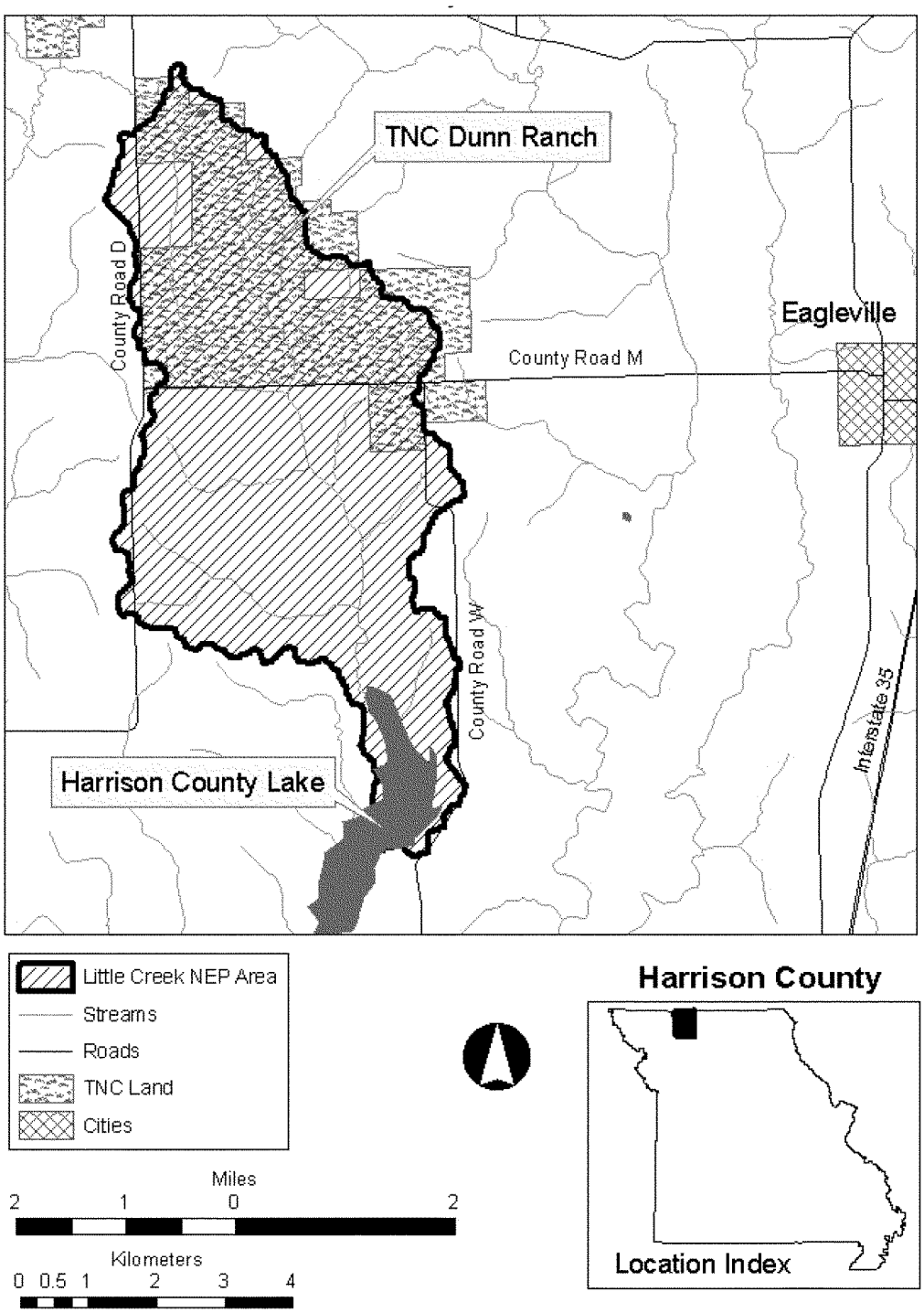
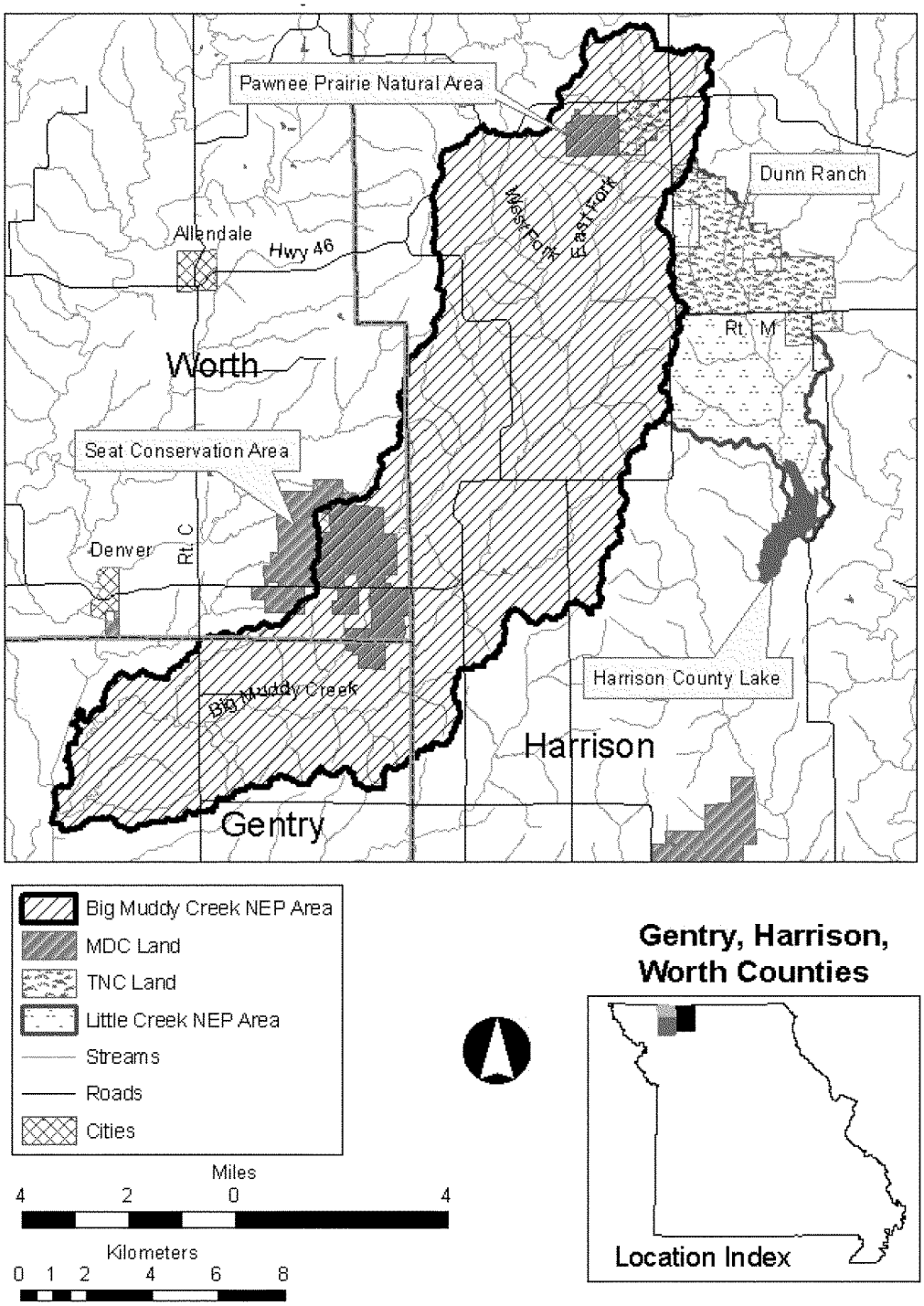


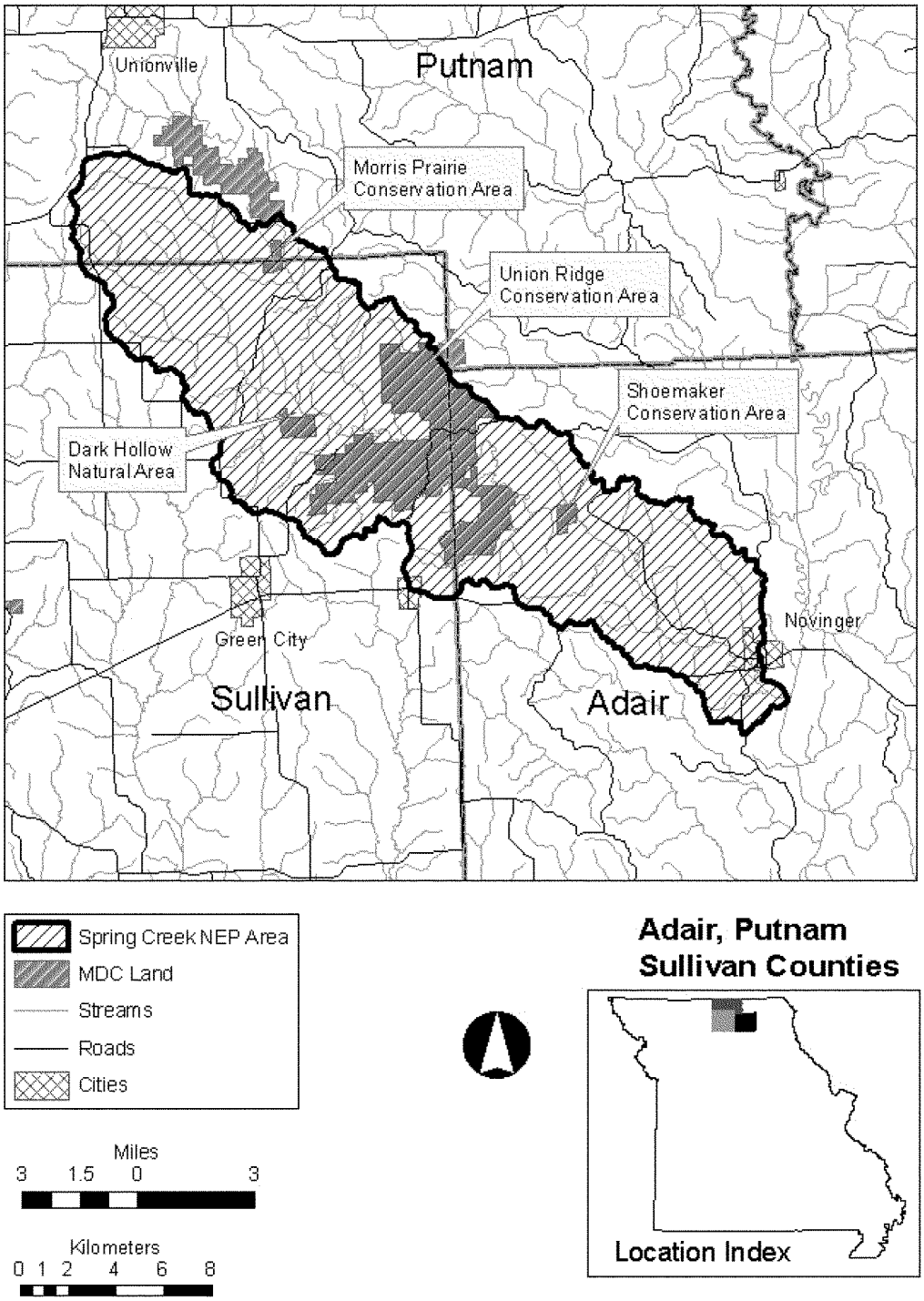
(6) **Note:** Map of the NEP area for the Topeka shiner in Little Creek watershed, Harrison County, follows:



(7) **Note:** Map of the NEP area for the Topeka shiner in Big Muddy Creek watershed, Gentry, Harrison, and Worth Counties, follows:



(8) **Note:** Map of the NEP area for the Topeka shiner in Spring Creek watershed, Adair, Putnam, and Sullivan Counties, follows:



* * * * *

Dated: January 2, 2013.

Michael Bean,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–01153 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register

Vol. 78, No. 15

Wednesday, January 23, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0050]

Notice of Request for Extension of a Currently Approved Information Collection; Importation and Transportation of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request an extension of an approved information collection regarding the importation and transportation of meat and poultry products. This information collection is due to expire.

DATES: Comments on this notice must be received on or before March 25, 2013.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0050. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; phone: (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Importation and Exportation of Meat and Poultry Products.

OMB Control No.: 0583–0094.

Expiration Date: 3/31/13.

Type of Request: Extension of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products and Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and correctly labeled.

FSIS is planning to request an extension of this approved information collection because it is due to expire on March 31, 2013.

Unless accounted for in an establishment's HACCP plan, meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under USDA seal to prevent such unmarked product from entering into commerce (9 CFR 325.5). To track product shipped under seal, FSIS requires shipping establishments to complete FSIS Form 7350–1 that identifies the type, amount, and weight of the product.

Foreign countries exporting meat and poultry products to the United States must establish eligibility for importation of product into the U.S., and annually certify that their inspection systems are ''equivalent to'' the U.S. inspection system (9 CFR 327.2 and 381.196). Additionally, meat and poultry products intended for import into the U.S. must be accompanied by a certificate, signed by an official of the foreign government, stating that the products have been produced by certified foreign establishments (9 CFR 327.2 and 381.197).

Maintenance of eligibility of a country for importation of products into the U.S. depends on the results of periodic reviews of each establishment listed in the certification (9 CFR 327.2 and 381.196). A written report must be prepared by the representative of the foreign government documenting the findings with respect to the effective operation of the system.

Meat and poultry products exported to the U.S. must be accompanied by a certificate signed by a responsible official of the exporting country (9 CFR 327.4 and 381.197).

Import establishments that wish to pre-stamp imported product with the inspection legend prior to FSIS inspection must submit a letter to FSIS requesting approval to do so (9 CFR 327.10(d) and 381.204).

FSIS has made the following estimates on the basis of an information collection assessment.

Estimate of Burden: FSIS estimates that it takes each respondent an average of 20.9 hours per year to complete the forms and documents described above.

Respondents: Importers, establishments, foreign governments.

Estimated No. of Respondents: 136.

Estimated No. of Annual Responses per Respondent: 650.

Estimated Total Annual Burden on Respondents: 2,846 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6065, South Building, Washington, DC 20250; phone: (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register_Notices/index.asp.*

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Done at Washington, DC, on: January 11, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–01233 Filed 1–22–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0055]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fats and Oils

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), are sponsoring a public meeting on February 5, 2013. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 23rd Session of the Codex Committee on Fats and Oils (CCFO) of the Codex Alimentarius Commission (Codex), which will be held in Langkawi, Malaysia, February 25-March 1, 2013. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 23rd Session of the CCFO and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 5, 2013, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The public meeting will be held at FDA, CFSAN, Harvey Wiley Building, Room 1A–002, 5100 Paint Branch Parkway, College Park, MD 20740. Documents related to the 23rd Session of the CCFO will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Martin J. Stutsman, U.S. Delegate to the 23rd Session of the CCFO, invites U.S. interested parties to submit their comments electronically to the following email address: *Martin.Stutsman@fda.hhs.gov.*

Call-In Number:

If you wish to participate in the public meeting for the 23rd Session of the CCFO by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1–888–858–2144
Participant Code: 6208658

FOR FURTHER INFORMATION ABOUT THE 23RD SESSION OF THE CCFO CONTACT: Martin Stutsman, J.D., Office of Food Safety, CFSAN, FDA, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: +1(240) 402–1642, Fax: +1(301) 436–2651, Email: *Martin.Stutsman@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Marie Maratos, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Phone: +1(202) 205–7760, Fax: +1(202) 720–3157, Email: *Marie.Maratos@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCFO is responsible for elaborating worldwide standards for fats and oils of animal, vegetable, and marine origin including margarine and olive oil.

The Committee is hosted by Malaysia.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 23rd Session of the CCFO will be discussed during the public meeting:

- Matters Referred by the Codex Alimentarius Commission and Other Codex Committees
- Proposed Draft Standard for Fish Oils
- Proposed Draft Amendment to Parameters for Rice Bran Oil in the Standard for Named Vegetable Oils

- Discussion Paper on the Amendment of the Standard for Named Vegetable Oils: Sunflower Seed Oils
- Discussion Paper on Cold Pressed Oils
- Discussion Paper on the Amendment of the Standard for Named Vegetable Oils: High Oleic Soybean Oil
- Discussion Paper on the Amendment of the Standard for Named Vegetable Oils for the addition of Palm Oil with High Oleic Acid OxG
- Discussion Paper on the Revision of the Limit for Campesterol in the Codex Standard for Olive Oils and Olive Pomace Oils
- Discussion Paper on the Amendment of the Standard for Olive Oils and Olive Pomace Oils: Content of Delta-7-Stigmastenol
- Reference to Acceptance/Voluntary Application in Codex Standards
- Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 5, 2013, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 23rd Session of the CCFO, Martin Stutsman (see **ADDRESSES**). Written comments should state that they relate to activities of the 23rd Session of the CCFO.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: January 4, 2013.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2013–01237 Filed 1–22–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0040]

National Advisory Committee on Microbiological Criteria for Foods; Reestablishment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of reestablishment of Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice is announcing the reestablishment of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). The Committee is being reestablished in cooperation with the Department of Health and Human Services (DHHS). The establishment of the Committee was recommended by a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The current charter for the NACMCF is available for viewing on the NACMCF homepage at *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp.*

FOR FURTHER INFORMATION CONTACT: Karen Thomas, Advisory Committee Specialist, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), Room 9–214D Patriots Plaza III, 1400 Independence Avenue SW., Washington, DC 20250–3700. Telephone number: (202) 690–6620.

SUPPLEMENTARY INFORMATION:

Background

USDA is charged with the administration and the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). The Secretary of DHHS is charged with the administration and enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). These Acts help protect consumers by ensuring that food products are wholesome, not adulterated, and properly marked, labeled, and packaged.

In order to assist the Secretaries in carrying out their responsibilities under the FMIA, PPIA, EPIA, and FFDCA, the NACMCF is being reestablished. The Committee will be charged with providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been adequately and appropriately processed.

Reestablishment of this Committee is necessary and in the public interest because of the need for external expert advice on the range of scientific and technical issues that must be addressed by the FSIS and DHHS in meeting their statutory responsibilities. To address the complexity of the issues, the Committee is expected to meet one or more times annually.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of the DHHS. Because of the complexity of matters addressed by this Committee, the Secretary may consult with other Federal Agencies, such as the Department of Commerce's National Marine Fisheries Service, the Department of Defense's Defense Logistics Agency, and the DHHS' Centers for Disease Control and Prevention, for advice on membership appointments. Background materials are

available on the Internet at the address noted above or by contacting the person listed above.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update (Update), which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update also is available on the FSIS Web site. In addition, FSIS offers an electronic mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on: January 4, 2013 .

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–01235 Filed 1–22–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart F. More specifically, 310B (e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932).

DATES: Comments on this notice must be received by March 25, 2013 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator, Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 3250, Washington, DC 20250, Telephone: 202–720–7558.

SUPPLEMENTARY INFORMATION:

Title: Small Socially Disadvantaged Producer Grant.

OMB Number: 0570–0052.

Expiration Date of Approval: January 31, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of this information collection is to obtain information necessary to evaluate grant applications to determine the eligibility of the applicant and the project for the program and to qualitatively assess the project to determine which projects should be funded.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8.5 hours per grant application.

Respondents: provide technical assistance to small, socially-disadvantaged agricultural producers through eligible cooperatives and cooperative development centers.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 24.

Estimated Number of Responses: 588.

Estimated Total Annual Burden on Respondents: 696.75 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 14, 2013.

Lillian E. Salerno,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2013–01258 Filed 1–22–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: National Security and Critical Technology Assessments of the U.S. Industrial Base.

OMB Control Number: 0694–0119.

Form Number(s): N/A.

Type of Request: Regular.

Burden Hours: 308,000.

Number of Respondents: 28,000.

Average Hours Per Response: 11.

Needs and Uses: The Department of Commerce/BIS, in coordination with other government agencies and private entities, conduct assessments of U.S.

industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness as well as the needs of the targeted industry sector in order to maintain a strong U.S. industrial base. Data obtained from the surveys will be used to prepare an assessment of the current status of the targeted industry, addressing production, technological developments, economic performance, employment and academic trends, and international competitiveness. This is a generic information collection and each survey is approved by OMB before being used for the assessment.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via email to *Jasmeet_K._Seehra@omb.eop.gov* or fax to (202) 395–5167.

Dated: January 16, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–01227 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of:

Jerome Stuart Pendzich currently incarcerated at: Inmate Number 43550–074, FMC Lexington, P.O. Box 14500, Lexington, KY 40512 and with an address at: 209 Reece Hill Road, Hampton, TN 37658–3615.

On October 12, 2011, in the U.S. District Court, Eastern District of Tennessee, Jerome Stuart Pendzich (''Pendzich'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2006 & Supp. IV 2010)) (''AECA'') . Specifically, Pendzich was convicted of knowingly and willfully attempting to export defense articles, that is, Level IV Ballistics Small Arms Protective Inserts (SAPI), to Bogota, Columbia without first having obtained a license or written approval from the United States Department of State. Pendzich was sentenced to 46 months of prison followed by three years of supervised release. Pendzich is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Pendzich's conviction for violating the IEEPA, and have provided notice and an opportunity for Pendzich to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Pendzich. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Pendzich's export privileges under the Regulations for a period of 10 years from the date of Pendzich's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Pendzich had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until October 12, 2021, Jerome Stuart Pendzich, with last known addresses at: currently incarcerated at: Inmate Number 43550–074, FMC Lexington, P.O. Box 14500, Lexington, KY 40512, and with an address at: 209 Reece Hill Road, Hampton, TN 37658–3615, and when acting for or on behalf of Pendzich, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Pendzich by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 12, 2021.

VI. In accordance with Part 756 of the Regulations, Pendzich may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Pendzich. This Order shall be published in the **Federal Register**.

Issued this 14th day of January 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–01260 Filed 1–22–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of:

James Allen Larrison, 211 Hope Drive, New Ringgold, PA 17960–9207.

On June 23, 2011, in the U.S. District Court, District of Delaware, James Allen Larrison (''Larrison'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2000 & Supp. IV 2010)) (''IEEPA''). Specifically, Larrison was convicted of knowingly and willfully attempting to export and causing the attempted export from the United States to the Islamic Republic of Iran two Hitachi JU–Z2 Junction Units (camera control box, 8-port multiple television camera control delegation switch), without obtaining the required authorization from the Office of Foreign Assets Control, Department of the Treasury. Larrison was sentenced to 24 months of probation.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Larrison's conviction for violating IEEPA, and have provided notice and an opportunity for Larrison to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Larrison. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Larrison's export privileges under the Regulations for a period of five years from the date of Larrison's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Larrison had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until June 23, 2016, James Allen Larrison, with a last known address at: 211 Hope Drive, New Ringgold, PA 17960–9207, and when acting for or on behalf of Larrison, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2000 & Supp. IV 2010)).

subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Larrison by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 23, 2016.

VI. In accordance with Part 756 of the Regulations, Larrison may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Larrison. This Order shall be published in the **Federal Register**.

Issued this 14th day of January 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–01262 Filed 1–22–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, February 26, 2012, at 9:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*). This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:00 a.m. to 3:30 p.m. EDT. This meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: As the first meeting of the newly reappointed Committee, the agenda will include an overview of the roles and responsibilities of members and discussion of Committee structure. The Committee will also review the work of the previous ETTAC and begin to outline important issues and policies that affect environmental trade. The status of the U.S. Environmental Export Initiative will also be discussed.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2014.

Man Cho,

Energy Team Leader, Office of Energy & Environmental Industries.

[FR Doc. 2013–01257 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC444

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has received a Tribal Resource Management Plan (TRMP) from the Nez Perce Tribe (NPT), and an updated Fishery Management and Evaluation Plan (FMEP) for fishery management in the Snake River Basin in Northeast Oregon. The TRMP is provided pursuant to the Tribal 4(d) Rule; the FMEP is provided pursuant to the salmon and steelhead 4(d) Rule. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to how the NPT TRMP addresses the criteria in the ESA, and of the FMEP. NMFS also announces the availability of a supplemental draft Environmental Assessment (EA) for the pending determination.

DATES: Comments and other submissions must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on February 22, 2013.

ADDRESSES: Written responses to the application should be sent to Enrique Patiño, National Marine Fisheries Services, Salmon Management Division, 7600 Sand Point Way NE., Seattle, WA

98115. Comments may also be submitted by email to: *NEOregonFisheryPlans.nwr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Northeast Oregon Fishery Plans. Comments may also be sent via facsimile (fax) to (206) 526–6736. Requests for copies of the documents should be directed to the National Marine Fisheries Services, Salmon Management Division, 7600 Sand Point Way NE., Seattle, WA 98115. The documents are also available on the Internet at *www.nwr.noaa.gov.* Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5418.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño at (206) 526–4655 or email: *enrique.patino@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River Spring/Summer-run.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Snake River Basin.

Background

Previously, NMFS had received fishery management plans for fisheries in tributaries of northeast Oregon. These plans, submitted by the Shoshone-Bannock Tribes, the Confederated Tribes of the Umatilla Indian Reservation, and the Oregon Department of Fish and Wildlife were the subjects of a draft environmental assessment and associated documents provided for public review and comment (76 FR 49735, August 11, 2011). Subsequent to that 30-day comment period, on February 17, 2012, NMFS received an updated TRMP from the NPT, addressing management of NPT fisheries in the Grande Ronde and Imnaha Rivers. NMFS also received an updated FMEP from Oregon describing inclusion of spring/summer Chinook salmon fisheries in the Washington State portion of the Grande Ronde River to be managed by the Washington Department of Fish and Wildlife on April 24, 2012. NMFS received additional comments clarifying aspects of the proposed actions. NMFS prepared a proposed evaluation of and pending determination on the NPT fishery plan, and updated the NMFS EA to incorporate the additional information.

The FMEPs and TRMPs propose to manage all spring/summer Chinook salmon fisheries to achieve escapement objectives. The FMEPs and TRMPs utilize a harvest rate with five tiers based on predicted adult abundance to each of the affected populations. The majority of the harvest is anticipated to come from hatchery-origin stocks. The FMEPs and TRMPs also describe a process to guide coordination of fishery design and implementation between the agencies implementing fisheries in the action area.

As required by the ESA 4(d) Rule for Tribal Plans (65 FR 42481, July 10, 2000 [50 CFR 223.209]), the Secretary must determine pursuant to 50 CFR 223.209 and pursuant to the government-to-government processes therein whether the TRMPs for fisheries in Northeast Oregon would appreciably reduce the likelihood of survival and recovery of Snake River spring/summer and Snake River Basin steelhead. The Secretary must take comments on his pending determination as to whether the TRMPs address the criteria in the Tribal 4(d) Rule and in § 223.203(b)(4).

As specified in § 223.203(b)(4) of the ESA 4(d) Rule, NMFS may approve an FMEP if it meets criteria set forth in § 223.203(b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on three ESA section 4(d) TRMPs and two ESA section 4(d) FMEPs. Therefore, NMFS is seeking public input on the scope of the required NEPA analysis with the inclusion of the additional proposed activities, including the range of reasonable alternatives and associated impacts of any alternatives.

The final NEPA, TRMP, and FMEP determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action on the TRMPs in the **Federal Register**.

Authority

Under section 4 of the ESA, NMFS, by delegated authority from the Secretary of Commerce, is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 4 of the updated 4(d) rule (50 CFR 223.203(b)(4)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005). The ESA Tribal 4(d) Rule (65 FR 42481, July 10, 2000) states that the ESA section 9 take prohibitions will not apply to TRMPs that will not appreciably reduce the likelihood of survival and recovery for the listed species.

Dated: January 16, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–01229 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC431

Endangered and Threatened Species; Recovery Plan for the North Pacific Right Whale

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft Recovery Plan (Plan) for the North Pacific right whale (*Eubalaena japonica*). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on March 11, 2013.

ADDRESSES: You may submit comments, identified by 0648– XC431, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Angela Somma, National Marine Fisheries Service, Office of Protected Resources, Endangered Species

Division, 1325 East West Highway, Silver Spring, MD 20910, Attn: North Pacific Right Whale Recovery Plan.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge (301–427–8437), email *Shannon.Bettridge@noaa.gov* or Larissa Plants (301–427–8471), email *Larissa.Plants@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). Section 4(f)(1) of the ESA requires that recovery plans incorporate: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the Plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

The Northern right whale (*Eubalaena glacialis*) has been listed as ''endangered'' under the Endangered Species Act (ESA) since its passage in 1973. In 2008, NMFS determined that the Northern right whale should be listed as two separate species, the North Pacific right whale and the North Atlantic right whale. North Pacific right whales historically had a wide distribution in the Pacific Ocean, but the population was dramatically reduced by extensive commercial whaling, now prohibited by the International Whaling Commission. It is estimated that roughly 1,000 individuals remain. Of the commercially exploited ''great whales,'' the North Pacific right whale is one of the least well studied, and the current status of the North Pacific right whale population is poorly understood. Currently, the population structure of North Pacific right whales has not been adequately defined.

Because the current status of North Pacific right whales is unknown, the primary purpose of the draft Recovery Plan is to provide a research strategy to obtain data necessary to estimate population abundance, trends, and structure and to identify factors that may be limiting North Pacific right whale recovery. Criteria for the reclassification of the North Pacific right whale are included in the draft Recovery Plan. In summary, the North Pacific right whale may be reclassified from endangered to threatened when all of the following have been met: (1) Given current and projected threats and environmental conditions, the North Pacific right whale population satisfies the risk analysis standard for threatened status (has no more than a 1 percent chance of extinction in 100 years) *and* the global population has at least 1,500 mature, reproductive individuals (consisting of at least 250 mature females and at least 250 mature males in each ocean basin). Mature is defined as the number of individuals known, estimated, or inferred to be capable of reproduction. Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before downlisting takes place; and (2) none of the known threats to North Pacific right whales are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed: (A) The present or threatened destruction, modification or curtailment of a species' habitat or range; (B) overutilization for commercial, recreational or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors.

The population will be considered for delisting if all of the following can be met: (1) Given current and projected threats and environmental conditions, the total North Pacific right whale population in each ocean basin in which it occurs satisfies the risk analysis standard for unlisted status (has less than a 10 percent probability of becoming endangered in 20 years). Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before delisting takes place; and (2) none of the known threats to North Pacific right whales are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed.

The time and cost to recovery is not predictable with the current information and global listing of North Pacific right whales. The difficulty in gathering data on North Pacific right whales and uncertainty about the success of passive acoustic monitoring in fulfilling data needs make it impossible to give a timeframe to recovery. While we are comfortable estimating costs for 50 years of plan implementation ($19.683 million), any projections beyond this date are likely to be too imprecise to predict. The anticipated date for removal from the endangered species list also cannot be determined because of the uncertainty in the success of recovery plan actions for North Pacific right whales. The effectiveness of many management activities is not known on a global level. Currently it is impossible to predict when such measures will bring the species to a point at which the protections provided by the ESA are no longer warranted, or even determine whether the species has recovered enough to be downlisted or delisted. In the future, as more information is obtained it should be possible to make more informative projections about the time to recovery, and its expense.

NMFS will consider all substantive comments and information presented during the public comment period in the course of finalizing this Plan. NMFS concludes that the Draft Recovery Plan meets the requirements of the ESA.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 17, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–01249 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC455

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the Tribal Resource Management Plan (Plan) submitted by the Shoshone-Bannock Tribes (Tribes) to NMFS pursuant to the limitation on take prohibitions for actions conducted under the Tribal Rule of section 4(d) for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plan specifies fishery management activities in the Salmon River sub basin of Idaho. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to the ESA Tribal 4(d) Rule for salmon and steelhead that implementing and enforcing the Plan will not appreciably reduce the likelihood of survival and recovery of ESA-listed salmon and steelhead.

DATES: The final determination on the Plan was made on January 11, 2013.

ADDRESSES: National Marine Fisheries Service, Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño at (206) 526–4655, or email: *Enrique.Patino@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River spring/summer.

Chinook salmon (*O. tshawytscha*): threatened, naturally produced and artificially propagated Snake River fall-run.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Snake River basin.

Sockeye (*O. nerka*): endangered, naturally produced and artificially propagated Snake River.

Background

The Shoshone-Bannock Tribes have submitted to NMFS a Tribal Plan describing the management of ceremonial and subsistence fisheries in the Salmon River basin in the State of Idaho. The objective of the Tribal Plan is to harvest spring Chinook salmon in a manner that does not appreciably reduce the likelihood of survival and recovery of the ESU. Impact levels on the listed spring Chinook salmon populations in the ESU are specified by a sliding-scale harvest rate schedule based on run size and escapement needs as described in the Tribal Plan. The Tribal Plan sets maximum harvest rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded. A variety of monitoring and evaluation tasks to be conducted by the Shoshone-Bannock Tribes is specified in the Tribal Plan to assess the abundance of spring Chinook salmon and to determine fishery effort and catch. A comprehensive review of the Tribal Plan to evaluate whether the fisheries and ESA-listed salmon and steelhead populations are performing as expected will be done within the proposed fishery season and at the end of the proposed season.

Under section 4(d) of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule for Tribal Plans adopting regulations necessary and advisable to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes (50 CFR 223.209).

This 4(d) Rule for Tribal Plans applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to fishery harvest activities if the fisheries are managed in accordance with a Tribal Plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids.

As specified in the Tribal 4(d) Rule, before the Secretary makes a decision on the Tribal Plan, the public must have an opportunity to review and comment on the pending determination. NMFS made the proposed evaluation and pending determination available for public review, and the final evaluation and determination reflect consideration of comments received.

Discussion of the Biological Analysis Underlying the Determination

The management objective is for the Tribes to conduct fisheries in a manner that does not appreciably reduce the likelihood of survival and recovery of listed Chinook salmon. The Plan includes provisions for monitoring and evaluation to assess fishing-related impacts on Snake River spring/summer Chinook salmon. Performance indicators include dam, weir, and redd counts, harvest estimates, and escapement with respect to escapement goals. The proposed Plan provides the framework through which Tribal salmon fisheries could be implemented while meeting requirements specified under the ESA.

The Tribes intend to engage in ceremonial and subsistence harvest of both hatchery and natural-origin spring/summer Chinook salmon. Annually, the Tribes would issue season regulations detailing the timing and season regulations for tributary fisheries consistent with this long-term Plan. Under the Plan, the Tribes would manage all Chinook salmon fisheries to achieve escapement objectives using population-specific, abundance-based harvest rate schedules to limit ESA take according to year-specific adult escapement abundances. As a result, weaker populations will sustain less harvest and as the number of predicted adults increase, the number of fish escaping to the spawning grounds will also increase.

To achieve its conservation objectives, the Plan employs a number of key strategies as part of their harvest conservation measures, including: (1) Fishery-related redistribution of the conservation burden historically borne by fisheries; (2) use of threshold points to restrict the take of ESA-listed fish; and (3) application of a sliding scale approach to determine appropriate ESA take limits on critically low runs as well as on healthier runs at levels that may not slow recovery.

The Plan includes provisions for annual reports that will assess compliance with performance standards established through the Plan. The monitoring and evaluation described in the Plan will focus on two primary performance indicators: adult and juvenile abundance, and the overall assessment of abundance and productivity measures for each population. Reporting and inclusion of new information derived from Plan research, monitoring, and evaluation activities provides assurance that performance standards will be achieved in future seasons.

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on the Plan for public review and comment on May 30, 2012 (77 FR 31835). The proposed evaluation and pending determination and an associated draft environmental assessment were available for public review and comment for 30 days.

NMFS received one set of comments, from the Nez Perce Tribe. Several comments were addressed in NMFS' final evaluation and recommended determination document, but no substantive changes were required to the Plan or the environmental

assessment. A detailed summary of the comments and NMFS' responses is also available on the Salmon Management Division Web site. Based on its evaluation and recommended determination and taking into account the public comments, NMFS issued its final determination on the Shoshone-Bannock Tribes' Salmon River subbasin salmon and steelhead fishery management Plan.

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) Rule (50 CFR 223.209) states that the ESA section 9 take prohibitions will not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species.

Dated: January 17, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–01282 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Notice of Public Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NOAA Science Advisory Board. The members will discuss and provide advice on issues outlined in the section on Matters to be considered.

DATES: The meeting is scheduled for Tuesday, February 19, 2013, from 1:00–3:00 p.m. Eastern Standard Time.

ADDRESSES: Conference call. Public access is available at: NOAA, SSMC 3, Room 4527, 1315 East-West Highway, Silver Spring, Md. Members of the public will not be able to dial in to this meeting.

Status: The meeting will be open to public participation with a 5-minute public comment period from 2:50–2:55 p.m. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of one minute. Written comments should be received in the SAB Executive Director's Office by February 14, 2013 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after February 14, 2013, will be distributed to the SAB, but may not be reviewed prior to the meeting date.

SUPPLEMENTARY INFORMATION: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

MATTERS TO BE CONSIDERED: The meeting will include the following topics: (1) Presentation of the final report from Research and Development Portfolio Review Task Force; and (2) Review of the Terms of Reference for the Environmental Information Services Working Group. For the latest agenda, please visit the SAB Web site at *http://www.sab.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov*).

Dated: January 16, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research National Oceanic and Atmospheric Administration.

[FR Doc. 2013–01277 Filed 1–22–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)—College Savings Account Research Demonstration Project

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)—College Savings Account Research Demonstration Project.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.334D.

DATES: *Applications Available:* January 23, 2013.

Deadline for Transmittal of Applications: March 11, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GEAR UP Program is a discretionary grant program that provides financial support for academic and related support services that eligible low-income students, including students with disabilities, need to enable them to obtain a secondary school diploma and prepare for and succeed in postsecondary education.

Priorities: This notice contains two absolute priorities. These priorities are from the notice of final priorities for this program published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Priority 1: Funding Eligibility

Priority 2: College Savings Accounts and Financial Counseling

Note: The full text of these priorities is included in the notice of final priorities for this program published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 20 U.S.C. 1070a–21 to 1070a–28.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 694. (d) The notice of final priorities, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,900,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $500,000 to $8,000,000.

Estimated Average Size of Awards: $1,200,000.

Estimated Number of Awards: 1–18.

Note: The Department is not bound by any estimates in this notice.

Note: The Department plans to fully fund the GEAR UP College Savings Account Research Demonstration Project up-front; that is, all funds needed for grantees to fully implement the project for its five or six year duration will be allocated for that purpose at the commencement of the project period.

Project Period: Five or six years. The project period will be five years for applicants with cohorts of students entering the ninth grade in the 2013–14 academic year and six years for applicants with cohorts of students entering the ninth grade in the 2014–15 academic year. Grantees will use the period before the cohorts of students enter the ninth grade for planning so that all required components of the savings accounts and financial counseling are fully operational before the start of the 2013–14 or 2014–15 school year.

III. Eligibility Information

1. *Eligible Applicants:* The complete eligibility criteria for applications under this competition may be found under Priority 1: Funding Eligibility in the notice of final priorities, published elsewhere in this issue of the **Federal Register**.

2. *Cost Sharing or Matching:* Section 404C(b) of the HEA requires that unless the State has received a waiver under Section 404C(b)(2), a State receiving a GEAR UP Program award must provide not less than 50 percent of the costs of each year's project from State, local, institutional, or private funds. See also 34 CFR 694.7 through 694.9. That is, each grantee for this competition will need to provide from State, local, institutional, or private funds for each project year not less than 50 percent of the total costs under this demonstration project. A grantee may count any ''over-matched'' non-Federal funds it has already committed to its regular GEAR UP project toward its match for the demonstration project.

Note: A grantee under this demonstration project may treat contributions of students, families, or others to a student savings account as a matching contribution in its project budget. If, however, during any project year non-Federal contributions to savings accounts are less than 50 percent of the total costs under this demonstration project, a State would have to ensure by the end of each project year that it had met the annual matching requirement through other non-Federal contributions to this project or over-matched non-Federal funds to its regular GEAR UP project.

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: *www.ed.gov/programs/gearup/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) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *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 program or competition as follows: CFDA number 84.334D.

You also can request a copy of the application package from the following: Catherine St. Clair, Student Service, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW., room 7056, Washington, DC 20006–8524. Telephone: (202) 502–7579 or by email: *Catherine.StClair@ed.gov.* If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part II) to no more than 25 pages. For purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limits do not apply to the cover sheet; the budget section, including the budget narrative and summary form; the assurances and certifications; or the one-page abstract.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: January 23, 2013.

Deadline for Transmittal of Applications: March 11, 2013.

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 subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372

is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* 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)—and, after July 24, 2012, with the System for Award Management (SAM)—the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM 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 or SAM 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 registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

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: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the GEAR UP College Savings Account Research Demonstration Project, CFDA number 84.334D, 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 the GEAR UP State Grant competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.334, not 84.334D).

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 4:30:00 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 4:30:00 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 4:30:00 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 *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) read-only, non-modifiable format. 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 4:30:00 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 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time, or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Catherine St. Clair, Student Service, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW., room 7056, Washington, DC 20006–8524. FAX: (202) 502–7857.

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 84.334D),
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 84.334D), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 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 *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* This is a research demonstration project. It has no performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Catherine St. Clair, Student Service, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW., room 7056, Washington, DC 20006–8524. Telephone: (202) 502–7579 or by email: *Catherine.StClair@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 16, 2013.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–01124 Filed 1–22–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–40–000]

Linden VFT, LLC v. Brookfield Energy Marketing, LP, Cargill Power Markets, LLC; Notice of Complaint

Take notice that on January 16, 2013, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Linden VFT, LLC (Complainant) filed a formal complaint against Brookfield Energy Marketing, LP and Cargill Power Markets, LLC (Respondents) alleging that, Respondents failed to reimburse Complainant for PJM Transmission service costs under their Transmission Scheduling Rights Purchase Agreement (TSR Agreement). Complainant requests the Commission direct the Respondents to: (1) Reimburse Complainant in full for past invoices for PJM Transmission Service Costs associated with the Complainant's transmission facility and (2) timely pay Complainant in full for all future invoices for the duration of their TSR Agreements.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondents as listed in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 5, 2013.

Dated: January 16, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01286 Filed 1–22–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662–012–CT; Project No. 12968–001–CT]

FirstLight Hydro Generating Company, City of Norwich Dept. of Public Utilities; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed competing applications for a new license for the Scotland Hydroelectric Project (Commission Project Nos. 2662–012 and 12968–001). The Scotland Hydroelectric Project is located on the Shetucket River, in Windham County, Connecticut. The existing licensee for the project is FirstLight Hydro Generating Company (FirstLight). The competitor applicant for the Scotland Hydroelectric Project No. 12968 is the City of Norwich Department of Public Utilities (Norwich Public Utilities).

Staff has prepared a final environmental assessment (EA) that analyzes the potential environmental effects of relicensing the project as proposed by FirstLight and Norwich Public Utilities, and concludes that licensing the project with either proposal, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number for either project, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* toll-free at 1–866–208–3676; or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Janet Hutzel at (202) 502–8675 or by email at *janet.hutzel@ferc.gov.*

Dated: January 16, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01285 Filed 1–22–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[LLC Project No. 14360–000]

Hydro Development; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 3, 2012, Hydro Development, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cascade Creek Hydroelectric Project (Cascade Creek Project or project) to be located on Swan Lake and Cascade Creek, near Petersburg, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing Swan Lake with surface area of 574 acres and useable storage capacity of 22,500 acre-feet; (2) an outlet control structure consisting of a low-head weir and a 3-foot-high, 50-foot-wide crest gate; (3) a submerged siphon inlet with screens; (4) a tunnel and penstock system conveying flows from the lake siphon to the powerhouse including: (i) A 26-foot-long, 26-foot-wide, 98-foot-deep concrete lined vertical shaft containing 10-foot-diameter siphon piping and a siphon shutoff valve; (ii) a 12-foot-diameter, 12,700-foot-long unlined low pressure tunnel; (iii) a 14-foot-diameter, 1,320-foot-long unlined vertical shaft/vent; (iv) a 14-foot-diameter, 1,980-foot-long tunnel containing a 9-foot-diameter, 1,980-foot-long steel penstock; and (v) a 9-foot-diameter, 780-foot-long buried steel penstock; (5) a 140-foot-long, 80-foot-wide concrete and metal powerhouse with three 23.3-megawatt (MW), vertical-shaft Pelton turbine units having a total installed capacity of 70 MW; (6) a 450-foot-long, 40-foot-wide riprap-armored trapezoidal open-channel tailrace; (7) a new marine access facility, including a dock and barge landing ramp; (8) a 18.7-mile-long, 138-kilovolt transmission line consisting of buried, submarine, and overhead segments, with interconnection to the existing Scow Bay substation; and (9) appurtenant facilities. The estimated annual generation of the Cascade Creek Project would be 200 gigawatt-hours.

Applicant Contact: Mr. Corky Smith, Hydro Development, LLC, 928 Thomas Road, Bellingham, Washington 98226; phone: (360) 733–3332.

FERC Contact: Kim Nguyen; phone: (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR § 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR § 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE. Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14360) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 16, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01283 Filed 1–22–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–049]

Alabama Power Company; Notice Rejecting Request for Rehearing

On March 31, 2010, the Commission issued a new license to Alabama Power Company (Alabama Power) for the continued operation and maintenance of the Warrior River Hydroelectric Project No. 2165, located on the Black Warrior River and on the Sipsey Fork of the Black Warrior River, in Cullman, Walker, Winston, and Tuscaloosa Counties, Alabama.[1] The Smith Lake Improvement and Stakeholders Association (Lake Association) filed a timely request for rehearing of the order, and on November 15, 2012, the Commission issued an order denying rehearing and providing clarification of the March 31 Order. [2] On December 17, 2012, the Lake Association filed a timely request for rehearing of the November 15 Order.

Rehearing of an order on rehearing lies when the later order modifies the result reached in the original order in a manner that gives rise to a wholly new objection.[3] The November 15 Order does not modify the result of the March 31 Order. Further, the arguments Lake Association makes in its rehearing request were considered and denied in the November 15 Order. Therefore, the request for rehearing by the Lake Association is rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection must be filed within 30 days of the date of issuance of this notice pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. 825*l* (2006), and section 385.713 of the Commission's regulations, 18 CFR 385.713 (2012).

Dated: January 16, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–01287 Filed 1–22–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Alabama Power Co.,* 130 FERC ¶ 62,271 (2010) (March 31 Order).

[2] *Alabama Power Co.,* 141 FERC ¶ 61,127 (2012) (November 15 Order).

[3] *See, e.g., Union Electric Company d/b/a AmerenUE,* 114 FERC ¶ 61,230, at 61,745–46 (2006); *Duke Power,* 114 FERC ¶ 61,148, at P 1 (2006); *Gustavus Electric Co.,* 111 FERC ¶ 61,424, at P 3 (2005); *Symbiotic, L.L.C.,* 99 FERC ¶ 61,064, at 61,300 (2002); and *PacifiCorp,* 99 FERC ¶ 61,015, at 61,052 (2002). *See also Southern Natural Gas Co.* v. *FERC,* 877 F.2d 1066, 1073 (DC Cir. 1999) (citing *Tennessee Gas Pipeline* v. *FERC,* 871 F.2d 1109–10 (D.C. Cir. 1988)).

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Defense Programs Advisory Committee

AGENCY: National Nuclear Security Administration, Office of Defense Programs, Department of Energy.

ACTION: Notice of Intent to Establish the Defense Programs Advisory Committee (DPAC).

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41, Code of Federal Regulations, § 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Defense Programs Advisory Committee (DPAC) will be established. The DPAC will provide advice and recommendations to the Deputy Administrator for Defense Programs on the stewardship and maintenance of the Nation's nuclear deterrent.

Additionally, the establishment of the Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations in implementation of that Act.

SUPPLEMENTARY INFORMATION: The activities of the DPAC will include, but are not limited to:

a. Periodic reviews of the diverse, scientific and technical activities of the Office of Defense Programs including.

b. Ongoing analysis of the DP mission and its foundation in national strategic policy (including the Nuclear Posture Review, provisions of the New START Treaty and other relevant treaties).

c. Potential application of DP capabilities to broader national security issues.

d. Analysis of DP management issues, including facility operations and fiscal matters.

e. Where appropriate, analysis of issues of broader concern to NNSA.

DPAC is expected to be continuing in nature. The Deputy Administrator for Defense Programs will appoint no more than 15 members. Members will be selected to achieve a balanced committee of scientific and technical experts in fields relevant to the Office of Defense Programs. All members must possess a ''Q'' clearance.

The DPAC is expected to meet approximately two to four times per year. It is anticipated that certain DPAC meetings will be closed to the public due to the classified nature of the Committee's discussions. Meetings will be closed in accordance with FACA and its implementing regulations. Subcommittees may be utilized.

FOR FURTHER INFORMATION CONTACT: COL. Mark Visosky at (202) 287–5270.

Issued in Washington, DC on January 15, 2013.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2013–01253 Filed 1–22–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0848; FRL–9374–6]

Notice of Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), publishes two notices of intent to suspend issued by EPA. Each Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In notice (DCI), which required the registrants of the affected pesticide products containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrants' failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under FIFRA.

DATES: Each Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or 30 days after the date of publication of this notice in the **Federal Register** (if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so),

unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend, or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV. explains what must be done to avoid suspension under this notice (i.e., how to request a hearing, or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Veronica Dutch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8585; *dutch.veronica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0848, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Registrants Issued Notices of Intent To Suspend Active Ingredient, Products Affected, and Dates Issued

The Notices of Intent to Suspend were sent via the U.S. Postal Service (USPS), return receipt requested to, the registrants for the products listed in Table 1 of this unit.

TABLE 1—LIST OF PRODUCTS

Registrant affected	Active ingredient	EPA Registration No.	Product name	Date EPA issued notice of intent to suspend
Adams Technology Systems	MGK–264	7754–41	Bug Barrier II	12/11/12
CTX Cenol Corporation	MGK–264	45385–93	CTX/Cyber Blast	12/11/12

III. Basis for Issuance of Notice of Intent To Suspend; Requirement List

The registrants failed to submit the required data or information or to take other appropriate steps to secure the required data for their pesticide products listed in Table 2 of this unit.

TABLE 2—LIST OF REQUIREMENTS

Registrant affected	EPA Registration No.	Guideline number as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend*
Adams Technology Systems.	7754–41	830.1550	Product identity and composition.	6/16/09	6/25/09	3/16/10	1,3
CTX Cenol Corporation	45385–93	830.1600	Description of materials used to produce the product.	6/16/09	6/25/09	3/16/10	1,3
		830.1620	Description of production process.	6/16/09	6/25/09	3/16/10	1,3
		830.1650	Description of formulation process.	6/16/09	6/25/09	3/16/10	1,3
		830.1670	Discussion of formation of impurities.	6/16/09	6/25/09	3/16/10	1,3
		830.1700	Preliminary analysis	6/16/09	6/25/09	3/16/10	1,3
		830.1750	Certified limits	6/16/09	6/25/09	3/16/10	1,3
		830.1800	Enforcement analytical method.	6/16/09	6/25/09	3/16/10	1,3
		830.6302	Color	6/16/09	6/25/09	3/16/10	1,3
		830.6303	Physical state	6/16/09	6/25/09	3/16/10	1,3
		830.6304	Odor	6/16/09	6/25/09	3/16/10	1,3
		830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	6/16/09	6/25/09	3/16/10	1,3
		830.6314	Oxidizing or reducing action.	6/16/09	6/25/09	3/16/10	1,3
		830.6315	Flammability	6/16/09	6/25/09	3/16/10	1,3
		830.6316	Explodability	6/16/09	6/25/09	3/16/10	1,3

TABLE 2—LIST OF REQUIREMENTS—Continued

Registrant affected	EPA Registration No.	Guideline number as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend*
		830.6317	Storage stability	6/16/09	6/25/09	3/16/10	1,3
		830.6319	Miscibility	6/16/09	6/25/09	3/16/10	1,3
		830.6320	Corrosion characteristics	6/16/09	6/25/09	3/16/10	1,3
		830.6321	Dielectric breakdown voltage.	6/16/09	6/25/09	3/16/10	1,3
		830.7000	pH	6/16/09	6/25/09	3/16/10	1,3
		830.7050	UV/Visible absorption	6/16/09	6/25/09	3/16/10	1,3
		830.7100	Viscosity	6/16/09	6/25/09	3/16/10	1,3
		830.7200	Melting point/melting range.	6/16/09	6/25/09	3/16/10	1,3
		830.7220	Boiling point/boiling range.	6/16/09	6/25/09	3/16/10	1,3
		830.7300	Density/relative density	6/16/09	6/25/09	3/16/10	1,3
		830.7370	Dissociation constants in water.	6/16/09	6/25/09	3/16/10	1,3
		830.7550	Partition coefficient (n-octanol/water) shake flask method.	6/16/09	6/25/09	3/16/10	1,3
		830.7570	Partition coefficient (n-octanol/water) estimation by liquid chromatography.	6/16/09	6/25/09	3/16/10	1,3
		830.7840	Water solubility: Column elution method, shake flask method.	6/16/09	6/25/09	3/16/10	1,3
		830.7860	Water solubility, generator column method.	6/16/09	6/25/09	3/16/10	1,3
		830.7950	Vapor pressure	6/16/09	6/25/09	3/16/10	1,3
		870.1100	Acute oral toxicity	6/16/09	6/25/09	3/16/10	1,3
		870.1200	Acute dermal toxicity	6/16/09	6/25/09	3/16/10	1,3
		870.1300	Acute inhalation toxicity	6/16/09	6/25/09	3/16/10	1,3
		870.2400	Acute eye irritation	6/16/09	6/25/09	3/16/10	1,3
		870.2500	Acute dermal irritation	6/16/09	6/25/09	3/16/10	1,3
		870.2600	Skin sensitization	6/16/09	6/25/09	3/16/10	1,3

*[1] No 90-day response received.
[2] Inadequate 90-day response received.
[3] No data received.
[4] Inadequate data received.

IV. How to avoid suspension under this notice?

1. You may avoid suspension under this notice if you, or another person adversely affected by this notice, properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of FIFRA section 6(d) and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA, provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The

request must be received by the Hearing Clerk by the applicable 30-day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30 day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2—List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2. of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail): Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your products. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrants subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrants subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registrations for your products listed in Table 1 of Unit II. are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In notice or section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's authority for taking this action?

The Agency's authority for taking this action is contained in FIFRA sections 3(c)(2)(B) and 6(f)(2), 7 U.S.C. 136 *et seq*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 10, 2013.

Michael Goodis,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–01311 Filed 1–22–13; 8:45 am]

BILLING CODE P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 24, 2013, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the

public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 13, 2012

B. New Business

- Review of Insurance Premium Rates
- Policy Statement Concerning the Sale of Assets

Dated: January 16, 2013.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2013–01201 Filed 1–22–13; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. FFIEC–2013–0001]

Social Media: Consumer Compliance Risk Management Guidance

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice; request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of its members, requests comment on this proposed guidance entitled ''Social Media: Consumer Compliance Risk Management Guidance'' (guidance). Upon completion of the guidance, and after consideration of comments received from the public, the federal financial institution regulatory agencies will issue it as supervisory guidance to the institutions that they supervise and the State Liaison Committee (SLC) of the FFIEC will encourage state regulators to adopt the guidance. Accordingly, institutions will be expected to use the guidance in their efforts to ensure that their policies and procedures provide oversight and controls commensurate with the risks posed by their social media activities.

DATES: Comments must be received on or before March 25, 2013.

ADDRESSES: Because paper mail received by the FFIEC is subject to delay due to heightened security precautions in the Washington, DC area, you are encouraged to submit comments by the Federal eRulemaking Portal, if possible. Please use the title ''Social Media Comments'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal (Regulations.gov): Go to http://www.regulations.gov. Click the ''Advanced Search'' option located in the bottom-right corner of the Search box. Scroll down to the ''By Docket ID:'' search box, type ''FFIEC–2013–0001,'' and hit Enter to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''How to use Regulations.gov'' section under the ''Help'' menu provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

Mail: Judith Dupre, Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: B–7081a, 3501 Fairfax Drive, Arlington, Virginia 22226–3550.

Hand delivery/courier: Judith Dupre, Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: B–7081a, 3501 Fairfax Drive, Arlington, VA 22226–3550.

Instructions: You must include ''FFIEC'' as the agency name and ''Docket Number FFIEC–2013–0001'' in your comment. In general, the FFIEC will enter all comments received into the docket and publish them on the Regulations.gov web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Docket: You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT:

OCC: Eric Gott, Compliance Specialist, Office of the Comptroller of the Currency, 400 7th Street SW., Washington DC, 20219, (202) 649–7181.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, (202) 452–2705.

FDIC: Elizabeth Khalil, Senior Policy Analyst, Federal Deposit Insurance Corporation, 550 17th Street NW., Room F–6016, Washington, DC 20429–0002, (202) 898–3534.

NCUA: Robert J. Polcyn, Consumer Compliance Policy and Outreach Analyst, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, (703) 664–3916.

CFPB: Suzanne McQueen, Senior Consumer Financial Protection Analyst, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7439.

SLC: Matthew Lambert, Policy Counsel, Conference of State Bank Supervisors, 1129 20th Street NW., 9th Floor, Washington, DC 20036, (202) 407–7130.

SUPPLEMENTARY INFORMATION:

I. Background Information

The FFIEC is proposing guidance to address the applicability of federal consumer protection and compliance laws, regulations, and policies to activities conducted via social media by banks, savings associations, and credit unions, as well as by nonbank entities supervised by the Consumer Financial Protection Bureau (CFPB) (collectively, financial institutions).

The six members of the FFIEC are the Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); the CFPB (collectively, the Agencies); and the State Liaison Committee (SLC). As part of its mission, the FFIEC makes recommendations regarding supervisory matters and the adequacy of supervisory tools to the Agencies. The FFIEC also develops procedures for examinations of financial institutions that are used by the Agencies. The Agencies expect that all financial institutions they supervise will effectively assess and manage risks associated with activities conducted via social media. Upon completion of the guidance, and after consideration of comments received from the public, the Agencies will issue it as supervisory guidance to the institutions that they supervise. Accordingly, such institutions will be expected to use the guidance in their efforts to ensure that their risk management practices adequately address the consumer compliance and legal risks, as well as related risks, such as reputation and operational risks, raised by activities conducted via social media. The SLC, which is composed of representatives of five state agencies that supervise financial institutions, was established to encourage the application of uniform examination principles and standards

by state and federal supervisory agencies. Upon finalization of the FFIEC guidance, the SLC will encourage the adoption of the guidance by state regulators. State agencies that adopt the guidance will expect the entities that they regulate to use the guidance in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by activities conducted via social media.

Social media has been defined in a number of ways. For purposes of the proposed guidance, the Agencies consider social media to be a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review Web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille). Social media can be distinguished from other online media in that the communication tends to be more interactive.

Financial institutions may use social media in a variety of ways, including marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers, for example, by receiving and responding to complaints, or providing loan pricing. Since this form of customer interaction tends to be informal and occurs in a less secure environment, it presents some unique challenges to financial institutions.

II. Principal Elements of Proposed Guidance

The use of social media by a financial institution to attract and interact with customers can impact a financial institution's risk profile. The increased risks can include the risk of harm to consumers, compliance and legal risk, operational risk, and reputation risk. Increased risk can arise from a variety of directions, including poor due diligence, oversight, or control on the part of the financial institution. The proposed guidance is meant to help financial institutions identify potential risk areas to appropriately address, as well as to ensure institutions are aware of their responsibilities to oversee and control these risks within their overall risk management program.

III. Request for Comments

The FFIEC is proposing this guidance to respond to requests that have been articulated to the Agencies by various participants in the industry for guidance regarding the application of consumer protection laws and regulations within the realm of social media. The FFIEC invites comments on any aspect of the proposed guidance. In addition, the FFIEC is specifically soliciting comments in response to the following questions:

1. Are there other types of social media, or ways in which financial institutions are using social media, that are not included in the proposed guidance but that should be included?
2. Are there other consumer protection laws, regulations, policies or concerns that may be implicated by financial institutions' use of social media that are not discussed in the proposed guidance but that should be discussed?
3. Are there any technological or other impediments to financial institutions' compliance with otherwise applicable laws, regulations, and policies when using social media of which the Agencies should be aware?

Please be aware that all comments received will be posted generally without change to *http://www.regulations.gov,* including any personal information provided.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA),[1] the Agencies 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 Guidance would not involve any new collections of information pursuant to the PRA. Consequently, no information will be submitted to the OMB for review.

The text of the proposed interagency Social Media: Consumer Compliance Risk Management Guidance follows:

Social Media: Consumer Compliance Risk Management Guidance

I. Purpose

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB) (collectively, the Agencies), and the State Liaison Committee (SLC) are issuing guidance to address the applicability of existing federal consumer protection and compliance laws, regulations, and policies to activities conducted via social media by banks, savings associations, and credit unions, as well as by nonbank entities supervised by the CFPB (collectively, financial institutions). The Agencies are responding to a need for guidance in this area that has been articulated to the Agencies by various participants in the industry. The guidance is intended to help financial institutions understand potential consumer compliance and legal risks, as well as related risks, such as reputation and operational risks associated with the use of social media, along with expectations for managing those risks. Although this guidance does not impose additional obligations on financial institutions, as with any new process or product channel, financial institutions must manage potential risks associated with social media usage and access.

The Agencies recognize that financial institutions are using social media as a tool to generate new business and interact with consumers. The Agencies believe social media, as any new communication technology, has the potential to improve market efficiency. Social media may more broadly distribute information to users of financial services and may help users and providers find each other and match products and services to users' needs. To manage potential risks to financial institutions and consumers, however, financial institutions should ensure their risk management programs provide oversight and controls commensurate with the risks presented by the types of social media in which the financial institution is engaged, including but not limited to, the risks outlined within this guidance.

II. Background

Social media has been defined in a number of ways. For purposes of this guidance, the Agencies consider social media to be a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille). Social media can be distinguished from other online media

[1] 44 U.S.C. 3501 *et seq.*

in that the communication tends to be more interactive.

Financial institutions may use social media in a variety of ways including advertising and marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers, for example by receiving and responding to complaints, or providing loan pricing. Since this form of customer interaction tends to be both informal and dynamic, and occurs in a less secure environment, it presents some unique challenges to financial institutions.

III. Compliance Risk Management Expectations for Social Media

A financial institution should have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media. The size and complexity of the risk management program should be commensurate with the breadth of the financial institution's involvement in this medium. For instance, a financial institution that relies heavily on social media to attract and acquire new customers should have a more detailed program than one using social media only to a very limited extent. The risk management program should be designed with participation from specialists in compliance, technology, information security, legal, human resources, and marketing. A financial institution that has chosen not to use social media should still be prepared to address the potential for negative comments or complaints that may arise within the many social media platforms described above and provide guidance for employee use of social media. Components of a risk management program should include the following:

- A governance structure with clear roles and responsibilities whereby the board of directors or senior management direct how using social media contributes to the strategic goals of the institution (for example, through increasing brand awareness, product advertising, or researching new customer bases) and establishes controls and ongoing assessment of risk in social media activities;
- Policies and procedures (either stand-alone or incorporated into other policies and procedures) regarding the use and monitoring of social media and compliance with all applicable consumer protection laws, regulations, and guidance. Further, policies and procedures should incorporate methodologies to address risks from online postings, edits, replies, and retention;
- A due diligence process for selecting and managing third-party service provider relationships in connection with social media;
- An employee training program that incorporates the institution's policies and procedures for official, work-related use of social media, and potentially for other uses of social media, including defining impermissible activities;
- An oversight process for monitoring information posted to proprietary social media sites administered by the financial institution or a contracted third party;
- Audit and compliance functions to ensure ongoing compliance with internal policies and all applicable laws, regulations, and guidance; and
- Parameters for providing appropriate reporting to the financial institution's board of directors or senior management that enable periodic evaluation of the effectiveness of the social media program and whether the program is achieving its stated objectives.

IV. Risk Areas

The use of social media to attract and interact with customers can impact a financial institution's risk profile, including risk of harm to consumers, compliance and legal risks, operational risks, and reputation risks. Increased risk can arise from poor due diligence, oversight, or control on the part of the financial institution. As noted previously, this guidance is meant to help financial institutions identify potential risks to ensure institutions are aware of their responsibilities to address risks within their overall risk management program.

Compliance and Legal Risks

Compliance and legal risk arise from the potential for violations of, or nonconformance with, laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards. These risks also arise in situations in which the financial institution's policies and procedures governing certain products or activities may not have kept pace with changes in the marketplace. This is particularly pertinent to an emerging medium like social media. Further, the potential for defamation or libel risk exists where there is broad distribution of information exchanges. Failure to adequately address these risks can expose an institution to enforcement actions and/or civil lawsuits.

The laws discussed in this guidance do not contain exceptions regarding the use of social media. Therefore, to the extent that a financial institution uses social media to engage in lending, deposit services, or payment activities, it must comply with applicable laws and regulations as when it engages in these activities through other media.

The following laws and regulations may be relevant to a financial institution's social media activities. This list is not all-inclusive. Each financial institution should ensure that it periodically evaluates and controls its use of social media to ensure compliance with all applicable federal, state, and local laws, regulations, and guidance.

Deposit and Lending Products

Social media may be used to market products and originate new accounts. When used to do either, a financial institution must take steps to ensure that advertising, account origination, and document retention are performed in compliance with applicable consumer protection and compliance laws and regulations. These include, but are not limited to:

Truth in Savings Act/Regulation DD and Part 707.[2] The Truth in Savings Act (TISA), as implemented by Regulation DD, and, for credit unions, by Part 707 of the NCUA Rules and Regulations, imposes disclosure requirements designed to enable consumers to make informed decisions about deposit accounts. Regulation DD and Part 707 require disclosures about fees, annual percentage yield (APY), interest rate, and other terms. Under Regulation DD and Part 707, a depository institution may not advertise deposit accounts in a way that is misleading or inaccurate or misrepresents the depository institution's deposit contract.

○ If an electronic advertisement displays a triggering term, such as ''bonus'' or ''APY,'' then Regulation DD and Part 707 require the advertisement to clearly state certain information, such as the minimum balance required to obtain the advertised APY or bonus. For example, an electronic advertisement can provide the required information via a link that directly takes the consumer to the additional information.

Fair Lending Laws: Equal Credit Opportunity Act/Regulation B [3] and Fair Housing Act.[4] A financial institution should ensure that its use of social media does not violate fair lending laws.

○ The Equal Credit Opportunity Act, as implemented by Regulation B,

[2] 12 U.S.C. 3201 *et seq.,* 12 CFR pts. 230 and 1030 and 12 CFR pt. 707 (NCUA).

[3] 15 U.S.C. 1601 *et seq.,* 12 CFR pts. 202 and 1002 and 12 CFR 701.31 (NCUA).

[4] 42 U.S.C. 3601 *et seq.,* 24 CFR pt. 100 (HUD), 12 CFR pt. 128 (OCC), 12 CFR pt. 390 subpart G (FDIC), 12 CFR 701.31 (NCUA).

prohibits creditors from making any oral or written statement, in advertising or other marketing techniques, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application. However, a creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.[5] Creditors must also observe the time frames outlined under Regulation B for notifying applicants of the outcome of their applications or requesting additional information for incomplete applications, whether those applications are received via social media or through other channels.

○ As with all prescreened solicitations, a creditor must preserve prescreened solicitations disseminated through social media, as well as the prescreening criteria, in accordance with Regulation B.[6]

○ When denying credit, a creditor must provide an adverse action notice detailing the specific reasons for the decision or notifying the applicant of his or her right to request the specific reasons for the decision.[7] This requirement applies whether the information used to deny credit comes from social media or other sources.

○ It is also important to note that creditors may not, with limited exceptions, request certain information, such as information about an applicant's race, color, religion, national origin, or sex. Since social media platforms may collect such information about participants in various ways, a creditor should ensure that it is not requesting, collecting, or otherwise using such information in violation of applicable fair lending laws. Particularly if the social media platform is maintained by a third party that may request or require users to provide personal information such as age and/or sex or use data mining technology to obtain such information from social media sites, the creditor should ensure that it does not itself improperly request, collect, or use such information or give the appearance of doing so.

○ The Fair Housing Act (FHA) prohibits discrimination based on race, color, national origin, religion, sex, familial status, or handicap in the sale and rental of housing, in mortgage lending, and in appraisals of residential real property. In addition, the FHA makes it unlawful to advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition applies to all advertising media, including social media sites. For example, if a financial institution engages in residential mortgage lending and maintains a presence on Facebook, the Equal Housing Opportunity logo must be displayed on its Facebook page, as applicable.[8]

Truth in Lending Act/Regulation Z.[9] Any social media communication in which a creditor advertises credit products must comply with Regulation Z's advertising provisions. Regulation Z broadly defines advertisements as any commercial messages that promote consumer credit, and the official commentary to Regulation Z states that the regulation's advertising rules apply to advertisements delivered electronically. In addition, Regulation Z is designed to promote the informed use of consumer credit by requiring disclosures about loan terms and costs. The disclosure requirements vary based on whether the credit is open-end or closed-end. Further, within those two broad categories, additional specific requirements apply to certain types of loans such as private education loans, home secured loans, and credit card accounts.

○ Regulation Z requires that advertisements relating to credit present certain information in a clear and conspicuous manner. It includes requirements regarding the proper disclosure of the annual percentage rate and other loan features. If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor.

○ For electronic advertisements, such as those delivered via social media, Regulation Z permits providing the required information on a table or schedule that is located on a different page from the main advertisement if that table or schedule is clear and conspicuous and the advertisement clearly refers to the page or location.

○ Regulation Z requires that, for consumer loan applications taken electronically, including via social media, the financial institution must provide the consumer with all Regulation Z disclosures within the required time frames.

Real Estate Settlement Procedures Act. Section 8 of the Real Estate Settlement Procedures Act[10] (RESPA) prohibits certain activities in connection with federally related mortgage loans. These prohibitions include fee splitting, as well as giving or accepting a fee, kickback, or thing of value in exchange for referrals of settlement service business. RESPA also has specific timing requirements for certain disclosures. These requirements apply to applications taken electronically, including via social media.

Fair Debt Collection Practices Act.[11] The Fair Debt Collection Practices Act (FDCPA) restricts how debt collectors (generally defined as third parties collecting others' debts and entities collecting debts on their own behalf if they use a different name) may collect debts. The FDCPA generally prohibits debt collectors from publicly disclosing that a consumer owes a debt. Using social media to inappropriately contact consumers, or their families and friends, may violate the restrictions on contacting consumers imposed by the FDCPA. Communicating via social media in a manner that discloses the existence of a debt or to harass or embarrass consumers about their debts (e.g., a debt collector writing about a debt on a Facebook wall) or making false or misleading representations may violate the FDCPA.

Unfair, Deceptive, or Abusive Acts or Practices. Section 5 of the Federal Trade Commission (FTC) Act[12] prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[13] prohibit unfair, deceptive, or abusive acts or practices. An act or practice can be unfair, deceptive, or abusive despite technical compliance with other laws. A financial institution should not engage in any advertising or other practice via social media that could be deemed ''unfair,'' ''deceptive,'' or ''abusive.'' As with other forms of communication, a financial institution should ensure that information it communicates on social media sites is accurate, consistent with other information delivered through electronic media, and not misleading.[14]

Deposit Insurance or Share Insurance. A number of requirements regarding FDIC or NCUA membership and deposit

[5] 12 CFR pt. 1002, Comment 4(b)–2.

[6] 12 CFR 1002.12(b)(7).

[7] 12 CFR 1002.9(a)(2).

[8] 12 CFR 128.4, 338.3, 390.145.

[9] 15 U.S.C. 1601 *et seq.;* 12 CFR pts. 226 and 1026.

[10] 12 U.S.C. 2607. *See* Interagency Guidance, *Weblinking: Identifying Risks and Risk Management Techniques,* (2003) *http://www.occ.treas.gov/news-issuances/bulletins/2003/bulletin-2003–15a.pdf.*

[11] 15 U.S.C. 1692–1692p.

[12] 15 U.S.C. 45.

[13] 12 U.S.C. 5531, 5536.

[14] *See* FTC Guidance, including *Guides Concerning the Use of Endorsements and Testimonials in Advertising,* at *http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf.*

insurance or share insurance apply equally to advertising and other activities conducted via social media as they do in other contexts.

○ *Advertising and Notice of FDIC Membership.*[15] Whenever a depository institution advertises FDIC-insured products, regardless of delivery channel, the institution must include the official advertising statement of FDIC membership, usually worded, ''Member FDIC.'' An advertisement is defined as ''a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.'' The official advertisement statement must appear, even in a message that ''promotes nonspecific banking products and services, if it includes the name of the insured depository institution but does not list or describe particular products or services.'' Conversely, the advertising statement is *not permitted* if the advertisement relates solely to nondeposit products or hybrid products (products with both deposit and nondeposit features, such as sweep accounts). In addition to the advertisement requirements, FDIC-insured institutions that offer ''noninterest-bearing transaction accounts'' should provide, if applicable, the required deposit insurance disclosure.

○ *Advertising and Notice of NCUA Share Insurance.*[16] Each insured credit union must include the official advertising statement of NCUA membership, usually worded, ''Federally insured by NCUA'' in advertisements regardless of delivery channel, unless specifically exempted. An advertisement is defined as ''a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.'' The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer. If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility. Each insured credit union must display the official NCUA sign on its Internet page, if any, where it accepts deposits or opens accounts.

○ *Nondeposit Investment Products.* As described in the ''Interagency Statement on Retail Sales of Nondeposit Investment Products,''[17] when a depository institution recommends or sells nondeposit investment products to retail customers, it should ensure that customers are fully informed that the products are not insured by the FDIC or NCUA; are not deposits or other obligations of the institution and are not guaranteed by the institution; and are subject to investment risks, including possible loss of the principal invested.

Payment Systems

If social media is used to facilitate a consumer's use of payment systems, a financial institution should keep in mind the laws, regulations, and industry rules regarding payments that may apply, including those providing disclosure and other rights to consumers. Under existing law, no *additional* disclosure requirements apply simply because social media is involved (for instance, providing a portal through which consumers access their accounts at a financial institution). Rather, the financial institution should continue to be aware of the existing laws, regulations, guidance, and industry rules that apply to payment systems and evaluate which will apply. These may include the following:

Electronic Fund Transfer Act/Regulation E.[18] The Electronic Fund Transfer Act (EFTA) and its implementing Regulation E provide consumers with, among other things, protections regarding ''electronic fund transfers'' (EFT), defined broadly to include any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of debiting or crediting a consumer's account at a financial institution. These protections include required disclosures and error resolution procedures.

Rules Applicable to Check Transactions. When a payment occurs via a check-based transaction rather than an EFT, the transaction will be governed by applicable industry rules[19] and/or Article 4[20] of the Uniform Commercial Code of the relevant state, as well as the Expedited Funds Availability Act, as implemented by Regulation CC[21] (regarding the availability of funds and collection of checks).

Bank Secrecy Act/Anti-Money Laundering Programs (BSA/AML)

As required by the Bank Secrecy Act (BSA)[22] and applicable regulations,[23] depository institutions and certain other entities must have a compliance program that incorporates training from operational staff to the board of directors. Among other elements, the compliance program must include appropriate internal controls to ensure effective risk management and compliance with recordkeeping and reporting requirements under the BSA. Internal controls are the financial institution's policies, procedures, and processes designed to limit and control risks and to achieve compliance with the BSA. The level of sophistication of the internal controls should be commensurate with the size, structure, risks, and complexity of the financial institution.

At a minimum, internal controls include but are not limited to: Implementing an effective customer identification program; implementing risk-based customer due diligence policies, procedures, and processes; understanding expected customer activity; monitoring for unusual or suspicious transactions; and maintaining records of electronic funds transfers. An institution's BSA/AML program must provide for the following minimum components: a system of internal controls to ensure ongoing compliance; independent testing of BSA/AML compliance, a designated BSA compliance officer responsible for managing compliance, and training for appropriate personnel. These controls should apply to all customers, products and services, including customers engaging in electronic banking (e-banking) through the use of social media, and e-banking products and services offered in the context of social media.

Financial institutions should also be aware of emerging areas of BSA/AML

[15] 12 CFR pt. 328.

[16] 12 CFR pt. 740.

[17] Interagency Guidance, *Retail Sales of Nondeposit Investment Products* (Feb. 17, 1994).

[18] 15 U.S.C. 1693 *et seq.,* 12 CFR pts 205 and 1005.

[19] *See* Operating Rules of the National Automated Clearing House Association (NACHA), *available at http://www.achrulesonline.org/*; Rules of the Electronic Check Clearinghouse Organization (ECCHO), available at *https://www.eccho.org/cc/rules/Rules%20Summary-Mar%202012.pdf.*

[20] UCC Art. 4.

[21] 12 CFR pt. 229.

[22] ''Bank Secrecy Act'' is the name that has come to be applied to the Currency and Foreign Transactions Reporting Act (Titles I and II of Public Law 91–508), its amendments, and the other statutes referring to the subject matter of that Act. These statutes are codified at 12 U.S.C. 1829b, 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; and notes thereto.

[23] Bank Secrecy Act regulations are found throughout 31 CFR Chapter X. Also, the federal banking agencies require institutions under their supervision to establish and maintain a BSA compliance program. *See* 12 CFR 21.21, 163.177 (OCC); 12 CFR 208.63, 211.5(m), 211.24(j) (Board); 12 CFR 326.8, 390.354 (FDIC); 12 CFR 748.2 (NCUA). *See also* Treas. Dep't Order 180–01 (Sept. 26, 2002).

risk in the virtual world. For example, illicit actors are increasingly using Internet games involving virtual economies, allowing gamers to cash out, as a way to launder money. Virtual world Internet games and digital currencies present a higher risk for money laundering and terrorist financing and should be monitored accordingly.

Community Reinvestment Act [24]

Under the regulations implementing the Community Reinvestment Act (CRA), a depository institution subject to the CRA must maintain a public file that includes, among other items, all written comments received from the public for the current year and each of the prior two calendar years related to the institution's performance in helping to meet community credit needs, and any response by the institution, assuming the comments or responses do not reflect adversely on the ''good name or reputation'' of others. Depository institutions subject to the CRA should ensure their policies and procedures addressing public comments also include appropriate monitoring of social media sites run by or on behalf of the institution.

Privacy

Privacy rules have particular relevance to social media when, for instance, a financial institution collects, or otherwise has access to, information from or about consumers. A financial institution should take into consideration the following laws and regulations regarding the privacy of consumer information:

Gramm-Leach-Bliley Act Privacy Rules and Data Security Guidelines.[25] Title V of the Gramm-Leach-Bliley Act (GLBA) establishes requirements relating to the privacy and security of consumer information. Whenever a financial institution collects, or otherwise has access to, information from or about consumers, it should evaluate whether these rules will apply. The rules have particular relevance to social media when, for instance, a financial institution integrates social media components into customers' online account experience or takes applications via social media portals.

○ A financial institution using social media should clearly disclose its privacy policies as required under GLBA.

○ Even when there is no ''consumer'' or ''customer'' relationship triggering GLBA requirements, a financial institution will likely face reputation risk if it appears to be treating any consumer information carelessly or if it appears to be less than transparent regarding the privacy policies that apply on one or more social media sites that the financial institution uses.

CAN–SPAM Act [26] and Telephone Consumer Protection Act.[27] The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act) and Telephone Consumer Protection Act (TCPA) may be relevant if a financial institution sends unsolicited communications to consumers via social media. The CAN–SPAM Act and TCPA, and their implementing rules,[28] establish requirements for sending unsolicited commercial messages (''spam'') and unsolicited communications by telephone or short message service (SMS) text message, respectively. These restrictions could apply to communications via a social media platform's messaging feature.

Children's Online Privacy Protection Act.[29] The Children's Online Privacy Protection Act (COPPA) and the Federal Trade Commission's implementing regulation [30] impose obligations on operators of commercial Web sites and online services directed to children younger than 13 that collect, use, or disclose personal information from children, as well as on operators of general audience Web sites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13. A financial institution should evaluate whether it, through its social media activities, could be covered by COPPA.

○ Certain social media platforms require users to attest that they are at least 13, and a financial institution using those sites may consider relying on such policies. However, the financial institution must still take care to monitor whether it is actually collecting any personal information of a person under 13, such as when a child under 13 manages to post such information on the financial institution's site.

○ A financial institution maintaining its *own* social media site (such as a virtual world) should be especially careful to establish, post, and follow policies restricting access to the site to users 13 or older, especially when those sites could attract children under 13. This may be true, for instance, in the case of virtual worlds and any other features that resemble video games.

Fair Credit Reporting Act.[31] The Fair Credit Reporting Act (FCRA) contains restrictions and requirements concerning making solicitations using eligibility information, responding to direct disputes, and collecting medical information in connection with loan eligibility. The FCRA applies when social media is used for these activities.

Reputation Risk

Reputation risk is the risk arising from negative public opinion. Activities that result in dissatisfied consumers and/or negative publicity could harm the reputation and standing of the financial institution, even if the financial institution has not violated any law. Privacy and transparency issues, as well as other consumer protection concerns, arise in social media environments. Therefore, a financial institution engaged in social media activities must be sensitive to, and properly manage, the reputation risks that arise from those activities. Reputation risk can arise in areas including the following:

Fraud and Brand Identity

Financial institutions should be aware that protecting their brand identity in a social media context can be challenging. Risk may arise in many ways, such as through comments made by social media users, spoofs of institution communications, and activities in which fraudsters masquerade as the institution. Financial institutions should consider the use of social media monitoring tools and techniques to identify heightened risk, and respond appropriately. Financial institutions should have appropriate policies in place to monitor and address in a timely manner the fraudulent use of the financial institution's brand, such as through phishing or spoofing attacks.

Third Party Concerns [32]

Working with third parties to provide social media services can expose

[24] 12 U.S.C. 2901 *et seq.,* 12 CFR pts. 25, 195, 228, 345.

[25] 15 U.S.C. 6801 *et seq.,* 12 CFR pt. 1016 (CFPB) and 16 CFR pt. 313 (FTC); *Interagency Guidelines Establishing Information Security Standards,* 12 CFR pt. 30, app B (OCC); 12 CFR pt. 208, app. D–2 and pt. 225, app. F (Board); 12 CFR pt. 364, app. B (FDIC); *Safeguards Rule,* 16 CFR pt. 314 (FTC).

[26] 15 U.S.C. 7701 *et seq.*

[27] 47 U.S.C. 227.

[28] 16 CFR pt. 316 (FTC); 47 CFR pts. 64 and 68 (FCC).

[29] 15 U.S.C. 6501 *et seq.*

[30] 16 CFR pt. 312.

[31] 15 U.S.C. 1681–1681u.

[32] 12 U.S.C. 1813(u). Guidance from the Agencies addressing third-party relationships is generally available on their respective Web sites. *See, e.g.,* CFPB Bulletin 2012–03, *Service Providers* (Apr. 13, 2012), *available at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf*; FDIC FIL 44–2208, *Managing Third-Party Risk* (June 6, 2008), *available at http://www.fdic.gov/news/news/*

Continued

financial institutions to substantial reputation risk. A financial institution should regularly monitor the information it places on social media sites. This monitoring is the direct responsibility of the financial institution, even when such functions may be delegated to third parties. Even if a social media site is owned and maintained by a third party, consumers using the financial institution's part of that site may blame the financial institution for problems that occur on that site, such as uses of their personal information they did not expect or changes to policies that are unclear. The financial institution's ability to control content on a site owned or administered by a third party and to change policies regarding information provided through the site may vary depending on the particular site and the contractual arrangement with the third party. A financial institution should thus weigh these issues against the benefits of using a third party to conduct social media activities.

Privacy Concerns

Even when a financial institution complies with applicable privacy laws in its social media activities, it should consider the potential reaction by the public to any use of consumer information via social media. The financial institution should have procedures to address risks from occurrences such as members of the public posting confidential or sensitive information—for example, account numbers—on the financial institution's social media page or site.

Consumer Complaints and Inquiries

Although a financial institution can take advantage of the public nature of social media to address customer complaints and questions, reputation risks exist when the financial institution does not address consumer questions or complaints in a timely or appropriate manner. Further, the participatory nature of social media can expose a financial institution to reputation risks that may occur when users post critical or inaccurate statements. Compliance risk can also arise when a customer uses social media in an effort to initiate a dispute, such as an error dispute under Regulation E, a billing error under Regulation Z, or a direct dispute about information furnished to a consumer reporting agency under FCRA and its implementing regulations. A financial institution should have monitoring procedures in place to address the potential for these statements or complaints to require further investigation. Some institutions have employed monitoring software to identify any active discussion of the institution on the Internet.

The financial institution should also consider whether, and how, to respond to communications disparaging the financial institution on other parties' social media sites. To properly control these risks, financial institutions should consider the feasibility of monitoring question and complaint forums on social media sites to ensure that such inquiries, complaints, or comments are addressed in a timely and appropriate manner.

Employee Use of Social Media Sites

Financial institutions should be aware that employees' communications via social media—even through employees' own personal social media accounts—may be viewed by the public as reflecting the financial institution's official policies or may otherwise reflect poorly on the financial institution, depending on the form and content of the communications. Employee communications can also subject the financial institution to compliance risk as well as reputation risk. Therefore, financial institutions should establish appropriate policies to address employee participation in social media that implicates the financial institution. The Agencies do not intend this guidance to address any employment law principles that may be relevant to employee use of social media. Each financial institution should evaluate the risks for itself and determine appropriate policies to adopt in light of those risks.

Operational Risk

Operational risk is the risk of loss resulting from inadequate or failed processes, people, or systems. The root cause can be either internal or external events.[33] Operational risk includes the risks posed by a financial institution's use of information technology (IT), which encompasses social media.

The identification, monitoring, and management of IT-related risks are addressed in the *FFIEC Information Technology Examination Handbook,*[34] as well as other supervisory guidance issued by the FFIEC or individual agencies.[35] Depository institutions should pay particular attention to the booklets ''Outsourcing Technology Services''[36] and ''Information Security''[37] when using social media, and include social media in existing risk assessment and management programs.

Social media is one of several platforms vulnerable to account takeover and the distribution of malware. A financial institution should ensure that the controls it implements to protect its systems and safeguard customer information from malicious software adequately address social media usage. Financial institutions' incident response protocol regarding a security event, such as a data breach or account takeover, should include social media, as appropriate.

Conclusion

As noted previously, the Agencies recognize that financial institutions are using social media as a tool to generate new business and provide a dynamic environment to interact with consumers. As with any product channel, financial institutions must manage potential risks to the financial institution and consumers by ensuring that their risk management programs provide appropriate oversight and control to address the risk areas discussed within this guidance.

Federal Financial Institutions Examination Council.

Dated: January 17, 2013.

Judith E. Dupre,

FFIEC Executive Secretary.

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financial/2008/fil08044a.html; NCUA Letter 07–CU–13, *Evaluating Third Party Relationships* (Dec. 2007), *available at http://www.ncua.gov/Resources/Documents/LCU2007-13.pdf*; OCC Bulletin OCC 2001–47, *Third-Party Relationships* (Nov. 1, 2001), *available at http://www.occ.gov/news-issuances/bulletins/2001/bulletin-2001-47.html.*

[33] FFIEC IT Examination Handbook: Management booklet, 2–3 (June 2004), *available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_Management.pdf.*

[34] *Available at http://ithandbook.ffiec.gov/it-booklets.aspx.*

[35] FFIEC InfoBase at *http://ithandbook.ffiec.gov.*

[36] *Available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_OutsourcingTechnologyServices.pdf.*

[37] *Available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_InformationSecurity.pdf.*

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (Eastern Time), January 28, 2013.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts will be closed to the public

Matters To Be Considered

1. Approval of the Minutes of the December 17, 2012 Board Member Meeting.
2. Thrift Savings Plan Activity Report by the Acting Executive Director.
a. Monthly Participant Activity Report.
b. Monthly Investment Performance Report.
c. Legislative Report.
3. Quarterly Investment Policy Report.
4. Quarterly Vendor Financials Review.
5. Annual Expense Ratio Report.
6. Annual Statement.
7. 2013 Board Meeting Calendar.

Parts Closed to the Public

8. Personnel.
9. Procurement.
10. Security.
11. Legal.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: January 18, 2013.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2013–01410 Filed 1–18–13; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Recombinant DNA Advisory Committee, January 24, 2013, 09:00 a.m. to January 24, 2013, 04:00 p.m., National Institutes of Health, Building 45, 45 Center Drive, Lower Level, Conference Room C1–C2, Rockville, MD, 20892 which was published in the **Federal Register** on January 08, 2013, 78FRN1216.

The time of the meeting has been changed from 9:00 a.m.–4:00 p.m. to 8:30 a.m.–4:30 p.m. Additionally, this meeting will not be webcast and there will be no opportunity to submit comments during the meeting. The meeting is open to the public.

Dated: January 16, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–01231 Filed 1–22–13; 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 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 Child Health and Human Development Special Emphasis Panel; ''Heritable Epigenome.''

Date: February 13, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–2717, *leszcyd@mail.nih.gov.*

(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: January 16, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–01230 Filed 1–22–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0973]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2013 minimum random drug testing rate at 25 percent of covered crewmembers. The Coast Guard will continue to closely monitor drug test reporting to ensure the quality of the information. The Coast Guard may set the rate back up to 50 percent of covered crewmembers if the positive rate for random drug tests is greater than 1 percent for any one year, or if the quality of data is not sufficient to accurately assess the positive rate.

DATES: The minimum random drug testing rate is effective January 1, 2013, through December 31, 2013. Marine employers must submit their 2013 Management Information System (MIS) reports no later than March 15, 2014.

ADDRESSES: Annual MIS reports may be submitted by mail to Commandant (CG–INV), U.S. Coast Guard Headquarters, 2100 Second Street SW., STOP 7561, Washington, DC 20593–7581 or by electronic submission to the following Internet address: *http://homeport.uscg.mil/Drugtestreports.*

The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0973 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Casualty Analysis (CG–INV), U.S. Coast Guard Headquarters, telephone 202–372–1033. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers. Every marine employer is required by 46 CFR 16.500 to collect and maintain a record of drug testing program data for each calendar year and submit this data by March 15 of the following year to the Coast Guard in an annual Management Information System (MIS) report. Marine employers may either submit their own MIS reports or have a consortium or other employer representative submit the data in a consolidated MIS report.

The Coast Guard annually sets the minimum drug testing rate for the coming year. The purpose of setting a minimum random drug testing rate is to assist the Coast Guard in analyzing its current approach for deterring and detecting illegal drug abuse in the maritime industry, and to encourage employers to maintain a drug-free workplace with the incentive of a reduced testing rate (and associated reduced costs). In every year of testing through 2012, the random testing rate has been 50 percent. In accordance with 46 CFR 16.230(f)(2), the Commandant may lower this rate to 25 percent if, for 2 consecutive years, the positive drug test rate is less than 1 percent.

MIS data indicates that the positive rate for random drug tests was 0.77 percent in 2011 and 0.74 percent in 2010. The Commandant is exercising his discretion to reduce the required random drug testing rate for calendar year 2013 to 25 percent of covered crewmembers. The Commandant may reset the rate to 50 percent of covered crewmembers if the positive rate for random drug tests is greater than 1 percent for any one year, or if the quality of data is not sufficient to accurately assess the positive rate.

The Coast Guard commends marine employers and mariners for their efforts to create a drug-free workplace and encourages marine employers and drug testing service providers to continue to submit accurate, complete and timely MIS data.

This notice is issued under authority of 46 CFR 16.230(f), which requires the Coast Guard to publish the results of random drug testing for the previous calendar year's MIS data and the minimum annual percentage rate for random drug testing for the next calendar year, and 5 U.S.C. 552(a).

Dated: January 4, 2013.

Paul F. Thomas,

Captain, U.S. Coast Guard, Director of Inspections and Compliance (CG–5PC).

[FR Doc. 2013–01236 Filed 1–22–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2002–11334]

Extension of Agency Information Collection Activity Under OMB Review: Aviation Security Infrastructure Fee Records Retention

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0018, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 26, 2012, (77 FR 65394). The collection involves the retention of certain information necessary for TSA to help set the Aviation Security Infrastructure Fee (ASIF), including information about air carriers' and foreign air carriers' costs related to screening passengers and property in calendar year 2000.

DATES: Send your comments by February 22, 2013. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3398; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Aviation Security Infrastructure Fee Records Retention.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0018.

Forms(s): N/A.

Affected Public: Air Carriers.

Abstract: The Aviation Transportation and Security Act (ATSA) authorizes the Assistant Secretary of the Department of Homeland Security to set the ASIF provided the ASIF not exceed industry aggregate Calendar Year 2000 security expenditures nor exceed an individual carrier's Calendar Year 2000 security expenditures. Under 49 CFR part 1511, carriers must retain any and all documents, records, or information related to the amount of the ASIF, including all information applicable to the carrier's calendar year 2000 security costs and information reasonably necessary to complete an audit. This requirement includes retaining the source information for the calendar year 2000 screening costs reported to TSA.

Number of Respondents: 185.

Estimated Annual Burden Hours: An estimated 370 hours annually.

Issued in Arlington, Virginia, on January 16, 2013.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–01216 Filed 1–22–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: TSA Customer Comment Card

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public

comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0030, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection allows customers to provide feedback to TSA about their experiences with TSA's airport security process and procedures while traveling.

DATES: Send your comments by March 25, 2013.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0030; TSA Customer Comment Card. This renewal continues a voluntary program for airport passengers to provide feedback to TSA regarding their experiences with TSA security procedures. This collection of information allows TSA to evaluate and address customer concerns about security procedures and policies.

TSA Customer Comment Cards collect feedback, and the passenger may voluntarily provide contact information. TSA may use the contact information to respond to the passenger's comments. For passengers who deposit their cards in the designated drop-boxes, TSA staff at airports collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as appropriate. Passengers also have the option to mail the cards directly to the address provided on the comment card, which varies by airport.

In addition, the TSA Contact Center will continue to be available for passengers to make comments independently of airport involvement via the Talk to TSA internet application on the TSA Web site at *www.tsa.gov.* Talk to TSA is an electronic form of the comment card intended for the same purpose, to allow passengers to provide feedback to TSA regarding their experiences with TSA security procedures. The information obtained from the electronic version (Talk to TSA) also allow TSA to evaluate and address customer concerns about security procedures and policies with an electronic interface. Additionally, one selection within the Talk to TSA application connects the user to the Civil Rights and Liberties form. This form is important as there are specific legal requirements for filing complaints. TSA estimates the number of respondents to be 1,783,800, with an estimated 150,880 annual burden hours.

Issued in Arlington, Virginia, on January 16, 2013.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–01217 Filed 1–22–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0020]

Agency Information Collection Activities: Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 30, 2012, at 77 FR 65704, allowing for a 60-day public comment period. USCIS received two public comment submisssions in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 22, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0024 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0020.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–360; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is used by several prospective classes of aliens who intend to establish their eligibility to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,882 responses at 2.08 hours per response, 6,381 responses at 3.08 hours per response, and 4,504 at 2.33 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 46,542. (This is a correction from the estimated total annual burden hours previously reported in the 60-day notice at 68,499, which was based on a calculation error.)

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: January 16, 2013.

Laura Dawkins

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–01215 Filed 1–22–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0015]

Agency Information Collection Activities: Immigrant Petition for Alien Workers, Form I–140; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 30, 2012, at 77 FR 65706, allowing for a 60-day public comment period. USCIS received three public comment submissions in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 22, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: All written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0018 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0015.

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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–140; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. The information furnished on Form I–140 will be used by USCIS to classify aliens under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: 77,149 at 1.08 hours (1 hour 5 minutes). This is a change from the estimated number of respondents in the 60-day **Federal Register** notice published on October 30, 2012, at 77 FR 65706 which estimated the number of respondents at 81,678. This change in the estimated number of respondents is due to a change in agency estimates based on updated FY2013 statistical data.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 83,320.92 annual burden hours. This is a change from the estimated total public burden hours reported in 60-day **Federal Register** notice published on October 30, 2012 at 77 FR 65706, which estimated the total annual burden associated with this collection to be 88,212 hours. This change in the total annual burden hours can be attributed to the adjustment in the agency estimates on the number of respondents noted above.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: January 16, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–01218 Filed 1–22–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–01]

Notice of Proposed Information for Public Comment for: Energy and Performance Information Center

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD created the Energy and Performance Information Center (''EPIC'') data system to track the amount and types of Energy Efficiency Measures (EEMs) being implemented within Public Housing units (OMB Control Number 2577–0274). This revision expands the data collected to include the amount and type of Public Housing development, including development in conjunction with Low Income Housing Tax Credits; other planning collections and performance reports presently collected in hard copy; the Physical Needs Assessment; and modernization undertaken by PHAs through Energy Performance Contracts. The EPIC data system is necessary in order to support the Department's Agency Performance Goals (APGs), specifically APG # 4, Measure # 13 which sets numeric targets for completing green retrofits and creating energy efficient units. In addition to the direct support of HUD APG # 4, Measure # 13, the implementation of the EPIC data system will enable HUD to provide reports on the progress of EEMs completed with PIH funding. The EPIC data system will also improve PHA planning by making the five year plan and annual statement process electronic and also enabling HUD to aggregate this information in order to track APG # 2, Measure # 5, which sets goals for expanding the number of families housed. The EPIC data system will also allow improved tracking of the Energy Performance Contract process and will include the Physical Needs Assessment tool.

DATES: *Comments Due Date:* March 25, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and 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: Energy and Performance Information Center (EPIC).

OMB Control Number, if applicable: 2577–0274.

Description of the need for the information and proposed use: The Department has recognized the need for improving energy efficiency in affordable housing and has prioritized this in Agency Priority Goal # 4, Measure # 13. The Department pioneered its data collection in this area with the American Recovery and Reinvestment Act of 2009 in creating the Recovery Act Management Performance System (''RAMPS''). The data collected through the RAMPS gave the Department a more comprehensive dataset regarding energy efficient improvements than it had ever had previously. The EPIC data system builds upon the successes of the RAMPS and adds data collection for other areas. This form is to revise the collection to include other information. Some of this information is presently collected in paper form and will be collected electronically through the EPIC data system.

The EPIC data system will gradually automate the collection of the five year plan and annual statement forms from grantees. These are required forms presently collected in hard copy on

Forms 50075.1 and 50075.2 under collection OMB control number 2577–0226. These forms also collect data on the eventual, actual use of funds; this data will be gradually collected electronically through the EPIC data system as well. Electronic collection will enable the Department to aggregate information about the way grantees are using Federal funding. Additionally, PHA grantees will be able to submit Replacement Housing Factor fund plans, the mechanism by which PHAs are allowed to accumulate special funds received based on units removed from the inventory from year to year. This information is presently collected in hard copy at the field office level; the EPIC data system will automate and centralize this collection in order to streamline the process and improve transparency.

Furthermore, the EPIC data system will be loaded with Physical Needs Assessment (''PNA'') data. This data being in the system coupled with the electronic planning process will streamline grantee planning.

The EPIC data system will collect information about the Energy Performance Contract (''EPC'') process such as energy efficiency improvement financed under an EPC, and construction start and completion date. It will also collect the energy efficiency improvements information on the types previously captured through the RAMPS for Public Housing Capital Fund Recovery grants. As the Department moves to shrink its energy footprint in spite of rising energy costs, clear and comprehensive data on this process will be crucial to its success.

Finally, the Department has prioritized in Agency Performance Goal # 2, Measure # 5 making housing more available for more families. In the light of the recent housing crisis, this goal has become simultaneously more challenging and more important. Tracking of the use of Federal funds paid through the Public Housing Capital Fund, the only Federal funding stream dedicated to the capital needs of the nation's last resort housing option, is crucial to understanding how the Department can properly and efficiently assist grantees in meeting this goal as well as assessing the Department's own progress. The EPIC data system will track development of public housing with Federal funds and through other means, including mixed-finance development.

Agency form numbers, if applicable: N/A, the data will be collected utilizing a web-based application. Recipients will be required to complete the collection online. To the greatest extent possible, all data will be pre-populated to minimize data entry. Once the initial file is created, recipients will be able to update the same file and submit on an ongoing basis.

Members of Affected Public: State or Local Government and Non-profit organizations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 3,150 with 69,600 annual responses and the total reporting burden is 183,045 hours.

Status of the proposed information collection: Revision.

Authority: section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 15, 2013.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2013–01309 Filed 1–22–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

21st Century Conservation Service Corps Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the Department of the Interior, announce a public meeting of the 21st Century Conservation Service Corps Advisory Committee (Committee).

DATES: *Meeting:* Thursday, February 14, 2013, 9:00 a.m.–12:00 p.m. (Eastern Time). *Meeting Participation:* Notify Lisa Young (see **FOR FURTHER INFORMATION CONTACT**) by close of business Tuesday, February 12, 2013, if requesting to make an oral presentation (limited to 2 minutes per speaker). The meeting will accommodate no more than a total of 15 minutes for all public speakers.

ADDRESSES: The meeting will be held at the Bureau of Land Management Offices at 20 M Street SE., Conference Room 4016 & 4017, Washington, DC. There will also be a conference call line available for those unable to attend in person. To participate in the call as an interested member of the public, please contact Lisa Young (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lisa Young, Designated Federal Officer (DFO), 1849 C Street NW., MS 3559, Washington, DC 20240; telephone (202) 208–7586; fax (202) 208–5873; or email *Lisa_Young@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, we announce that the 21st Century Conservation Service Corps Advisory Committee will hold a meeting.

Background

Chartered in November 2011, the Committee is a discretionary advisory committee established under the authority of the Secretary of the Interior. The purpose of the Committee is to provide the Secretary of the Interior with recommendations on: (1) Developing a framework for the 21CSC, including program components, structure, and implementation, as well as accountability and performance evaluation criteria to measure success; (2) the development of certification criteria for 21CSC providers and individual certification of 21CSC members; (3) strategies to overcome existing barriers to successful 21CSC program implementation; (4) identifying partnership opportunities with corporations, private businesses or entities, foundations, and non-profit groups, as well as state, local, and tribal governments, to expand support for conservation corps programs, career training and youth employment opportunities; and (5) developing pathways for 21CSC participants for future conservation engagement and natural resource careers. Background information on the Committee is available at *www.doi.gov/21csc.*

Meeting Agenda

The Committee will convene to discuss priorities for the first meeting of the National Council for the 21CSC, along with other committee business. The public will be able to make comment on Thursday, February 14, 2013 starting at 11:30 a.m. The final agenda will be posted on *www.doi.gov/21csc* prior to the meeting.

Public Input

Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Due to the nature of this meeting, interested members of the public are strongly encouraged to submit written statements to the committee by COB Tuesday, February 12, 2013 so they can be reviewed and considered during the full committee meeting on Thursday, February 14, 2013.

Individuals or groups requesting to make comment at the public Committee meeting will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact Lisa Young, DFO, in writing (preferably via email), by Wednesday, August 22, 2012. (*See* **FOR FURTHER INFORMATION CONTACT**, to be placed on the public speaker list for this meeting.)

In order to attend this meeting, you must register by close of business Tuesday, February 12, 2013. The meeting is open to the public. Calls in lines are limited, so all interested in attending should pre-register, and at that time will be given the call in information. Please submit your name, email address and phone number to Lisa Young via email at *Lisa_Young@ios.doi.gov* or by phone at (202) 208–7586.

Dated: January 17, 2013.

Lisa Young,

Designated Federal Officer.

[FR Doc. 2013–01304 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 2013 Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2013 funding agreements with self-governance Indian tribes and lists programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior, pursuant to the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2013.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Sharee M. Freeman, Director, Office of Self-Governance (MS 355H–SIB), 1849 C Street NW., Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–1404, or to the bureau-specific points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the ''Tribal Self-Governance Act'' or the ''Act'') instituted a permanent self-governance program at the Department of the Interior. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribe.

Under section 405(c) of the Tribal Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Tribal Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribe through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies, ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Tribal Self-Governance Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, the non-BIA Bureaus will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances. In those instances where the tribe disagrees with the Bureau's determination, the tribe may request reconsideration from the Secretary.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

No comments were received.

II. Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior for Fiscal Year 2012

A. Bureau of Land Management (1)
- Council of Athabascan Tribal Governments

B. Bureau of Reclamation (5)
- Gila River Indian Community
- Chippewa Cree Tribe of Rocky Boy's Reservation
- Hoopa Valley Tribe
- Karuk Tribe of California
- Yurok Tribe

C. Office of Natural Resources Revenue (none)

D. National Park Service (3)
- Grand Portage Band of Lake Superior Chippewa Indians
- Lower Elwha S'Klallam Tribe
- Yurok Tribe

E. Fish and Wildlife Service (2)
- Council of Athabascan Tribal Governments
- Confederated Salish and Kootenai Tribes of the Flathead Reservation

F. U.S. Geological Survey (none)

G. Office of the Special Trustee for American Indians (1)
- Confederated Salish and Kootenai Tribes of the Flathead Reservation

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating tribe. The list represents the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either

sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Bureau of Land Management (BLM) Programs

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the self-governance tribe demonstrating a special geographic, culture, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for tribal participation through a funding agreement.

Tribal Services

1. Minerals Management. Inspection and enforcement of Indian oil and gas operations: Inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

2. Cadastral Survey. Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. Cultural Heritage. Cultural heritage activities, such as research and inventory, may be available in specific States.

2. Natural Resources Management. Activities such as silvicultural treatments, timber management, cultural resource management, watershed restoration, environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. Range Management. Activities such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. Riparian Management. Activities such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. Recreation Management. Activities such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. Wildlife and Fisheries Habitat Management. Activities such as construction and maintenance, implementation of statutory, regulatory and policy or administrative plan-based species protection, interpretive design and construction, and similar activities may be available in specific States.

7. Wild Horse Management. Activities such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

For questions regarding self-governance, contact Jerry Cordova, Bureau of Land Management (MS L St-204), 1849 C Street NW., Washington, DC 20240, telephone: (202) 912–7245, fax: (202) 452–7701.

B. Eligible Bureau of Reclamation Programs

The mission of the Bureau of Reclamation (Reclamation) is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of the Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control; outdoor recreation; and enhancement of fish and wildlife habitats.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon
2. Trinity River Fishery, California
3. Central Arizona Project, Arizona
4. Rocky Boy's/North Central Montana Regional Water System, Montana
5. Indian Water Rights Settlement Projects, as authorized by Congress.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Kelly Titensor, Policy Analyst, Native American and International Affairs Office, Bureau of Reclamation (96–43000) (MS 7069–MIB); 1849 C Street NW., Washington DC 20240, telephone: (202) 513–0558, fax: (202) 513–0311.

C. Eligible Office of Natural Resources Revenue (ONRR) Programs

Effective October 1, 2010, the Office of Natural Resources Revenue (ONNR) moved from the Bureau of Ocean Energy Management (formerly MMS) to the Office of the Assistant Secretary for Policy, Management and Budget (PMB). The ONRR collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases.

The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning tribes opportunities to become involved in its programs that address the intent of tribal self-governance. These programs are available to self-governance tribes and are a good prerequisite for assuming other technical functions. Generally, ONRR program functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The ONRR program functions that may be available to self-governance tribes include:

1. Audit of Tribal Royalty Payments. Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in ONRR cooperative audits, this program is offered as an option.)

2. Verification of Tribal Royalty Payments. Financial compliance verification, monitoring activities, and production verification.

3. Tribal Royalty Reporting, Accounting, and Data Management.

Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. Tribal Royalty Valuation. Preliminary analysis and recommendations for valuation, and allowance determinations and approvals.

5. Royalty Internship Program. An orientation and training program for auditors and accountants from mineral-

producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this is the term contained in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance, contact Shirley M. Conway, Special Assistant to the Director, Office of Natural Resources Revenue, Office of the Assistant Secretary—Policy, Management and Budget, 1801 Pennsylvania Avenue NW., 4th Floor, Washington, DC 20006, telephone: (202) 254–5554, fax: (202) 254–5589.

D. Eligible National Park Service (NPS) Programs

The National Park Service administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. The National Park Service maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance tribe to a national park, monument, preserve, or recreation area and the types of programs that have components that may be suitable for contracting through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas
25. Joshua Tree National Park—California
26. Lassen Volcanic National Park—California
27. Redwood National Park—California
28. Whiskeytown National Recreation Area—California
29. Yosemite National Park—California
30. Hagerman Fossil Beds National Monument—Idaho
31. Effigy Mounds National Monument—Iowa
32. Fort Scott National Historic Site—Kansas
33. Tallgrass Prairie National Preserve—Kansas
34. Boston Harbor Islands National Recreation Area—Massachusetts
35. Cape Cod National Seashore—Massachusetts
36. New Bedford Whaling National Historical Park—Massachusetts
37. Isle Royale National Park—Michigan
38. Sleeping Bear Dunes National Lakeshore—Michigan
39. Grand Portage National Monument—Minnesota
40. Voyageurs National Park—Minnesota
41. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
42. Glacier National Park—Montana
43. Great Basin National Park—Nevada
44. Aztec Ruins National Monument—New Mexico
45. Bandelier National Monument—New Mexico
46. Carlsbad Caverns National Park—New Mexico
47. Chaco Culture National Historic Park—New Mexico
48. White Sands National Monument—New Mexico
49. Fort Stanwix National Monument—New York
50. Great Smoky Mountains National Park—North Carolina/Tennessee
51. Cuyahoga Valley National Park—Ohio
52. Hopewell Culture National Historical Park—Ohio
53. Chickasaw National Recreation Area—Oklahoma
54. John Day Fossil Beds National Monument—Oregon
55. Alibates Flint Quarries National Monument—Texas
56. Guadalupe Mountains National Park—Texas
57. Lake Meredith National Recreation Area—Texas
58. Ebey's Landing National Recreation Area—Washington
59. Mt. Rainier National Park—Washington
60. Olympic National Park—Washington
61. San Juan Islands National Historic Park—Washington
62. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (Org. 2560, 9th Floor), 1201 Eye Street NW.,

Washington, DC 20005–5905, telephone: (202) 354–6962, fax: (202) 371–6609.

E. Eligible Fish and Wildlife Service (Service) Programs

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs, and facilitate Tribal Consultation to ensure ANILCA Title VII terms are being met as well as activities fulfilling the terms of Title VIII of ANILCA.

2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA); candidate species under the ESA may be eligible for self-governance funding agreements. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, which help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges that may be eligible for a self-governance funding agreement. Such activities may include, but are not limited to: Taking, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

The Service developed the list below based on the proximity of identified self-governance tribes to Service facilities that have components that may be suitable for contracting through a self-governance funding agreement.

1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona
3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. National Bison Range—Montana
9. Ninepipe National Wildlife Refuge—Montana
10. Pablo National Wildlife Refuge—Montana
11. Sequoyah National Wildlife Refuge—Oklahoma
12. Tishomingo National Wildlife Refuge—Oklahoma
13. Bandon Marsh National Wildlife Refuge—Washington
14. Dungeness National Wildlife Refuge—Washington
15. Makah National Fish Hatchery—Washington
16. Nisqually National Wildlife Refuge—Washington
17. Quinault National Fish Hatchery—Washington
18. San Juan Islands National Wildlife Refuge—Washington
19. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Patrick Durham, Fish and Wildlife Service (MS–330), 4401 N. Fairfax Drive, Arlington, VA 22203, telephone: (703) 358–1728, fax: (703) 358–1930.

F. Eligible U.S. Geological Survey (USGS) Programs

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact Kaye Cook, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192, telephone: (703) 648–7442, fax: (703) 648–7451.

G. Eligible Office of the Special Trustee for American Indians (OST) Programs

The Department of the Interior has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by

fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

2. Appraisal Services Program. Tribes/consortia that currently perform these programs under a self-governance funding agreement with the Office of Self-Governance may negotiate a separate memorandum of understanding (MOU) with OST that outlines the roles and responsibilities for management of these programs.

The MOU between the tribe/consortium and OST outlines the roles and responsibilities for the performance of the OST program by the tribe/consortium. If those roles and responsibilities are already fully articulated in the existing funding agreement with the BIA, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the tribe/consortium and OST, which will be binding on both parties and attached and incorporated into the BIA funding agreement.

If a tribe/consortium decides to assume the operation of an OST program, the new funding for performing that program will come from OST program dollars. A tribe's newly-assumed operation of the OST program(s) will be reflected in the tribe's funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140—MIB), 1849 C Street NW., Washington, DC 20240–0001, phone: (202) 208–7587, fax: (202) 208–7545.

IV. Programmatic Targets

During Fiscal Year 2013, upon request of a self-governance tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: January 15, 2013.

Ken Salazar,

Secretary.

[FR Doc. 2013–01246 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N199; FXES11130100000C2–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (Brachylagus idahoensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the approved Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*). The recovery plan includes recovery objectives and criteria and prescribes specific recovery actions considered necessary to achieve downlisting of the population from endangered to threatened status on the Federal List of Endangered and Threatened Wildlife and Plants.

ADDRESSES: An electronic copy of the recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html* and *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Copies of the recovery plan are also available by request from the U.S. Fish and Wildlife Service, Eastern Washington Field Office, 11103 East Montgomery Drive, Spokane, Washington 99206 (phone: 509–891–6839). Printed copies of the recovery plan will be available for distribution within 4 to 6 weeks of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Chris Warren, Fish and Wildlife Biologist, at the above Spokane address and telephone number.

SUPPLEMENTARY INFORMATION: We announce the availability of the approved Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (Columbia Basin pygmy rabbit).

Background

Recovery of endangered or threatened animals and plants is the primary goal of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of a listed species to the point at which listing it is no longer required under the criteria set forth in section 4(a)(1) of the Act and its implementing regulations at 50 CFR 424. The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Recovery plans help guide the recovery effort by prescribing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery.

In 2007 we developed a draft recovery plan (Draft) for the Columbia Basin pygmy rabbit in coordination with the Columbia Basin Pygmy Rabbit Recovery Team, which included representatives from two U.S. Department of the Interior bureaus (Fish and Wildlife Service and Bureau of Land Management), one U.S. Department of Agriculture bureau (Natural Resources Conservation Service), two State agencies (Washington Department of Fish and Wildlife and Washington Department of Natural Resources), Washington State University, The Nature Conservancy, Oregon Zoo, Foster Creek Conservation District, and several adjunct expert contributors. In order to address available new information, ongoing implementation of adaptive management measures, and prescribed changes to specific actions defined in the Draft, we developed an amendment to the draft recovery plan (Amendment) for the Columbia Basin pygmy rabbit in 2011. Several of the above recovery team members also contributed to development of the Amendment and the final approved recovery plan.

Section 4(f) of the Act requires public notice and an opportunity for public review and comment during recovery plan development. From September 7 through November 6, 2007, we provided the Draft to the public and solicited comments (72 FR 51461). From June 29 through August 29, 2011, we provided the Amendment to the public and solicited comments (76 FR 38203). We considered all information we received during the public comment periods, along with comments solicited from expert peer reviewers, and have summarized that information and our responses to comments in an appendix to the final recovery plan. We welcome continuing comment on the recovery plan, and we will consider all substantive comments on an ongoing basis to inform the implementation of

recovery activities and future updates to the recovery plan.

Large-scale loss and fragmentation of native shrub steppe habitats, primarily for agricultural development, likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit. By 2001, the Columbia Basin pygmy rabbit was imminently threatened by its small population size, loss of genetic diversity, and inbreeding depression, coupled with a lack of suitable protected habitats in the wild. To varying degrees, these influences continue to impact the Columbia Basin pygmy rabbit.

The Washington Department of Fish and Wildlife began a captive breeding program for the Columbia Basin pygmy rabbit in 2001 and an intercross breeding strategy in 2003. Due to severe inbreeding depression in the purebred captive animals, intercross breeding was conducted to facilitate genetic restoration of the Columbia Basin pygmy rabbit, and is considered essential for recovery efforts. Intercross breeding was accomplished through carefully controlled matings between the founding purebred Columbia Basin animals and pygmy rabbits of the same taxonomic classification from a discrete population in Idaho. The last known wild subpopulation of pygmy rabbits within the Columbia Basin was extirpated by early 2004, although other wild subpopulations may still exist on lands that have not yet been surveyed.

In March of 2007, 20 captive-bred, intercrossed pygmy rabbits were reintroduced to habitats historically occupied by the species in the Columbia Basin of central Washington. Through monitoring it was determined that these captive-bred animals experienced very high mortality over the first several weeks following their release, and none are believed to have survived. Following the development and implementation of appropriate adaptive management measures, reintroduction efforts were resumed in the summer of 2011. The new measures that have been implemented include additional releases of the captive-bred intercrossed pygmy rabbits, the capture and translocation of wild pygmy rabbits from populations outside of the Columbia Basin for inclusion in the reintroduction program, initiation of partially controlled field-breeding efforts, and improved protective measures during releases. As these new measures have been implemented, the need for continuing captive breeding efforts has steadily diminished, and captive breeding operations at the three cooperating facilities were discontinued by the end of July 2012.

The recovery plan prescribes a phased approach for recovery: (1) Removal or abatement of imminent threats to the population and potentially suitable shrub-steppe habitats in the Columbia Basin; (2) reestablishment of an appropriate number and distribution of free-ranging subpopulations over the near term; and (3) establishment and protection of a sufficiently resilient, free-ranging population that would be expected to withstand foreseeable long-term threats. This recovery strategy is oriented to dynamic adaptive management of the Columbia Basin pygmy rabbit and its habitat, consistent with the Service's Strategic Habitat Conservation process, which calls for an iterative process of biological planning, conservation design, conservation delivery, and monitoring and research. The biological planning and conservation design set forth in this recovery plan lay out the criteria for recovery and identify localities for implementing actions, while the recovery actions describe a process for implementing conservation on the ground, outcome-based monitoring to assess success, and ongoing assumption-driven research to test biological hypotheses important to management. To facilitate this strategy, specific near-term (i.e., 2012 to 2021) and more general long-term objectives and criteria have been established. In addition, revised implementation schedules will be developed, as necessary, to reflect the knowledge gained, accomplishments met, potential future constraints encountered, and consequent refinements to near-term recovery objectives, criteria, and/or actions as recovery progresses.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 11, 2012.

Richard R. Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–01293 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N009; FF06E16000–123–FXES11130600000D2]

Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Application; Draft Black-Footed Ferret Programmatic Safe Harbor Agreement and Environmental Assessment; Reopening of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the public comment period for an application from the Black-footed Ferret Recovery Implementation Coordinator for an enhancement of survival permit under the Endangered Species Act of 1973, as amended (ESA). The documents available for public review are a draft programmatic Safe Harbor Agreement (Agreement) to reintroduce the federally endangered black-footed ferret on properties of voluntary participants across the species' range to further recovery of this species and a draft environmental assessment (EA) pursuant to the National Environmental Policy Act (NEPA). If you have previously submitted comments, please do not resubmit them, because we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: Written comments must be submitted by February 22, 2013.

ADDRESSES: Send comments by U.S. mail to Kimberly Tamkun, U.S. Fish and Wildlife Service, National Black-footed Ferret Conservation Center, P.O. Box 190, Wellington, CO, 80549–0190, or via email to *FerretSHA@fws.gov.* You also may send comments by facsimile to (970) 897–2732. The draft Agreement and EA are available on the Black-Footed Ferret Recovery Program Web site at *http://www.blackfootedferret.org/.* You also may review copies of these documents during regular business hours at the National Black-footed Ferret Conservation Center (Ferret Center), 19180 North East Frontage Road Carr, CO, 80612–9719. If you do not have access to the Web site or cannot visit our office, you may request copies by telephone at (970) 897–2730 ext. 238 or by letter to the Ferret Center.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Black-footed Ferret Recovery

Coordinator, U.S. Fish and Wildlife Service, (970) 897–2730 ext. 224; *pete_gober@fws.gov.*

SUPPLEMENTARY INFORMATION: On December 19, 2012, we published a **Federal Register** notice (77 FR 75185) announcing the availability of the draft Agreement and EA for public review for 30 days, pursuant to the ESA (16 U.S.C. 1531 *et seq.*). We are providing the public more time to review these documents by reopening the public comment period for another 30 days in response to requests from the American Farm Bureau Federation, U.S. Senators Max Baucus and Jon Tester from Montana, U.S. Senators Pat Roberts and Jerry Moran from Kansas, and Congressman Tim Huelskamp from Kansas. We agree with the requesters that the additional time is needed to review the documents due to the scope and complexity of the Agreement and because the holidays occurred during the first comment period.

For background and more information on the draft Agreement and EA, see our December 19, 2012, notice (77 FR 75185). For information on where to view the documents and how to submit comments, please see the **ADDRESSES** section above.

Public Availability of Comments

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (NEPA) (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: January 15, 2013.

Michael Thabault,

Acting Regional Director—Ecological Services, Mountain-Prairie Region, Denver, Colorado.

[FR Doc. 2013–01292 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Energy Resource Development Program Grants

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for grants under the Office of Indian Energy and Economic Development Office's Energy and Mineral Development Program authorized by OMB Control Number 1076–0174. This information collection expires April 30, 2013.

DATES: Submit comments on or before March 25, 2013.

ADDRESSES: You may submit comments on the information collection to Catherine Freels, U.S. Department of the Interior, Office of Indian Energy and Economic Development, 800 S. Gay Street, Suite 800, Knoxville, Tennessee 37929; email: *Catherine.Freels@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine Freels, (865) 545–4315, extension 23.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005, 25 U.S.C. 3503 authorizes the Secretary of the Interior to provide grants to Indian tribes as defined in 25 U.S.C. 3501(4)(A) and (B).

The Office of Indian Energy and Economic Development (IEED) administers and manages the energy resource development grant program under the Energy and Minerals Development Program (EMDP). Congress may appropriate funds to EMDP on a year-to-year basis. When funding is available, IEED may solicit proposals for energy resource development projects from Indian tribes for use on Indian lands as defined in 25 U.S.C. 3501. The projects may be in the areas of exploration, assessment, development, feasibility, or market studies. Indian tribes that would like to apply for an EMDP grant must submit an application that includes certain information, and must assist IEED by providing information in support of any National Environmental Policy Act (NEPA) analyses.

II. Request for Comments

The Bureau of Indian Affairs (BIA) requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0174.

Title: Energy and Mineral Development Program Grant Solicitation.

Brief Description of Collection: Indian tribes that would like to apply for an EMDP grant must submit an application that includes certain information. A complete application must contain a current, signed tribal resolution that provides sufficient information to authorize the project and comply with the terms of the grant; a proposal describing the planned activities and deliverable products; and a detailed budget estimate. The IEED requires this information to ensure that it provides funding only to those projects that meet the goals of the EMDP and purposes for which Congress provides the appropriation. Upon acceptance of an application, a tribe must then submit one—to two—page quarterly progress reports summarizing events, accomplishments, problems and/or results in executing the project. Response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes with Indian land.

Number of Respondents: 55 applicants per year; 18 project participants each year.

Frequency of Response: Once per year for applications; 4 times per year for progress reports.

Estimated Time per Response: 40 hours per application; 1.5 hours per progress report.

Estimated Total Annual Hour Burden: 2,308 hours (2,200 for applications and 108 for progress reports).

Dated: January 15, 2013.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2013–01252 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2014 or Calendar Year 2014

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2013, deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2014 or calendar year 2014.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2013.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355–G–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION:

Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

The regulations at 25 CFR sections 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2014 and calendar year 2014. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2014 or calendar year 2014 must respond to this notice, except for those tribes/consortia which are: (1) Currently involved in negotiations with the Department; or (2) one of the 107 tribal entities with signed agreements.

Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program.

Dated: January 14, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–01251 Filed 1–22–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000; L14300000; EU0000; CACA 053961]

Notice of Intent To Amend the California Desert Conservation Area Plan and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Needles Field Office, Needles, California intends to prepare an amendment to the California Desert Conservation Area (CDCA) Plan with an associated Environmental Assessment (EA) to analyze the sale of approximately 133 acres of public land and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the CDCA Plan amendment with associated EA. Comments on issues may be submitted in writing until February 22, 2013. The BLM does not plan to hold any scoping meetings for this plan amendment. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the CDCA Plan amendment and associated EA by any of the following methods:

- *Email: gmeckfessel@blm.gov.*
- *Fax:* 760–326–7099.
- *Mail:* Raymond Lee, BLM Needles Field Manager, 1303 S. Highway 95, Needles, CA 92363.

Documents pertinent to this proposal may be examined at the Needles Field Office, 1303 S. U.S. Highway 95, Needles, CA 92363.

FOR FURTHER INFORMATION CONTACT: George R. Meckfessel, Planning and Environmental Coordinator, BLM Needles Field Office, telephone 760–326–7008; address 1303 S. U.S. Highway 95, Needles, CA 92363; email *gmeckfessel@blm.gov.* You may also request to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is providing notice that the BLM Needles Field Office, Needles, California intends to prepare an amendment to the 1980 CDCA Plan with

an associated EA; announces the beginning of the scoping process; and seeks public input on issues and planning criteria. The planning area is located in San Bernardino County, California and encompasses the 133.19 acres of public land that has been identified for possible direct sale. The BLM has received a request from the State of California to purchase the following public land:

San Bernardino Meridian

T. 16 N., R. 14 E.,
Sec. 11, lot 1;
Sec. 12, lots 2, 4, 6, 9, 11, and 14;
Sec. 13, lot 2;
Sec. 14, lots 1, 4, 7, 11, and 12;
Sec. 23, lots 3, 6, 9, and 11.

The area described containing 133.19 acres lies entirely in San Bernardino County, California.

The State of California wishes to purchase the public lands described above for a point of entry facility for agricultural and commercial vehicle inspections. The public lands described above were not specifically identified for sale in the CDCA Plan, as amended, and a plan amendment is therefore required to process a direct sale. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process.

The BLM anticipates that the EA will consider both a plan amendment and the subsequent sale of the land and has identified local land uses and input from local governments as the primary preliminary issue of concern. The BLM anticipates that the EA will include, at a minimum, input from the disciplines of land use planning, biology and archaeology. This plan amendment will be limited to an analysis of whether the public lands described above meet the criteria for sale in FLPMA at Section 203(a)(3), which states, ''disposal of such tract will serve important public objectives,'' which is the planning criteria for this amendment.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period. The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will evaluate identified issues to be addressed in the plan amendment, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

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.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Cynthia Staszak,

Associate Deputy State Director, Resources California.

[FR Doc. 2013–01261 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI01000 L12320000 AL0000 LVRDID130000]

Notice of Intent To Collect Fees on Public Land in Clark County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Collect Fees on Public Land in Clark County, ID.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), the Bureau of Land Management (BLM) Upper Snake Field Office is proposing to collect a reservation fee for large group sites at the Birch Creek Campground in Clark County, ID. Under Section 2(2) of the REA, Birch Creek Campground qualifies as a site wherein visitors can be charged an ''Expanded Amenity Recreation Fee'' authorized under section 3(g). In accordance with the REA, and the BLM's implementing regulations, the Upper Snake Field Office is proposing to charge a group site reservation fee of $35 per night for overnight camping within the Birch Creek Campground.

An analysis of the recreation site shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: This notice initiates the public comment period. Comments by interested parties will be accepted in writing through July 22, 2013. New fees would begin no earlier than July 22, 2013.

New fee implementation is contingent upon a final review and approval recommendation by the Idaho Falls District Resource Advisory Council (RAC) and the BLM Idaho State Director. The BLM Upper Snake Field Office will provide final public notice of the group site reservation fee collection for the Birch Creek Campground.

ADDRESSES: Comments may be submitted to Attention: Shannon Bassista, Bureau of Land Management Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, ID 83401, via email at *BLM_ID_IF_BirchCrCGFee@blm.gov* or by fax at 208–524–7505. Please reference ''Notice of Intent to Collect Fees at Birch Creek Campground'' on all correspondence.

FOR FURTHER INFORMATION CONTACT: Shannon Bassista, BLM Upper Snake Field Office recreation planner at 208–524–7552 or by email at *sbassista@blm.gov*. Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The REA directs the Secretary of the Interior to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once the public comment period is complete, a new fee must be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Birch Creek Campground is located in Clark County, Idaho, approximately 75 miles northwest of Idaho Falls, Idaho, and 86 miles south of Salmon, Idaho. It is fairly remote and allows visitors to camp adjacent to the popular Birch Creek fishing area and enjoy the scenery of the Lemhi Mountain range. Visitors can also recreate with motorized vehicles on adjacent BLM- and U.S. Forest Service-managed lands.

There are approximately 60 campsites and four large identified group sites dispersed along a 5.5 mile stretch of Birch Creek. Approximately one-third of the campsites have picnic tables and fire rings. There are multiple restroom facilities throughout the campground. The campground is adjacent to Highway 28 and is accessed by one of three entrances. The BLM does not provide electricity or water at the individual campsites and there is no recreational vehicle (RV) dump station or refuse collection. The host site has hook-ups, and there is a water pump adjacent to the host site that allows visitors to fill up their RV tanks. This area is not currently a fee area.

The Upper Snake Field Office is proposing charging a fee for large groups to reserve one of the group sites to guarantee camping access for an entire group. The proposed group site reservation fee is classified as an ''Expanded Amenity Fee'' under REA and would only apply to visitors wanting to reserve a group site. The BLM receives 12–15 requests annually to reserve one of the group sites at Birch Creek Campground. Reasons for these requests vary: some want to reserve a campsite located near accessible restroom facilities, while others want to reserve the location for large family reunions or other special occasions. Without an amenity fee associated with the site, the BLM is unable to make such reservations, leaving visitors wishing to reserve a group campsite with the sole option of seeking exclusive use, with an accompanying fee of $200, which is prohibitive for most weekend campground users. Because the vast majority of identified campsites at Birch Creek Campground are individual, a reservation system for group campsites would not displace or inconvenience other campers. Based on these factors, visitors' willingness to pay a group reservation fee is expected to be high.

Outside of the proposed group site reservation fee, the BLM is not planning to assess fees for camping at Birch Creek Campground. Additionally, fees will not be charged for camping in designated group sites when the sites have not been reserved.

Joe Kraayenbrink,

Idaho Falls District Manager.

[FR Doc. 2013–01266 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, 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, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below.

DATES: The meeting will be held February 19–22, 2013, in Fairbanks, Alaska. The meetings will begin at 9:00 a.m. in Room 401, International Arctic Research Center (IARC), 930 Koyukuk Drive, University of Alaska Fairbanks campus, Fairbanks, Alaska. Public comment will be accepted between 3:00 and 4:00 p.m. on Wednesday, February 20, 2013.

FOR FURTHER INFORMATION CONTACT: Dennis Lassuy, Acting Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3212 or email *dlassuy@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed resource management decisions. This meeting will include continued dialog for scenario planning for the North Slope and adjacent marine environments. Additionally, the STAP will continue with designing a long-term monitoring strategy for the North Slope.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative. 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: January 15, 2013.

Bud C. Cribley,

State Director.

[FR Doc. 2013–01240 Filed 1–22–13; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L18200000.XZ0000]

Notice of Public Meeting: Northwest California 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 of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Feb. 21–22, 2013, at the Inn of the Lost Coast, 205 Wave Rd., Shelter Cove, California. On Feb. 21, the council will convene at 9 a.m. The meeting is open to the public. Public comments will be taken at 11 a.m. On Feb. 22, the council convenes at 8 a.m. and departs immediately for a field tour. Members of the public are welcome. They must provide their own transportation, food and beverages.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 224–2160; or Joseph J. Fontana, public affairs officer, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-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 Northwest California. At this meeting the RAC will discuss planning efforts for the Lost Coast Headlands and Lacks Creek areas of Humboldt County, hear an update on land use plan development for the Redding Field Office, plan upcoming work with BLM field offices and hear reports on the status of the BLM's participation in the Northwest Forest Plan and marijuana eradication on public lands. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: January 15, 2013.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2013–01294 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL00100 L12200000 PM0000]

Notice of Temporary Closure of Public Lands in Fergus County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a temporary closure of public lands to motorized vehicles and other recreational uses is in effect on public lands administered by the Bureau of Land Management (BLM) Lewistown Field Office within the Judith Mountains, northeast of Lewistown, Montana.

DATES: The area closure will remain in effect 2 years from the date this notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Geoff Beyersdorf, Field Manager, 920 NE. Main Street, Lewistown, Montana 59457; 406–538–1900. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This closure affects public lands along the Maiden Canyon Road in Fergus County, Montana. The closed section extends from the intersection of Maiden Canyon Road and Judith Peak Road to 4 miles west of Gilt Edge. This temporary closure responds to public safety needs during a project to repair severe road damage that resulted from near record runoff and flooding in the spring of 2011, combined with extreme icing conditions that exist through the winter months. The flooding created extensive damage on a 2-mile portion of the Maiden Canyon Road.

The most heavily used portion of the Maiden Canyon Road remains open for public use. However, driving and other recreational uses on the damaged portion of the Maiden Canyon Road are extremely unsafe due to a number of issues including: Steep, eroded banks; areas where the road is now in the active creek channel; falling trees where the flooding removed material around the root systems; seasonal snow or ice covering on the surface making extremely slick conditions; road shoulder damage with a vertical bank now encroaching in the driving lane; impassible road for towed or recreational vehicles; dangerous night driving conditions; and inclement weather further damaging this road section. Each of these factors increases the risk of an accident or incident and until these factors are repaired the area closure is necessary to protect the public health and safety and to enhance efficient project completion.

The BLM prepared an environmental assessment analyzing the potential environmental impacts of road repairs and a Categorical Exclusion Review for the temporary closure. The contracting and road repair work will be the responsibility of the Montana Department of Highways.

Construction activities will include surveying, staking out the work to be done, and the actual construction work. Stakes and other markings will need to be preserved for directing the work to be completed. For public safety reasons, vehicle traffic, pedestrian traffic and visitor use will be precluded during all of these activities.

The BLM will post closure signs at the main entry points to the road. The BLM will also post the closure order in the Lewistown Field Office and will keep the public informed as this project progresses via local and regional press releases and posting those releases online at: *http://www.blm.gov/mt/st/en.html.* Maps of the affected areas and other documents associated with this closure are available online and at the BLM Lewistown Field Office at 920 NE. Main Street, Lewistown, MT 59457.

Under the authority of Section 303(a) of the Federal land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rule on the damaged portion of the Maiden Canyon Road in Fergus County, Montana: Visitors must not use motorized vehicles, hike or otherwise enter the public land within the closed area.

Exceptions: The following persons are exempt from this order: Federal, State and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of

their official duties; those who own private property within the closure and persons with written authorization from the BLM.

Penalties: Any person who violates the above restriction may be tried before a United States Magistrate and fined no more than $1000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided by 18 U.S.C. 3571.

Gary L. ''Stan'' Benes,

Central Montana District Manager.

[FR Doc. 2013–01263 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–GOIS–11606; 4925–726]

Minor Boundary Revision at Governors Island National Monument

AGENCY: National Park Service, Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460*l*–9(c)(1)(ii), the boundary of Governors Island National Monument is modified to include an additional 0.13-acre of adjacent submerged land identified as Tract 01–106. Upon inclusion in the national monument, the tract will be conveyed at no cost to the United States for use in maintaining a dock necessary to provide safe waterborne access to the island. The boundary revision is depicted on Map No. 019/107522A dated August 17, 2011. The map is available for inspection at the following locations: National Park Service, Northeast Land Resources Program Center, New England Office, 115 John Street, Fifth Floor, Lowell, Massachusetts 01852, and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Superintendent Patti Reilly, Governors Island National Monument, 10 South Street—Slip 7, New York, New York 10004, telephone (212) 825–3055.

DATES: The effective date of this boundary revision is January 22, 2013.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460*l*–9(c)(1)(ii) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. This boundary revision and subsequent acquisition of Tract 01–106 will enable the National Park Service to manage and maintain a floating dock that has been installed to provide safe access to the island for ferry passengers.

Dated: November 27, 2012.

Dennis R. Reidenbach,

Regional Director, Northeast Region.

[FR Doc. 2013–01305 Filed 1–22–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Expenditure Surveys: Quarterly Interview and Diary

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Consumer Expenditure Surveys: Quarterly Interview and Diary,'' 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 February 22, 2013.

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 DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), 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.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The BLS uses the Consumer Expenditure Surveys to gather information on expenditures, income, and other related subjects. These data are used periodically to update the national Consumer Price Index. In addition, the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population. The proposed revisions to this ICR fall into two major categories: streamlining the current questions and updating and deleting several questions to reflect the current marketplace.

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 that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0050. The current approval is scheduled to expire on April 30, 2014. For additional information, see the related notice published in the **Federal Register** on September 5, 2012.

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 mention OMB Control Number 1205–0050. 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: DOL–BLS.

Title of Collection: Consumer Expenditure Surveys: Quarterly Interview and Diary.

OMB Control Number: 1205–0050.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 16,375.

Total Estimated Number of Responses: 77,500.

Total Estimated Annual Burden Hours: 68,894.

Total Estimated Annual Other Costs Burden: $0.

Dated: January 15, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–01259 Filed 1–22–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0003]

Electrical Protective Equipment Standard and the Electric Power Generation, Transmission, and Distribution Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its request for an extension of the information collection requirements specified in its standards on Electrical Protective Equipment (29 CFR 1910.137) and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269).

DATES: Comments must be submitted (postmarked, sent, or received) by March 25, 2013.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0003, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (*hand, express mail, messenger, and courier service*) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2013–0003) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Electrical Protective Equipment Standard (29 CFR 1910.137) and the Electric Power Generation, Transmission, and Distribution Standard (29 CFR 1910.269) specify several paperwork requirements. The following describes the information collection requirements contained in the standards and addresses who will use the information.

Electrical Protective Equipment Standard (§ 1910.137)

Testing Certification (§ 1910.137(b)(2)(xii))

Employers must certify that the electrical protective equipment used by their workers have passed the tests specified in paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of the Standard. The certification must identify the equipment that passed the tests and the dates of the tests. This provision ensures that electrical protective equipment is reliable and safe for worker use and will provide adequate protection against electrical hazards. In addition, certification enables OSHA to determine if employers are in compliance with the equipment-testing requirements of the Standard.

Electric Power Generation, Transmission, and Distribution Standard (§ 1910.269)

Training Certification (§ 1910.269(a)(2)(vii))

This provision requires employers to certify that each worker has received the training specified in paragraph (a)(2) of the Standard. Employers must provide certification after a worker demonstrates proficiency in the work practices involved.

The training conducted under paragraph (a)(2) of the Standard must ensure that: Workers are familiar with the safety-related work practices, safety procedures, and other procedures, as well as any additional safety requirements in the Standard that

pertain to their respective job assignments; workers are familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), addressed specifically by this Standard that relate to their work and are necessary for their safety; and qualified workers have the skills and techniques necessary to distinguish exposed live parts from other parts of electrical equipment, can determine the nominal voltage of the exposed live parts, know the minimum approach distances specified by the standard for voltages when exposed to them, and understand the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools for working on or near exposed and energized parts of electrical equipment.

Workers must receive additional training or retraining if: the supervision and annual inspections required by the Standard indicate that they are not complying with the required safety-related work practices; new technology or equipment, or revised procedures, require the use of safety-related work practices that differ from their usual safety practices; and they use safety-related work practices that are different than their usual safety practices while performing job duties.

The training requirements of the Standard inform workers of the safety hazards of electrical exposure and provide them with the understanding required to minimize these safety hazards. In addition, workers receive proper training in safety-related work practices, safety procedures, and other safety requirements specified in the standard. The required training, therefore, provides information to workers that enable them to recognize how and where electrical exposures occur, and what steps to take, including work practices, to limit such exposure. The certification requirement specified by paragraph (a)(2)(vii) of the Standard helps employers monitor the training their workers received and helps OSHA determine if employers provided the required training to their workers.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the Standards on Electrical Protective Equipment (29 CFR 1910.137), and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269). The Agency is proposing to decrease the burden hours in the currently approved information collection request from 34,208 hours to 8,218 hours (a total decrease of 25,990 hours). The decrease is a result of a decrease in the number of burden hours for test certification. The Agency has determined that it is usual and customary for employers to have or stamp the test date on electrical protective equipment.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved information collection.

Title: Electrical Protective Equipment (29 CFR 1910.137) and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269).

OMB Control Number: 1218–0190.

Affected Public: Business or other for-profits.

Number of Respondents: 20,765.

Frequency: On occasion; Semi-annually; Annually.

Average Time per Response: One minute (.02 hour) for a clerical worker to maintain training certification records.

Estimated Total Burden Hours: 8,218.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2013–0003). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–01275 Filed 1–22–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–003]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Frances Teel, NASA Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA Clearance Officer/JF000, NASA Headquarters, 300 E Street SW., Washington, DC 20546 or *Frances.C.Teel@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The LISTS (Locator and Information Services Tracking System) form is used at NASA Goddard Space Flight Center to collect locator information on support contractors when the information cannot be imported from other systems. The LISTS also serves as repository for contact information in the event of an emergency during or outside official duty hours. Information collected is also used for short and long-term institutional planning.

II. Method of Collection

The preferred method of collection is electronic. Approximately 60% of the data is collected electronically by means of a data entry screen that duplicates the Goddard Space Flight Center form GSFC 24–27 in the LISTS system. The remaining 40% of the data is keyed into the system from submissions of a hardcopy version of form GSFC 24–27.

III. Data

Title: Locator and Information Services Tracking System (LISTS) Form.

OMB Number: 2700–0064.

Type of review: Extension of currently approved collection.

Affected Public: Individuals or households.

Responses per Respondent: 1.

Annual Responses: 8,455.

Hours per Request: 0.08 hours/5 minutes.

Annual Burden Hours: 705.

Annual Cost to the Government: $170,200.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA Clearance Officer.

[FR Doc. 2013–01228 Filed 1–22–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Office of Small Credit Unions (OSCUI) Loan Program Access for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Funding Opportunity.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a Notice of Funding Opportunity (NOFO) to invite eligible credit unions to submit applications for participation in the OSCUI Loan Program (a.k.a. Community Development Revolving Loan Fund (CDRLF)), subject to funding availability. The OSCUI Loan Program serves as a source of financial support, in the form of loans, for credit unions serving predominantly low-income members. It also serves as a source of funding to help low-income designated credit unions (LICUs) respond to emergencies arising in their communities.

DATES: The application open period is from January 1, 2013 thru December 31, 2013. Funds may be exhausted prior to this deadline, at which time the programs/funds will no longer be available.

ADDRESSES: Applications must be submitted online at *www.cybergrants.com/ncua/applications.*

FOR FURTHER INFORMATION CONTACT: Further information can be found at: *www.ncua.gov/OSCUI/grantsandloans.* For questions email: National Credit Union Administration, Office of Small Credit Union Initiatives at *OSCUIAPPS@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of Funding Opportunity

The purpose of the OSCUI Loan Program is to assist specially designated credit unions in providing basic financial services to their low-income members to stimulate economic activities in their communities. Through the OSCUI Loan Program, NCUA provides financial support in the form of loans to LICUs. These funds help improve and expand the availability of financial services to these members. The OSCUI Loan Program also serves as a source of funding to help LICUs respond to emergencies. The Loan Program consists of Congressional appropriations that are administered by OSCUI, an office of the NCUA.

A. *Program Regulation:* Part 705 of NCUA's regulations implements the OSCUI Grant and Loan Program. 12 CFR 705. A revised Part 705 was published on November 2, 2011. 76 FR 67583. Additional requirements are found at 12 CFR Parts 701 and 741. Applicants should review these regulations in addition to this NOFO. Each capitalized term in this NOFO is more fully defined in the regulations, the loan application, and the loan agreement. For the purposes of this NOFO, an Applicant is a Qualifying Credit Union that submits a complete Application to NCUA under the OSCUI Loan Program.

B. *Funds Availability:* Congress has not made an appropriation to the OSCUI Loan Program for Fiscal Years 2013–2014. NCUA expects to lend approximately $9.5 million under this NOFO, derived from appropriated and earned funds. Monies for additional loans come from scheduled loan amortizations. NCUA reserves the right to: (i) Award more or less than the amount cited above; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds from the amount that is anticipated to

be available under this NOFO to other programs, particularly if NCUA determines that the number of awards made under this NOFO is fewer than projected.

II. Description of Loan Program

OSCUI loans are made to LICUs that meet the requirements in the program regulation and this NOFO, subject to funds availability. OSCUI loans are generally made at lower than market interest rates.

A. *Eligibility Requirements:* The regulations specify the requirements a credit union must meet in order to be eligible to apply for assistance under this NOFO. See 12 CFR 705.

Following are additional requirements for participating in the Loan Program under this NOFO. In short, an Applicant must:

○ Be a Qualifying Credit Union (QCU);

○ Meet the underwriting standards and program requirements specified in the Regulations and this NOFO; and

○ Complete and submit an Application (see Section III. of this NOFO for additional information).

1. *Low Income Credit Union Designation:* A credit union must be a LICU, or equivalent in the case of a Qualifying State-chartered Credit Union, in order to participate in the OSCUI Grant and Loan Program. Requirements for obtaining the designation are found at 12 CFR § 701.34.

B. *Permissible Uses of Funds:* NCUA will consider requests for funds consistent with the purpose of the OSCUI Loan Program. 12 CFR § 705.1. A non-exhaustive list of examples of permissible uses or projects of loan proceeds are contained in § 705.4 of the regulation, and include: (i) Development of new products or services for members including new or expanded share draft or credit card programs; (ii) Partnership arrangements with community based service organizations or government agencies; (iii) Loan programs, including, but not lmited to, micro business loans, payday loan alternatives, education loans, and real estate loans; (iv) Acquisition, expansion or improvement of office space or equipment, including branch facilities, ATMs, and electronic banking facilities; and (v) Operational programs such as security and disaster recovery.

NCUA will consider other proposed uses of funds that in its sole discretion it determines are consistent with the purpose of the OSCUI Loan Program, the requirements of the regulations, and this NOFO.

C. *Terms:* The specific terms and conditions governing a loan will be established in the loan documents each Participating Credit Union will sign prior to disbursement of funds. Following are the general loan terms under the program.

1. *Maximum Loan Amount:* NCUA expects that most loans made under this NOFO will be in an amount less than or equal to $300,000. NCUA has determined that loans of this size will help maximize allocation of this limited resource among many credit unions. However, NCUA will consider funding requests in excess of $300,000 from Applicants that demonstrate the need and capability to effectively deploy such funding; and have a high probability of realizing significant impact, while maintaining financial and operational soundness. NCUA may consider other factors for the approval of funding requests in excess of $300,000 and will be assessed on a case-by-case basis. See Section III and IV of this NOFO for additional information.

2. *Maturity:* Loans will generally mature in five years. A credit union may request a shorter loan period, but in no case will the term exceed five years.

3. *Interest:* The interest rate on loans is governed by the Loan Interest Rate Policy, which can be found on NCUA's Web site at *www.ncua.gov/OSCUI/GrantsandLoans.*

4. *Repayment:* All loans must be repaid to NCUA regardless of how they are accounted for by the Participating Credit Union.

(a) *Principal:* The entire principal is due at maturity.

(b) *Interest:* Interest is due in semi-annual payments beginning six months after the initial distribution of the loan.

(c) *Principal Prepayment:* There is no penalty for principal prepayment. Principal prepayments may be made as often as monthly.

D. *Conditions:*

1. *Loan Agreements:* Each Participating Credit Union under this NOFO must enter into agreement with NCUA before NCUA will disburse loan funds. The agreement documents include, for example, a promissory note, loan agreement, and security agreement (if applicable). For further information, see Section VI. of this NOFO.

2. *Matching Funds:* Part 705.5(g) of NCUA's regulations describe the overall requirements for matching funds. NCUA, in its sole discretion, may require matching funds of an Applicant, on a case-by-case basis depending on the financial condition of the Applicant. NCUA anticipates that most Applicants will not be required to obtain matching funds. However, each Applicant should address in the Application its strategy for raising matching funds if NCUA determines matching funds are required (see 12 CFR Part 705 and the Application for additional information).

(a) *Matching Funds Requirements:* The specific terms and covenants pertaining to any matching funds requirement will be provided in the loan agreement of the Participating Credit Union. Following, are general matching requirements. NCUA, in its sole discretion, may amend these requirements depending upon its evaluation of the Applicant, but in no case will the amended requirements be greater than the conditions listed below.

(i) The amount of matching funds required must generally be in an amount equal to the loan amount.

(ii) Matching funds must be from non-governmental member or nonmember share deposits.

(iii) Any loan monies matched by nonmember share deposits are not subject to the 20% limitation on nonmember deposits under § 701.32 of NCUA's regulations.

(iv) Participating Credit Unions must maintain the outstanding loan amount in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to § 701.32 of NCUA's regulations.

(b) *Criteria for Requiring Matching Funds:* NCUA will use the following criteria to determine whether to require an Applicant to have matching funds as a condition of its loan.

(i) CAMEL Composite Rating
(ii) CAMEL Management Component Rating
(iii) CAMEL Asset Quality
(iv) Regional Director Concurrence
(v) Net Worth Ratio

(c) *Documentation of Matching Funds:* NCUA may contact the matching funds source to discuss the matching funds and the documentation that the Applicant has provided. If NCUA determines that any portion of the Applicant's matching funds is ineligible under this NOFO, NCUA, in its sole discretion, may permit the Applicant to offer alternative matching funds as a substitute for the ineligible matching funds. In this case: (i) the Applicant must provide acceptable alternative matching funds documentation within 10 business days of NCUA's request.

3. *Compliance with Past Agreements:* In evaluating funding requests under this NOFO, NCUA will consider an Applicant's record of compliance with past agreements, including any deobligation of funds. NCUA, in its sole discretion, will determine whether to consider an Application from an

Applicant with a past record of noncompliance, including any deobligation (i.e. removal of unused awards) of funds.

(a) *Default Status:* If an Applicant is in default of a previously executed agreement with NCUA, NCUA will not consider an Application for funding under this NOFO.

(b) *Undisbursed Funds:* NCUA may not consider an Application if the Applicant is a prior awardee under the OSCUI Grant Program and has unused grant awards as of the date of Application.

III. Application Requirements

A. *Application Form:* The application and related documents can be found on NCUA's Web site at *www.ncua.gov/OSCUI/GrantsandLoans.*

B. *Minimum Application Content:* Each Applicant must complete and submit information regarding the applicant and requested funding. In addition, applicants will be required to certify applications prior to submission.

1. *DUNS Number:* Based on an Office of Management and Budget (OMB) policy directive effective October 31, 2003, credit unions must have a Data Universal Numbering System (DUNS) number issued by Dun and Bradstreet (D&B) in order to be eligible to receive funding from the OSCUI Loan Program. NCUA will not consider an Application that does not include a valid DUNS number. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a DUNS number may be found on D&B's Web site at *http://fedgov.dnb.com/webform* or by calling D&B, toll-free, at 1–866–705–5711.

2. *Employer Identification Number:* Each Application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). NCUA will not consider an application that does not include a valid and current EIN. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a EIN may be found on the IRS's Web site at *www.irs.gov.*

3. *Abbreviated Application:* An Applicant requesting a loan amount of $300,000 or less is permitted to complete a short online application form that limits the amount of required narrative responses. The required narratives will address the proposed use of funds; the credit union's ability to obtain matching funds, if required; and how the credit union will assess the impact of the funding.

4. *Narrative Responses:* Each Application must include the narratives listed below. Applicants must adhere to character limitations contained in the Application. NCUA will not read or consider narrative comments beyond the limits specified. Additionally, NCUA will read only information requested in the Application and will not read attachments that have not been requested in this NOFO or the Application.

(a) *Use of Funds:* A narrative describing how it intends to use the loan proceeds. The narrative should demonstrate that the loan will enhance the products and services the credit union provides to its members. It also should describe how those enhanced products and services will support the economic development of the community served by the credit union.

(b) *Matching Funds:* A narrative describing its strategy for raising matching funds from non-federal sources if matching funds are required.

5. *Large Loans:* An Applicant requesting a loan in excess of $300,000 is required to complete an online application form that contains additional narrative comments supporting such request. The additional narrative consists of a business plan.

(a) *Business Plan:* As detailed in Part 705 of NCUA's regulations, the business plan must: describe the community's need for financial products and services and the Applicant's need for funding; summarize the services, financial products, and services provided by the Applicant; describe the Applicant's involvement with other entities; describe the credit union's marketing strategy to reach members and the community; and include financial projections.

6. *Non-federally Insured Applicants:*

(a) *Additional Application Requirements:* Each Applicant that is a non-federally insured, state-chartered credit union must submit additional application materials. These additional materials are more fully described in § 705.6(b)(3) of NCUA's regulations and in the Application.

(b) *Examination by NCUA:* Non-federally insured, state-chartered credit unions must agree to be examined by NCUA. The specific terms and covenants pertaining to this condition will be provided in the loan agreement of the Participating Credit Union.

C. *Submission of Application:* Under this NOFO, Applications must be submitted online at *www.cybergrants.com/ncua/applications.*

IV. Application Review

A. Review Process

1. *Eligibility and Completeness Review:* NCUA will review each Application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the Regulations and Section II of this NOFO. An incomplete Application or one that does not meet the eligibility requirements will be declined without further consideration.

2. *Substantive Review:* After an Applicant is determined eligible and its Application is determined complete, NCUA will conduct a substantive review in accordance with the criteria and procedures described in the Regulations and this NOFO. NCUA reserves the right to contact the Applicant during its review for the purpose of clarifying or confirming information contained in the Application. If so contacted, the Applicant must respond within the time specified by NCUA or NCUA, in its sole discretion, may decline the application without further consideration.

3. *Evaluation and Scoring:* The evaluation criteria are more fully described in § 705.6 of NCUA's regulations. NCUA will evaluate each Application that receives a substantive review on the four criteria categories described in the regulation: Financial Performance, Compatibility, Feasibility, and Examination Information and Concurrence from Regional Director of Qualifying Credit Unions.

(a) *Assessment of Impact:* The Compatibility criteria will take into consideration the extent of community need and projected impact of the funding on the Applicant's members and community.

(b) *Effective Strategy:* The Feasibility criteria will take into consideration the quality of the Applicant's strategy and its capacity to execute the strategy as demonstrated by its past performance, partnering relationships, and other relevant factors.

(c) *Evaluating Prior Award Performance:* For prior participants of the OSCUI Grant and Loan Program, loans may not be awarded if the participant: (i) is noncompliant with any active award; (ii) failed to make timely loan payments to NCUA during fiscal years prior to the date of Application; and (iii) had an award deobligated (i.e. removal of unused awarded funds) during fiscal years prior to the date of Application.

4. *Input from Examiners:* NCUA will not approve an award to a credit union for which its NCUA regional examining office or State Supervisory Agency

(SSA), if applicable, indicates it has safety and soundness concerns. If the NCUA regional office or SSA identifies a safety and soundness concern, OSCUI, in conjunction with the regional office or SSA, will assess whether the condition of the Applicant is adequate to undertake the activities for which funding is requested, and the obligations of the loan and its conditions. NCUA, in its sole discretion, may defer decision on funding an Application until the credit union's safety and soundness conditions improve.

V. Funding Process

A. *Funding Selection:* NCUA will make its funding selections based on a consistent scoring tier where each applicant will receive an individual score. NCUA will consider the impact of the funding. In addition, NCUA may consider the geographic diversity of the Applicants in its funding decisions. When loan demand is high applications will be ranked based on the aforementioned.

B. *Notice of Funding:* NCUA will notify each Applicant of its funding decision. Notification will generally be by email. Applicants that are approved for funding will also receive instructions on how to proceed with disbursement of the loan.

VI. Disbursement of Funds

A. *Loan Agreement:* Each Applicant selected to receive a loan under this NOFO must sign a Loan Agreement and a Promissory Note in order to receive a disbursement of funds. The Loan Agreement will include the terms and conditions of funding, including but not limited to the: (i) Loan amount; (ii) interest rate; (iii) repayment requirements; (iv) accounting treatment; (v) impact measures; and (vi) reporting requirements.

1. *Failure to Sign Agreement:* NCUA, in its sole discretion, may rescind a loan offer if the Applicant fails to return the signed loan documents and/or any other requested documentation, within the time specified by NCUA.

2. *Multiple Disbursements:* NCUA may determine, in its sole discretion, to fund a loan in multiple disbursements. In such cases, the process for disbursement will be specified by NCUA in the Loan Agreement.

VII. Post-Award Requirements

A. *Reporting Requirements:* Annually, each Participating Credit Union will submit an annual report to NCUA. The report will address the Participating Credit Union's use of the loan funds; the impact of funding; and explanation of any failure to meet objectives for use of proceeds, outcome, or impact. NCUA, in its sole discretion, may modify these requirements. However, such reporting requirements will be modified only after notice to affected credit unions.

1. *Report Form:* Applicable credit unions will be notified regarding the submission of the report form. A Participating Credit Union is responsible for timely and complete submission of the report. NCUA will use such information to monitor each Participating Credit Union's compliance with the requirements of its loan agreement and to assess the impact of the OSCUI Loan Program.

VIII. Agency Contacts

A. *Methods of Contact:* For further information, contact NCUA by email at *OSCUIAPPS@ncua.gov*.

B. *Information Technology Support:* People who have visual or mobility impairments that prevent them from using NCUA's Web site should call (703) 518–6610 for guidance (this is not a toll free number).

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786; 12 CFR 705.

By the National Credit Union Administration Board on January 16, 2013.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2013–01206 Filed 1–22–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel. The purpose of the meeting is for panel review, discussion, evaluation, and recommendation of applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning on or after April 1, 2013.

DATES: The meeting will be held on Tuesday, February 12, 2013, from 9:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506, in Room 730.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Avenue NW., Room 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, the meeting will be closed to the public pursuant to section 552b(c)(4) of Title 5 U.S.C., as amended. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July l9, l993.

Dated: January 17, 2013.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2013–01265 Filed 1–22–13; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0191]

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 September 24, 2012 (77 FR 58871).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* NRC Reactor Vendor Registration.

3. *Current OMB approval number:* 3150–XXXX.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Annually.

6. *Who will be required or asked to report:* Power reactor licensee and applicants, and vendors are asked to report voluntary.

7. *An estimate of the number of annual responses:* 192.

8. *The estimated number of annual respondents:* 192.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 183.5.

10. *Abstract:* The NRC is commencing an effort to identify vendors of safety-related parts and services to nuclear power plants both directly (vendors) and indirectly (sub-vendors). For the purpose of this document, the term vendor includes supplier. The NRC licensees and applicants are responsible for the safety of facilities licensed by the NRC. As such, they are responsible for ensuring that their vendors meet applicable regulations and requirements, both technical and quality, in purchase documents. In order to ensure that licensees are meeting the regulatory requirements in this area, the NRC inspects vendors to evaluate their conformance with technical and quality requirements in part 21 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Reporting of Defects and Noncompliance,'' and Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR Part 50, as required by procurement contracts with licensees. There is no requirement for vendors to register with the NRC. This collection will assist the NRC in assessing the number and variety of vendors of safety-related parts and services for resource and vendor inspection planning. As part of that effort, the NRC plans to (1) issue a communication to power reactor licensee and applicants requesting the voluntary submittal of vendor information and (2) create a Web page on its public Web site that allows vendor and sub-vendor information to be submitted individually. When power reactor licensee and applicants respond either by submitting their information by mail or online they will be asked to provide the following information: Vendor names, vendor addresses, vendor points of contact, vendor point of contact email address, vendor telephone number, scope of supply, and comments. Additionally, Vendors will also be able to use this Web page voluntarily to complete self registration.

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 O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's 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 February 22, 2013. 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–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@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 16th day of January, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–01204 Filed 1–22–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–038; NRC–2008–0581]

Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC Combined License Application for Nine Mile Point 3 Nuclear Power Plant Exemption

1.0 Background

Nine Mile Point 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (UniStar), submitted a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR to the U.S. Nuclear Regulatory Commission (NRC) in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), subpart C of part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor is to be identified as Nine Mile Point 3 Nuclear Power Plant (NMP3NPP), and located adjacent to the current Nine Mile Point Nuclear Station, Unit 1 and Unit 2, in Oswego County, New York. The NMP3NPP COL application incorporates by reference AREVA NP's application for a Standard Design Certification for the U.S. EPR. Additionally, the NMP3NPP COL application is based upon the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the NMP3NPP COL application on December 12, 2008. On March 31, 2009, UNE submitted Revision 1 to the COL application, including updates to the Final Safety Analysis Report (FSAR). On December 1, 2009, UniStar Nuclear Energy (UNE), acting on behalf of the COL applicant's Nine Mile Point 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC, requested that the NRC temporarily suspend the NMP3NPP COL application review, including any supporting reviews by external agencies, until further notice. Based on this request, the NRC discontinued all review activities associated with the NMP3NPP COL application. By letter to the NRC dated December 9, 2010, UNE requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2010 and 2011 COL application FSAR updates, and proposed for approval of a new submittal deadline of December 31, 2012, for the next FSAR update. The NRC granted the exemption as described in **Federal Register** Notice (FRN) 76 FR 32994 (June 7, 2011). The NRC is currently performing a detailed review of the CCNPP3 RCOL application, as well as AREVA NP's application for design certification of the U.S. EPR.

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii), require that an applicant for a combined license under 10 CFR part 52 shall, during the period from docketing of a COL application until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's Final Safety Analysis Report (FSAR), which is a part of the application.

Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update of the NMP3NPP COL application FSAR would be due in December 2012. By letter to the NRC dated November 27, 2012, UNE

requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2012 COL application FSAR update, and proposed for approval of a new submittal deadline of December 31, 2013, for the next FSAR update.

UNE's requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next FSAR update by December 31, 2013. The current FSAR update schedule could not be changed, absent the exemption. UNE requested the exemption by letter dated November 27, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML12342A012). The NRC notes that the granting of the exemption applies prospectively, rather than retroactively, so this exemption applies to required actions from the date of exemption issuance and does not retroactively authorize a previous failure to take required action.

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including Section 50.71(e)(3)(iii) when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and 2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1)''Application 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'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The review of the NMP3NPP COL application FSAR has been suspended since December 1, 2009. Since the COL application incorporates by reference the application for a Standard Design Certification for the U.S. EPR, many changes in the U.S. EPR FSAR require an associated change to the COL application FSAR, and because the NRC review of the COL application is suspended, the updates to the COL application FSAR will not be reviewed by the NRC staff until the NMP3NPP COL application review is resumed. Thus, the optimum time to prepare a revision to the COL application FSAR is sometime prior to UNE requesting the NRC to resume its review. Preparing and submitting a COL application FSAR update when the review remains suspended and in the absence of any decision by UNE to request the NRC to resume the review would require UNE to spend significant time and effort, and would be of no value, particularly due to the fact that the U.S. EPR FSAR is still undergoing periodic revisions and updates. UNE commits to submit the next FSAR update by December 31, 2013, and would need to identify all changes to the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the changes to the U.S. EPR FSAR.

The requested one-time schedule exemption to defer submittal of the next update to the NMP3NPP COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). UNE has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by submitting Revision 1 to the COL application on March 31, 2009, prior to requesting the review suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow UNE to submit the next NMP3NPP COL application FSAR update on or before December 31, 2013. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting UNE the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by UNE will not be reviewed by the NRC at this time. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow UNE to submit the next FSAR update on or before December 31, 2013. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) ''Application 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'' (10 CFR 50.12(a)(2)(ii)); or (2) ''The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit UNE time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the NMP3NPP COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In

addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief, and UNE has made good faith efforts to comply with the regulation by submitting Revision 1 to the COL application on March 31, 2009, prior to requesting the review suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application. For the above reasons, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25), and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by UNE

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants UNE a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the NMP3NPP COL application to allow submittal of the next FSAR update no later than December 31, 2013.

Pursuant to 10 CFR 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of January 2013.

For the Nuclear Regulatory Commission.

John Segala,

Chief, Licensing Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–01326 Filed 1–22–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from November 1, 2012, to November 31, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes annually a consolidated listing of all Schedule A, B, and C appointing authorities current as of June 30 as a notice in the **Federal Register**.

Schedule A

No schedule A authorities to report during November 2012.

Schedule B

No schedule B authorities to report during November 2012.

Schedule C

The following Schedule C appointing authorities were approved during November 2012.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF COMMERCE	Office of Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.	Senior Advisor	DC130010	11/6/2012
	Office of Executive Secretariat	Special Assistant	DC130012	11/6/2012
	Office of the Deputy Secretary	Special Assistant	DC130013	11/29/2012
DEPARTMENT OF DEFENSE	Office of Assistant Secretary of Defense (Public Affairs).	Special Assistant	DD130008	11/1/2012
	Washington Headquarters Services.	Staff Assistant	DD130009	11/9/2012
	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD130012	11/9/2012
DEPARTMENT OF EDUCATION	Office of the Under Secretary	Special Assistant	DB130004	11/15/2012
	Office of Elementary and Secondary Education.	Special Assistant	DB120099	11/20/2012
DEPARTMENT OF ENERGY	Office of Public Affairs	Project Coordinator for Digital Media.	DE130003	11/15/2012
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Communications Director for Human Services.	DH130007	11/9/2012
DEPARTMENT OF JUSTICE	Civil Rights Division	Senior Counselor	DJ130013	11/20/2012
SECURITIES AND EXCHANGE COMMISSION.	Division of Risk, Strategy and Financial Innovation.	Confidential Assistant	SE130001	11/6/2012
DEPARTMENT OF STATE	Office of the Chief of Protocol	Protocol Officer	DS130018	11/20/2012
	Bureau of Energy Resources	Staff Assistant	DS130013	11/27/2012

The following Schedule C appointing authorities were revoked during November 2012.

Agency	Organization	Position title	Authorization No.	Vacate date
COMMISSION ON CIVIL RIGHTS.	Commissioners	Special Assistant to the Commissioner.	CC120002	11/4/2012
DEPARTMENT OF COMMERCE	Office of the Chief of Staff	Protocol Officer	DC110040	11/2/2012
DEPARTMENT OF EDUCATION	Office for Civil Rights	Senior Counsel	DB120023	11/3/2012
		Senior Counsel	DB120055	11/3/2012
	Office of Vocational and Adult Education.	Special Assistant	DB110119	11/17/2012
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and School Turnaround.	DB120003	11/20/2012
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Confidential Assistant	DH110118	11/7/2012
DEPARTMENT OF HOMELAND SECURITY.	U.S. Customs and Border Protection.	Counselor to the Commissioner	DM110203	11/2/2012
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public Affairs	Senior Speechwriter	DU090112	11/16/2012
DEPARTMENT OF JUSTICE	Office of Public Affairs	Speechwriter	DJ100015	11/16/2012
	Office of the Deputy Attorney General.	Deputy Chief of Staff and Senior Counsel.	DJ120012	11/17/2012
DEPARTMENT OF STATE	Office of the Under Secretary for Civilian Security, Democracy and Human Rights.	Staff Assistant	DS090140	11/2/2012
	Bureau for Education and Cultural Affairs.	Staff Assistant	DS110073	11/14/2012
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Senior Advisor for Alaskan Affairs.	DI090123	11/26/2012
DEPARTMENT OF THE NAVY	Office of the Under Secretary of the Navy.	Special Assistant	DN090080	11/18/2012
EXPORT–IMPORT BANK	Board of Directors	Senior Advisor to the Chairman	EB090008	11/16/2012
OFFICE OF THE SECRETARY OF DEFENSE.	Washington Headquarters Services.	Staff Assistant	DD110112	11/17/2012
	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD110122	11/17/2012
SMALL BUSINESS ADMINISTRATION.	Office of Capital Access	Special Advisor to the Associate Administrator for Capital Access.	SB110044	11/14/2012

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2013–01279 Filed 1–22–13; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This provides the consolidated notice of all agency specific excepted authorities, approved by the Office of Personnel Management (OPM), under Schedule A, B, and C, as of June 30, 2012, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resource Services, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the U.S. Office of Personnel Management (OPM) to publish notice of exceptions granted under Schedule A, B, and C. Under 5 CFR 213.103(a) it is required that all Schedule A, B, and C appointing authorities available for use by all agencies to be published as regulations in the **Federal Register** (FR) and the Code of Federal Regulations (CFR). Excepted appointing authorities established solely for use by one specific agency do not meet the standard of general applicability prescribed by the **Federal Register** Act for regulations published in either the FR or the CFR. Therefore, 5 CFR 213.103(b) requires monthly publication, in the Notices section of the **Federal Register**, of any Schedule A, B, and C appointing authorities applicable to a single agency. Under 5 CFR 213.103(c) it is required that a consolidated listing of all Schedule A, B, and C authorities, current as of June 30 of each year, be published annually in the Notices section of the **Federal Register** at *www.federalregister.gov/agencies/personnel-management-office*. That notice follows. Governmentwide authorities codified in the CFR are not printed in this notice. When making appointments under an agency-specific authority, agencies should first list the appropriate Schedule A, B, or C, followed by the applicable number, for example: Schedule A, 213.3104(x)(x). Agencies are reminded that all excepted authorities are subject to the provisions of 5 CFR part 302 unless specifically exempted by OPM at the time of approval.

OPM maintains continuing information on the status of all Schedule A, B, and C appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Senior Executive Resource Services, Office of Personnel Management, 1900 E Street NW., Room 7412, Washington, DC 20415, or by calling (202) 606–2246.

The following exceptions are current as of June 30, 2012.

Schedule A

03. Executive Office of the President (Sch. A, 213.3103)

(a) Office of Administration—

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget—

(1) Not to exceed 20 positions at grades GS–5/15.

(c) Council on Environmental Quality—

(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved)

(g) National Security Council—

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy—

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy—

(1) Not to exceed 18 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

04. Department of State (Sch. A, 213.3104)

(a) Office of the Secretary—

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) (Reserved)

(b)–(f) (Reserved)

(g) Bureau of Population, Refugees, and Migration—

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration—

(1) (Reserved)

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) (Reserved)

05. Department of the Treasury (Sch. A, 213.3105)

(a) Office of the Secretary—

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken.

(2) Covering no more than 100 positions supplementing permanent staff studying domestic economic and financial policy, with employment not to exceed 4 years.

(3) Not to exceed 100 positions in the Office of the Under Secretary for Terrorism and Financial Intelligence.

(4) Up to 35 temporary or time-limited positions at the GS–9 through 15 grade levels to support the organization, design, and stand-up activities for the Consumer Financial Protection Bureau (CFPB), as mandated by Public Law 111–203. This authority may be used for the following series: GS–201, GS–501, GS–560, GS–1035, GS–1102, GS–1150, GS–1720, GS–1801, and GS–2210. No new appointments may be made under this authority after July 21, 2011, the designated transfer date of the CFPB.

(b)–(d) (Reserved)

(e) Internal Revenue Service—

(1) Twenty positions of investigator for special assignments.

(f) (Reserved)

(g) (Reserved, moved to DOJ)

(h) Office of Financial Responsibility—

(1) Positions needed to perform investment, risk, financial, compliance, and asset management requiring unique qualifications currently not established by OPM. Positions will be in the Office of Financial Stability and the General Schedule (GS) grade levels 12–15 or Senior Level (SL), for initial employment not to exceed 4 years. No new appointments may be made under this authority after December 31, 2012.

06. Department of Defense (Sch. A, 213.3106)

(a) Office of the Secretary—

(1)–(5) (Reserved)

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT),

Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force)—

(1) Dependent School Systems overseas—Professional positions in Military Dependent School systems overseas.

(2) Positions in Attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided that

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) (Reserved)

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after October 1, 2012.

(11) Not to exceed 3,000 positions that require unique cyber security skills and knowledge to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis, and cyber-related infrastructure inter-dependency analysis. This authority may be used to make permanent, time-limited and temporary appointments in the following occupational series: Security (GS–0080), Intelligence Analysts (GS–0132), Computer Engineers (GS–0854), Electronic Engineers (GS–0855), Computer Scientists (GS–1550), Operations Research (GS–1515), Criminal Investigators (GS–1811), Telecommunications (GS–0391), and IT Specialists (GS–2210). Within the scope of this authority, the U.S. Cyber Command is also authorized to hire miscellaneous administrative and program (GS–0301) series when those positions require unique qualifications not currently established by OPM. All positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2012.

(c) (Reserved)

(d) General—

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical, or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences—

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University—

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency—

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisition University—

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany—

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial

employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii—

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

(k) Business Transformation Agency—

(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS–11 through GS–15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS–343: Logistics Management, GS–346; Financial Management Programs, GS–501; Accounting, GS–510; Computer Engineering, GS–854; Business and Industry, GS–1101; Operations Research, GS–1515; Computer Science, GS–1550; General Supply, GS–2001; Supply Program Management, GS–2003; Inventory Management, GS–2010; and Information Technology, GS–2210.

(l) Special Inspector General for Afghanistan—

(1) Positions needed to establish the Special Inspector General for Afghanistan Reconstruction. These positions provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated and otherwise made available for the reconstruction of Afghanistan. These positions are established at General Schedule (GS) grade levels for initial employment not to exceed 3 years and may, with prior approval of OPM, be extended for an additional period of 2 years. No new appointments may be made under this authority after January 31, 2011.

07. Department of the Army (Sch. A, 213.3107)

(a)–(c) (Reserved)

(d) U.S. Military Academy, West Point, New York—

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and Librarian when filled by an officer of the Regular Army retired from active service, and the Military Secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved)

(g) Defense Language Institute—

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA—

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved)

(j) U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey—

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas—

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

08. Department of the Navy (Sch. A, 213.3108)

(a) General—

(1)–(14) (Reserved)

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College—

(1) Professors, Instructors, and Teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and Social Counselors at the Naval Academy.

(c) Chief of Naval Operations—

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command

(1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) (Reserved)

(g) Office of Naval Research—

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

09. Department of the Air Force (Sch. A, 213.3109)

(a) Office of the Secretary—

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General—

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred eighty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Norton and McClellan Air Force Bases, California—

(1) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado—

(1) (Reserved)

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved)

(f) Air Force Office of Special Investigations—

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Wright-Patterson Air Force Base, Ohio—

(1) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special

Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama—

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio—

(1) Civilian deans and professors.

(j) Air Force Logistics Command—

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) Wright-Patterson AFB, Ohio—

(1) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) Air National Guard Readiness Center—

(1) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

10. Department of Justice (Sch. A, 213.3110)

(a) General—

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved)

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in 1-year increments for the duration of the in-country program.

(7) Positions necessary throughout DOJ, for the excepted service transfer of NDIC employees hired under Schedule A, 213.3110(d). Authority expires September 30, 2012.

(b) (Reserved, moved to DHS)

(c) Drug Enforcement Administration—

(1) (Reserved)

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) (Reserved, moved to Justice)

(e) Bureau of Alcohol, Tobacco, and Firearms—

(1) One hundred positions of Criminal Investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

11. Department of Homeland Security (Sch. A, 213.3111)

(a) (Revoked 11/19/2009)

(b) Law Enforcement Policy—

(1) Ten positions for oversight policy and direction of sensitive law enforcement activities.

(c) Homeland Security Labor Relations Board/Homeland Security Mandatory Removal Board—

(1) Up to 15 Senior Level and General Schedule (or equivalent) positions.

(d) General—

(1) Not to exceed 1,000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2012.

(e) Papago Indian Agency—Not to exceed 25 positions of Immigration and Customs Enforcement (ICE) Tactical Officers (Shadow Wolves) in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3105(b)(9))

12. Department of the Interior (Sch. A, 213.3112)

(a) General—

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators, and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the

Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) Indian Arts and Crafts Board—

(1) The Executive Director

(d) (Reserved)

(e) Office of the Assistant Secretary, Territorial and International Affairs—

(1) (Reserved)

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved)

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service—

(1) (Reserved)

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation—

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs—

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

13. Department of Agriculture (Sch. A, 213.3113)

(a) General—

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved)

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of Sec. 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved)

(b)–(c) (Reserved)

(d) Farm Service Agency—

(1) (Reserved)

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development—

(1) (Reserved)

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved)

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service—

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, peanut, and processed and fresh fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved)

(l) Food Safety and Inspection Service—

(1)–(2) (Reserved)

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration—

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation—

(1) Executive Director

14. Department of Commerce (Sch. A, 213.3114)

(a) General—

(1)–(2) (Reserved)

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved)

(d) Bureau of the Census—

(1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved)

(i) Office of the Under Secretary for International Trade—

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved)

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period not to exceed 2 years and may, with prior OPM approval, be extended for an additional 2 years.

(j) National Oceanic and Atmospheric Administration—

(1)–(2) (Reserved)

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved)

(l) National Telecommunication and Information Administration—

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

15. Department of Labor (Sch. A, 213.3115)

(a) Office of the Secretary—

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved)

(d) Employment and Training Administration—

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

16. Department of Health and Human Services (Sch. A, 213.3116)

(a) General—

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service—

(1) (Reserved)

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved)

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved)

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved)

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved)

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved)

(f) The President's Council on Physical Fitness—

(1) Four staff assistants.

17. Department of Education (Sch. A, 213.3117)

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

18. Board of Governors, Federal Reserve System (Sch. A, 213.3118)

(a) All positions

27. Department of Veterans Affairs (Sch. A, 213.3127)

(a) Construction Division—

(1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Alcoholism Treatment Units and Drug Dependence Treatment Centers—

(1) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals—

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Vietnam Era Veterans Readjustment Counseling Service—

(1) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

32. Small Business Administration (Sch. A, 213.3132)

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

33. Federal Deposit Insurance Corporation (Sch. A, 213.3133)

(a)–(b) (Reserved)

(c) Temporary or time-limited positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. Time-limited appointments under this authority may not exceed 7 years.

36. U.S. Soldiers' and Airmen's Home (Sch. A, 213.3136)

(a) (Reserved)

(b) Positions when filled by member-residents of the Home.

46. Selective Service System (Sch. A, 213.3146)

(a) State Directors

48. National Aeronautics and Space Administration (Sch. A, 213.3148)

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

55. Social Security Administration (Sch. A, 213.3155)

(a) Arizona District Offices—

(1) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) New Mexico—

(1) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Alaska—

(1) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

62. The President's Crime Prevention Council (Sch. A, 213.3162)

(a) (Reserved)

65. Chemical Safety and Hazard Investigation Board (Sch. A, 213.3165)

(a) (Reserved)

(b) (Reserved)

66. Court Services and Offender Supervision Agency of the District of Columbia (Sch. A, 213.3166)

(a) (Reserved, expired 3/31/2004)

70. Millennium Challenge Corporation (MCC) (Sch. A, 213.3170)

(a) (Reserved, expired 9/30/2007).

(b)

(1) Positions of Resident Country Directors and Deputy Resident Country Directors. The length of appointments will correspond to the length or term of the compact agreements made between the MCC and the country in which the MCC will work, plus one additional year to cover pre- and post-compact agreement related activities.

74. Smithsonian Institution (Sch. A, 213.3174)

(a) (Reserved)

(b) Smithsonian Tropical Research Institute—All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) National Museum of the American Indian—Positions at GS–15 and below requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, two Social Science Program Administrators, and one Middle East Studies Program Administrator.

78. Community Development Financial Institutions Fund (Sch. A, 213.3178)

(a) (Reserved, expired 9/23/1998).

80. Utah Reclamation and Conservation Commission (Sch. A, 213.3180)

(a) Executive Director

82. National Foundation on the Arts and the Humanities (Sch. A, 213.3182)

(a) National Endowment for the Arts—

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy, or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

90. African Development Foundation (Sch. A, 213.3190)

(a) One Enterprise Development Fund Manager. Appointment is limited to four years unless extended by OPM.

91. Office of Personnel Management (Sch. A, 213.3191)

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

94. Department of Transportation (Sch. A, 213.3194)

(a) U.S. Coast Guard—

(1) (Reserved)

(2) Lamplighters

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved)

(e) Maritime Administration—

(1)–(2) (Reserved)

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved)

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

95. Federal Emergency Management Agency (Sch. A, 213.3195)

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Schedule B

03. Executive Office of the President (Sch. B, 213.3203)

(a) (Reserved)

(b) Office of the Special Representative for Trade Negotiations—

(1) Seventeen positions of economist at grades GS–12 through GS–15.

04. Department of State (Sch. B, 213.3204)

(a) (1) One non-permanent senior level position to serve as Science and Technology Advisor to the Secretary.

(b)–(c) (Reserved)

(d) Seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved)

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

05. Department of the Treasury (Sch. B, 213.3205)

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved)

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) A total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

06. Department of Defense (Sch. B, 213.3206)

(a) Office of the Secretary—

(1) (Reserved)

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved)

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities—

(1) Seven positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office,

providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University—

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General—

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General—

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama—

(1) One Director, GM–15.

(g) Defense Security Assistance Agency—

All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

07. Department of the Army (Sch. B, 213.3207)

(a) U.S. Army Command and General Staff College—

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

08. Department of the Navy (Sch. B, 213.3208)

(a) Naval Underwater Systems Center, New London, Connecticut—

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) Armed Forces Staff College, Norfolk, Virginia—All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) Defense Personnel Security Research and Education Center—One Director and four Research Psychologists at the professor or GS–15 level.

(d) Marine Corps Command and Staff College—All civilian professor positions.

(e) Executive Dining facilities at the Pentagon—One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) (Reserved)

09. Department of the Air Force (Sch. B, 213.3209)

(a) Air Research Institute at the Air University, Maxwell Air Force Base, Alabama—Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1-, 2-, or 3- years indefinitely thereafter.

(b)–(c) (Reserved)

(d) Air University—Positions of Instructor or professional academic staff at the Air University associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) U.S. Air Force Academy, Colorado—One position of Director of Development and Alumni Programs, GS–301–13.

10. Department of Justice (Sch. B, 213.3210)

(a) Drug Enforcement Administration—

Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved)

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved)

(e) United States Trustees—Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

13. Department of Agriculture (Sch. B, 213.3213)

(a) Foreign Agricultural Service—

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General—

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

14. Department of Commerce (Sch. B, 213.3214)

(a) Bureau of the Census—

(1) (Reserved)

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through 12.

(b)–(c) (Reserved)

(d) National Telecommunications and Information Administration—

(1) Not to exceed 10 Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

15. Department of Labor (Sch. B, 213.3215)

(a) Administrative Review Board—Chair and a maximum of four additional Members.

(b) (Reserved)

(c) Bureau of International Labor Affairs—

(1) Positions in the Office of Foreign Relations, which are paid by outside

funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

17. Department of Education (Sch. B, 213.3217)

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

27. Department of Veterans Affairs (Sch. B, 213.3227)

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration (VA) supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

28. Broadcasting Board of Governors (Sch. B, 213.3228)

(a) International Broadcasting Bureau—

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

36. U.S. Soldiers' and Airmen's Home (Sch. B, 213.3236)

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

40. National Archives and Records Administration (Sch. B, 213.3240)

(a) Executive Director, National Historical Publications and Records Commission.

48. National Aeronautics and Space Administration (Sch. B, 213.3248)

(a) Not to exceed 40 positions of Astronaut Candidates at grades GS–11 through 15. Employment under this authority may not exceed 3 years.

55. Social Security Administration (Sch. B, 213.3255)

(a) (Reserved).

74. Smithsonian Institution (Sch. B, 213.3274)

(a) (Reserved).

(b) Freer Gallery of Art—

(1) Not to exceed four Oriental Art Restoration Specialists at grades GS–9 through GS–15.

76. Appalachian Regional Commission (Sch. B, 213.3276)

(a) Two Program Coordinators.

78. Armed Forces Retirement Home (Sch. B, 213.3278)

(a) Naval Home, Gulfport, Mississippi—

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

82. National Foundation on the Arts and the Humanities (Sch. B, 213.3282)

(a) (Reserved).

(b) National Endowment for the Humanities—

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

91. Office of Personnel Management (Sch. B, 213.3291)

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Federal Executive Institute—Twelve positions of faculty members at grades GS–13 through 15. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Assistant Secretary for Congressional Relations.	Staff Assistant	DA110105	7/13/2011
	Office of the Deputy Secretary	Special Assistant	DA110109	7/13/2011
	Office of the Under Secretary Farm and Foreign Agricultural Service.	Special Assistant	DA110113	7/14/2011
	Food and Nutrition Service	Chief of Staff	DA110110	7/15/2011
	Office of Communications	Deputy Director of Scheduling	DA110108	8/3/2011
	Office of the Under Secretary for Marketing and Regulatory Programs.	Special Assistant	DA110107	8/9/2011
	Office of the Under Secretary for Marketing and Regulatory Programs.	Confidential Assistant	DA110118	8/24/2011
	Office of the Assistant Secretary for Congressional Relations.	Special Assistant	DA110119	8/24/2011
	Office of the Under Secretary for Food Safety.	Special Assistant	DA110121	9/21/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Risk Management Agency	Confidential Assistant	DA110137	10/3/2011
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant	DA120006	10/25/2011
	Natural Resources Conservation Service.	Assistant Chief	DA120007	10/26/2011
	Farm Service Agency	Special Assistant	DA120008	11/3/2011
	Office of the Assistant Secretary for Civil Rights.	Senior Advisor	DA120004	11/4/2011
	Office of the Under Secretary for Rural Development.	Special Assistant	DA120011	11/4/2011
	Office of the Assistant Secretary for Administration.	Special Assistant	DA120015	11/4/2011
	Rural Utilities Service	Staff Assistant	DA120009	11/7/2011
	Foreign Agricultural Service	Confidential Assistant	DA120010	11/7/2011
	Rural Housing Service	Special Assistant	DA120016	11/10/2011
	Farm Service Agency	Special Assistant (Deputy Chief of Staff).	DA120017	12/1/2011
	Office of the Under Secretary for Rural Development.	Director, Legislative and Public Affairs Staff.	DA120022	1/17/2012
	Office of the Assistant Secretary for Congressional Relations.	Staff Assistant (Legislative Analyst)	DA120024	1/17/2012
		Staff Assistant	DA120021	1/24/2012
	Rural Housing Service	Chief of Staff	DA120025	1/24/2012
		Special Assistant	DA120026	1/24/2012
	Agricultural Marketing Service	Chief of Staff	DA120029	1/24/2012
	Office of the Under Secretary for Research, Education and Economics.	Chief of Staff	DA120032	2/7/2012
	Office of the Under Secretary for Marketing and Regulatory Programs.	Senior Advisor	DA120036	2/10/2012
	Office of the Under Secretary for Research, Education and Economics.	Confidential Assistant	DA120037	2/10/2012
	Rural Housing Service	Special Assistant	DA120039	2/17/2012
		Confidential Assistant	DA120034	2/24/2012
	Office of the Secretary	Confidential Assistant	DA120041	3/23/2012
	Office of the Under Secretary for Rural Development.	Special Assistant for Energy Programs.	DA120061	4/19/2012
	Office of the Secretary	Executive Assistant	DA120065	4/19/2012
	Office of Communications	Deputy Director of Scheduling	DA120063	4/24/2012
	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Advisor for Special Projects	DA120067	4/24/2012
	Office of the Assistant Secretary for Administration.	Confidential Assistant	DA120070	5/7/2012
	Foreign Agricultural Service	Senior Advisor	DA120071	5/7/2012
	Farm Service Agency	State Executive Director	DA120077	5/11/2012
	Food and Nutrition Service	Advisor for Special Projects	DA120078	5/16/2012
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant	DA120080	5/24/2012
		Special Assistant	DA120081	5/24/2012
	Office of Communications	Speech Writer	DA120084	6/11/2012
Department of Commerce	National Oceanic and Atmospheric Administration.	Special Assistant	DC110096	7/6/2011
		Deputy Director, Office of Legislative Affairs.	DC110104	7/13/2011
	Office of the General Counsel	Special Advisor	DC110105	8/2/2011
	Office of the Under Secretary	Deputy Chief of Staff for Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office.	DC110109	8/4/2011
		Special Assistant	DC110112	8/5/2011
	Office of the Chief of Staff	Advance Specialist	DC110115	8/12/2011
		Deputy Director of Advance	DC110117	8/16/2011
		Advance Specialist	DC110119	9/2/2011
	Assistant Secretary and Director General for United States and Foreign Commercial Service.	Executive Assistant	DC110120	9/2/2011
	Office of the Under Secretary	Special Assistant	DC110121	9/8/2011
	Office of the Chief Economist	Special Assistant	DC110124	9/22/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the General Counsel	Deputy General Counsel for Strategic Initiatives.	DC110125	9/23/2011
		Senior Advisor	DC110128	9/26/2011
	Office of Business Liaison	Deputy Director	DC110132	9/29/2011
	Office of the Under Secretary	Confidential Assistant and Scheduler.	DC110136	9/30/2011
	Office of the Assistant Secretary for Economic Development.	Senior Advisor	DC110135	10/7/2011
	Office of the Deputy Secretary	Special Assistant	DC120003	10/17/2011
	Office of the Chief of Staff	Executive Assistant	DC120005	10/21/2011
	Office of the Assistant Secretary for Economic Development.	Director, Office of Innovation and Entrepreneurship.	DC120012	11/1/2011
	International Trade Administration	Deputy Director of Public Affairs	DC120013	11/1/2011
	Office of Legislative and Intergovernmental Affairs.	Legislative Assistant	DC120015	11/18/2011
	Office of the Chief of Staff	Confidential Assistant	DC120022	12/6/2011
	Office of the Deputy Secretary	Special Assistant	DC120023	12/6/2011
	Office of the Under Secretary	Senior Advisor	DC120024	12/12/2011
	National Oceanic and Atmospheric Administration.	Special Assistant	DC120029	12/21/2011
	Import Administration	Special Advisor	DC120034	12/21/2011
	Office of the Deputy Secretary	Special Advisor	DC120035	12/22/2011
	National Oceanic and Atmospheric Administration.	Senior Policy Advisor	DC120036	1/5/2012
	Office of White House Liaison	Special Assistant	DC120039	1/5/2012
	Assistant Secretary for Market Access and Compliance.	Special Advisor	DC120038	1/9/2012
	Office of Public Affairs	Confidential Assistant	DC120051	1/9/2012
		Deputy Press Secretary	DC120042	1/11/2012
	Office of Assistant Secretary for Legislative and Intergovernmental Affairs.	Legislative Assistant	DC120043	1/11/2012
	Office of the Deputy Secretary	Special Assistant	DC120050	1/11/2012
	Office of Business Liaison	Special Assistant	DC120052	1/13/2012
	Office of the Chief of Staff	Special Assistant	DC120053	1/17/2012
	Office of Public Affairs	Director of Speechwriting	DC120055	1/20/2012
	Office of Executive Secretariat	Confidential Assistant	DC120057	1/25/2012
	Office of Legislative and Intergovernmental Affairs.	Confidential Assistant	DC120044	1/26/2012
	Office of the Under Secretary	Senior Advisor	DC120040	2/2/2012
		Senior Policy Advisor	DC120072	2/14/2012
	Office of Public Affairs	Senior Advisor for Communications and Policy.	DC120073	2/16/2012
		Director of Digital Strategy	DC120070	2/24/2012
	Office of the Chief of Staff	Director of Scheduling	DC120077	3/15/2012
	Assistant Secretary and Director General for United States and Foreign Commercial Service.	Special Advisor	DC120083	3/23/2012
	Office of the Under Secretary	Special Advisor	DC120084	3/23/2012
	Office of Public Affairs	Deputy Director of Public Affairs	DC120101	4/13/2012
	Patent and Trademark Office	Deputy Chief Communications Officer.	DC120106	4/17/2012
	Office of Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.	Associate Director for Oversight	DC120109	5/3/2012
	Minority Business Development Agency.	Special Advisor	DC120116	5/18/2012
	Office of Executive Secretariat	Deputy Director, Executive Secretariat.	DC120119	5/24/2012
	Office of the Under Secretary	Director of Congressional and Public Affairs.	DC120122	6/8/2012
	National Oceanic and Atmospheric Administration.	Director External Affairs	DC120123	6/13/2012
	Office of White House Liaison	Deputy Director	DC120126	6/15/2012
	Office of the Assistant Secretary for Manufacturing and Services.	Director, Office of Advisory Committees.	DC120133	6/29/2012
	Office of the Chief of Staff	Director of Scheduling and Advance.	DC120135	6/29/2012
Commission on Civil Rights	Commissioners	Special Assistant	CC110008	8/24/2011
		Special Assistant	CC120002	1/26/2012
Commodity Futures Trading Commission.	Office of the Chairperson	Administrative Assistant	CT120003	12/1/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
Council on Environmental Quality ...	Council on Environmental Quality	Special Assistant (Energy/Climate Change).	EQ110006	7/20/2011
		Special Assistant	EQ120001	1/12/2012
		Scheduler	EQ120002	5/11/2012
		Associate Director for Congressional Affairs.	EQ120003	5/11/2012
		Special Assistant (Legislative Affairs).	EQ120004	6/15/2012
Department of Defense	Washington Headquarters Services.	Staff Assistant	DD110112	7/20/2011
	Office of the General Counsel	Attorney-Advisor (General)	DD110104	7/29/2011
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant for African Affairs	DD110119	8/15/2011
	Office of the Under Secretary of Defense Office of the Secretary.	Staff Assistant	DD110117	8/22/2011
		Special Assistant for Protocol	DD110124	8/24/2011
		Confidential Assistant	DD110125	9/7/2011
	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD110122	9/19/2011
	Office of the Secretary of Defense	Deputy White House Liaison	DD120001	10/13/2011
	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD110134	10/21/2011
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant	DD110133	10/25/2011
	Office of the Assistant Secretary of Defense (Global Strategic Affairs).	Special Assistant	DD120005	10/25/2011
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant	DD120004	11/1/2011
	Office of the Secretary	Special Assistant	DD110135	11/3/2011
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD120010	11/18/2011
	Office of the Secretary	Advance Officer	DD110132	11/28/2011
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD120015	12/8/2011
		Special Assistant	DD120002	12/11/2011
		Special Assistant	DD120003	12/11/2011
	Office of the Secretary	Protocol Officer	DD120017	12/21/2011
		Advance Officer	DD120019	1/5/2012
	Deputy Under Secretary of Defense (Logistics and Materiel Readiness).	Confidential Assistant	DD120020	1/5/2012
	Office of the Under Secretary of Defense (Policy).	Special Assistant (Homeland Defense and Americas Security Affairs).	DD120022	1/5/2012
	Office of the Secretary	Advance Officer	DD120018	1/6/2012
	Office of Assistant Secretary of Defense (Public Affairs).	Assistant Press Secretary	DD120023	1/12/2012
	Office of the Secretary	Confidential Assistant	DD120025	1/12/2012
	Office of Assistant Secretary of Defense (Public Affairs).	Research Assistant	DD120026	1/12/2012
	Office of the Secretary	Director, Travel Operations	DD120032	3/7/2012
	Washington Headquarters Services.	Defense Fellow	DD120037	3/9/2012
	Office of Assistant Secretary of Defense (Public Affairs).	Assistant Press Secretary	DD120036	3/13/2012
	Office of the Director (Cost Assessment and Program Evaluation).	Special Assistant for Special Projects.	DD120038	3/30/2012
	Office of the Secretary	Special Assistant	DD120067	5/2/2012
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD120078	5/29/2012
	Office of the Assistant Secretary of Defense (Global Strategic Affairs).	Special Assistant (Cyber Policy)	DD120075	6/1/2012
	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Special Assistant	DD120080	6/20/2012
	Washington Headquarters Services.	Defense Fellow	DD120094	6/29/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of the Army	Office Assistant Secretary Army (Acquisition, Logistics and Technology).	Special Assistant	DW110047	7/1/2011
	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Special Assistant	DW110048	7/13/2011
	Office Assistant Secretary Army (Civil Works).	Special Assistant	DW120005	11/10/2011
	Office Deputy Under Secretary of Army (Operations Research).	Special Assistant	DW120015	2/22/2012
	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Special Assistant	DW120014	2/24/2012
Department of the Navy	Office of the Under Secretary of the Navy.	Director, Strategic Communications.	DN110038	7/22/2011
		Special Assistant	DN110041	11/8/2011
	Office of the Secretary	Special Assistant	DN120011	2/2/2012
		Special Advisor	DN120012	3/8/2012
	Office Assistant Secretary of Navy (Energy, Installations and Environment).	Special Assistant	DN120018	4/12/2012
Department of Education	Office of the Deputy Secretary	Director of Policy and Program Implementation.	DB110093	7/6/2011
	Office of the Secretary	Confidential Assistant	DB110096	7/6/2011
		Confidential Assistant	DB110097	7/6/2011
	Office of Postsecondary Education	Confidential Assistant	DB110099	7/14/2011
	Office of Vocational and Adult Education.	Confidential Assistant	DB110100	7/22/2011
	Office of Innovation and Improvement.	Confidential Assistant	DB110104	7/22/2011
	Office of Elementary and Secondary Education.	Confidential Assistant	DB110107	7/29/2011
	Office of the Secretary	Director, White House Liaison	DB110105	8/2/2011
		Special Advisor	DB110109	8/3/2011
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB110110	8/3/2011
	Office of Elementary and Secondary Education.	Confidential Assistant	DB110108	8/5/2011
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB110113	8/10/2011
	Office of the Deputy Secretary	Confidential Assistant	DB110116	9/9/2011
	Office of Vocational and Adult Education.	Special Assistant	DB110119	9/9/2011
	Office of the Secretary	Special Assistant	DB110115	9/19/2011
	Office of Planning, Evaluation and Policy Development.	Deputy Assistant Secretary for Planning and Policy Development.	DB110118	9/23/2011
	Office of the Deputy Secretary	Confidential Assistant	DB110122	9/26/2011
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and School Turnaround.	DB120003	10/18/2011
	Office of Communications and Outreach.	Confidential Assistant	DB120008	10/20/2011
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB120007	10/25/2011
	Office of the Secretary	Director, Strategic Partnerships	DB110120	11/2/2011
	Office of Innovation and Improvement.	Special Assistant	DB120010	11/2/2011
	Office of Legislation and Congressional Affairs.	Deputy Assistant Secretary	DB120005	11/3/2011
	Office for Civil Rights	Senior Counsel	DB120012	11/4/2011
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB120013	11/4/2011
	Office of the Under Secretary	Confidential Assistant	DB120009	11/7/2011
	Office of the General Counsel	Confidential Assistant	DB120017	11/10/2011
	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB120006	11/15/2011
	Office of the Under Secretary	Special Assistant	DB120021	11/18/2011
	Office of Legislation and Congressional Affairs.	Director, Strategic Outreach	DB120020	12/4/2011
	Office for Civil Rights	Senior Counsel	DB120023	12/5/2011
	Office of the Secretary	Special Assistant	DB110101	12/12/2011
	Office of Innovation and Improvement.	Associate Assistant Deputy Secretary.	DB120024	12/12/2011
	Office of Postsecondary Education	Confidential Assistant	DB120026	12/12/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Communications and Outreach.	Deputy Assistant Secretary, Intergovernmental Affairs.	DB120025	12/19/2011
	Office of the General Counsel	Special Assistant	DB120028	12/27/2011
	Office of the Under Secretary	Executive Director, White House Initiative on American Indian and Alaskan Native Education.	DB120031	12/27/2011
	Office of the Secretary	Confidential Assistant	DB120033	12/30/2011
		Director, Scheduling and Advance Staff.	DB120034	1/6/2012
	Office of the Under Secretary	Director, White House Initiative on Educational Excellence for Hispanic Americans.	DB120027	1/20/2012
	Office of the Secretary	Special Assistant	DB120046	1/27/2012
	Office of Innovation and Improvement.	Special Assistant	DB120048	1/27/2012
	Office of the Under Secretary	Deputy Director, White House Initiative on Educational Excellence for Hispanic Americans.	DB120049	1/27/2012
	Office for Civil Rights	Senior Counsel	DB120050	1/29/2012
	Office of the General Counsel	Special Counsel	DB120043	2/2/2012
		Special Counsel	DB120045	2/2/2012
	Office of Innovation and Improvement.	Senior Counsel	DB120044	2/7/2012
	Office of the Secretary	Deputy White House Liaison	DB120052	2/10/2012
	Office of the General Counsel	Chief of Staff	DB120053	2/23/2012
	Office of Communications and Outreach.	Special Assistant	DB120054	2/23/2012
	Office for Civil Rights	Senior Counsel	DB120055	2/24/2012
	Office of the Secretary	Confidential Assistant	DB120056	2/24/2012
	Office for Civil Rights	Confidential Assistant	DB120030	3/30/2012
	Office of the Secretary	Confidential Assistant	DB120040	3/30/2012
		Confidential Assistant	DB120041	3/30/2012
	Office of Innovation and Improvement.	Confidential Assistant	DB120062	4/4/2012
	Office for Civil Rights	Confidential Assistant	DB120047	4/13/2012
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB120064	4/19/2012
		Chief of Staff	DB120063	4/20/2012
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Early Learning.	DB120060	5/1/2012
	Office of the Under Secretary	Director, White House Initiative on American Indian and Alaskan Native Education.	DB120066	5/8/2012
	Office of Communications and Outreach.	Special Assistant	DB120065	5/17/2012
	Office of the Secretary	Special Assistant	DB120067	6/8/2012
	Office of Elementary and Secondary Education.	Special Assistant	DB120061	6/26/2012
	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB120070	6/26/2012
Department of Energy	Office of Management	Lead Advance Representative	DE110120	7/12/2011
	Office of the Deputy Secretary	Senior Advisor	DE110123	7/19/2011
	Office of Science	Special Assistant	DE110106	7/20/2011
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Deputy Assistant Secretary for House Affairs.	DE110125	8/2/2011
		Intergovernmental Affairs Advisor	DE110131	8/12/2011
	National Nuclear Security Administration.	Deputy Press Secretary	DE110135	8/22/2011
	Office of Management	Deputy Scheduler	DE110134	8/26/2011
	Office of Public Affairs	Deputy Press Secretary	DE110138	8/31/2011
	Loan Programs Office	Special Advisor, Front-End Nuclear	DE110137	9/15/2011
	Office of Fossil Energy	Senior Advisor	DE110140	9/16/2011
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist	DE110148	10/6/2011
	Office of Public Affairs	New Media Specialist	DE120013	10/21/2011
	Office of Management	Deputy Director of Scheduling and Advance.	DE120005	10/25/2011
	National Nuclear Security Administration.	Special Assistant	DE120009	10/25/2011
	Office of Management	Special Assistant	DE120014	11/4/2011
	Office of Public Affairs	Deputy Director	DE120021	12/1/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	.....	Press Secretary	DE120022	12/1/2011
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Special Assistant	DE120019	12/12/2011
	Office of Public Affairs	Speechwriter	DE120035	1/20/2012
	National Nuclear Security Administration.	Communications Coordinator	DE120037	1/20/2012
	Office of the Deputy Secretary	Special Assistant	DE120053	3/15/2012
	Office of the Secretary	Deputy White House Liaison	DE120054	3/20/2012
		Special Assistant	DE120058	3/22/2012
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist	DE120056	3/29/2012
	Office of Electricity Delivery and Energy Reliability.	Special Assistant	DE120057	3/29/2012
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor	DE120068	3/29/2012
	Office of the Secretary	Special Advisor	DE120067	3/30/2012
	Office of General Counsel	Staff Assistant	DE120061	4/3/2012
	Office of Public Affairs	Senior Digital Communications Strategist.	DE120059	4/4/2012
		Press Assistant	DE120060	4/6/2012
	Office of Assistant Secretary for Policy and International Affairs.	Special Assistant	DE120071	4/19/2012
	Office of the Secretary	Deputy Director for Outreach and Public Engagement.	DE120078	4/26/2012
	Office of the Under Secretary	Special Assistant	DE120075	4/27/2012
	Office of Environmental Management.	Communications Advisor	DE120077	4/27/2012
	Office of Assistant Secretary for Policy and International Affairs.	Special Assistant	DE120087	5/9/2012
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Assistant	DE120091	5/21/2012
	Office of the Secretary	Special Assistant	DE120094	6/1/2012
	Office of the General Counsel	Senior Advisor	DE120104	6/19/2012
	Office of Nuclear Energy	Special Advisor	DE120105	6/21/2012
	Office of Public Affairs	Deputy Press Secretary for Regional and Online Outreach.	DE120108	6/21/2012
		Deputy Press Secretary for Regional and Online Outreach.	DE120109	6/21/2012
	Office of Nuclear Energy	Special Assistant	DE120106	6/26/2012
Environmental Protection Agency	Office of the Administrator	Director of Scheduling and Advance.	EP110042	7/13/2011
	Office of the Associate Administrator for External Affairs and Environmental Education.	Press Secretary	EP110047	9/13/2011
		Deputy Associate Administrator	EP110046	9/14/2011
	Office of the Administrator	Deputy White House Liaison	EP120008	11/22/2011
	Operations Staff	Trip Coordinator	EP120010	12/1/2011
	.....	Special Representative	EP120005	12/2/2011
	Office of the Administrator	Deputy Press Secretary	EP120016	3/2/2012
	.....	White House Liaison	EP120028	4/13/2012
	Office of the Associate Administrator for External Affairs and Environmental Education.	Assistant Press Secretary	EP120029	4/13/2012
Export-Import Bank	Export-Import Bank	Director of Scheduling	EB110011	9/2/2011
	.....	Deputy Chief of Staff	EB110012	9/23/2011
	Board of Directors	Executive Secretary	EB120002	5/8/2012
	Export-Import Bank	Director of Scheduling	EB120003	5/21/2012
Federal Communications Commission.	Office of Legislative Affairs	Deputy Director	FC120001	11/3/2011
	Office Strategic Planning and Policy Analysis.	Special Advisor, Office Strategic Planning.	FC120005	12/16/2011
		Advisor	FC120007	3/20/2012
Federal Energy Regulatory Commission.	Office of the Chairman	Program Analyst	DR110007	7/11/2011
Federal Housing Finance Agency	Federal Housing Finance Agency	Confidential Assistant	HA120001	3/12/2012
General Services Administration	Office of the Administrator	White House Liaison	GS110048	7/15/2011
	The Heartland Region	Special Assistant	GS120002	11/7/2011
	Office of Congressional and Intergovernmental Affairs.	Legislative Policy Advisor	GS120003	12/12/2011
	Office of Administrative Services	Special Advisor	GS120010	2/28/2012
	Office of the Administrator	Communications Director	GS120012	3/30/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Mid-Atlantic Region	Regional Administrator	GS120017	4/27/2012
	Office of the Administrator	Special Assistant	GS120021	5/24/2012
Department of Health and Human Services.	Office of Public Affairs	Special Assistant	DH110110	7/6/2011
	Office of the Assistant Secretary for Health.	Confidential Assistant	DH110112	7/12/2011
	Office of the Assistant Secretary for Children and Families.	Senior Advisor	DH110111	7/22/2011
	Office of the Secretary	Special Assistant	DH110113	7/22/2011
	Office of Intergovernmental and External Affairs.	Director, Office of External Affairs	DH110115	7/22/2011
		Confidential Assistant	DH110116	7/22/2011
		Deputy Director	DH110119	7/22/2011
	Office of the Secretary	Director of Scheduling and Advance.	DH110120	7/22/2011
	Office of the Assistant Secretary for Public Affairs.	Confidential Assistant	DH110118	7/27/2011
		Director of Public Health Initiatives	DH110125	8/5/2011
	Health Resources and Services Administration Office of the Administrator.	Special Assistant	DH110128	9/13/2011
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH110130	9/21/2011
		Special Assistant	DH110137	9/23/2011
		Director of Business Outreach	DH110139	9/23/2011
		Regional Director, Chicago, Illinois-Region V.	DH110135	10/4/2011
	Office of the Secretary	Deputy Director for Scheduling and Advance.	DH110140	10/21/2011
	Office of the Assistant Secretary for Public Affairs.	Communications Director for Public Health.	DH120004	11/1/2011
	Office of the Assistant Secretary for Legislation.	Special Assistant for Discretionary Health Programs.	DH120010	11/8/2011
		Confidential Assistant for Mandatory Health Programs.	DH120011	11/10/2011
	Office of the Assistant Secretary for Public Affairs.	Senior Advisor	DH120038	1/26/2012
	Office of the Commissioner	Senior Advisor	DH120037	1/27/2012
	Office of the Secretary	Confidential Assistant	DH120046	2/7/2012
		Senior Advisor	DH120047	2/14/2012
		Advance Lead	DH120043	2/16/2012
		Advance Lead	DH120044	2/16/2012
	Office of the Deputy Secretary	Chief of Staff	DH120045	2/16/2012
	Office of the Secretary	Deputy White House Liaison for Political Personnel, Boards and Commissions.	DH120052	2/16/2012
	Office of the Assistant Secretary for Planning and Evaluation.	Senior Policy Analyst	DH120053	2/16/2012
	Office of the Assistant Secretary for Public Affairs.	Special Assistant	DH120059	3/19/2012
	Administration for Community Living.	Special Assistant	DH120068	4/6/2012
	Centers for Medicare and Medicaid Services.	Senior Advisor	DH120069	4/6/2012
	Office of the Assistant Secretary for Children and Families.	Confidential Assistant-Departmental Liaison for Early Childhood Development.	DH120098	4/13/2012
		Confidential Assistant	DH120099	4/13/2012
	Office of the Secretary	Confidential Assistant	DH120100	4/13/2012
	Office of the Assistant Secretary for Children and Families.	Confidential Assistant for Policy, Administration for Children and Families.	DH120101	4/17/2012
	Office of the Assistant Secretary for Public Affairs.	Press Secretary	DH120105	4/23/2012
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH120110	5/30/2012
	Administrator for Children, Youth and Families/Office of Commissioner.	Special Assistant	DH120114	6/1/2012
	Office of Intergovernmental and External Affairs.	Special Assistant	DH120117	6/1/2012
		Deputy Director for Regional Outreach.	DH120109	6/13/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Public Affairs.	Director for Health Care Initiatives	DH120111	6/13/2012
	Office of the Assistant Secretary for Legislation.	Confidential Assistant	DH120112	6/13/2012
Department of Homeland Security	U.S. Customs and Border Protection.	Assistant Commissioner for Public Affairs.	DM110222	7/14/2011
	Office of the Assistant Secretary for Intergovernmental Affairs.	State and Local Coordinator	DM110224	7/14/2011
	Office of the Assistant Secretary for Public Affairs.	Deputy Press Secretary	DM110234	8/5/2011
	U.S. Immigration and Customs Enforcement.	Special Assistant	DM110235	8/5/2011
	Office of the Assistant Secretary for Public Affairs.	Press Secretary	DM110237	8/5/2011
	Office of the Assistant Secretary for Policy.	Business Liaison	DM110239	8/5/2011
		Policy Analyst	DM110238	8/15/2011
	Office of the Chief of Staff	Deputy Director of Scheduling	DM110246	9/1/2011
	Office of the Assistant Secretary for Public Affairs.	Deputy Press Secretary	DM110252	9/1/2011
	U.S. Customs and Border Protection.	Policy Advisor	DM110255	9/8/2011
	Office of the Assistant Secretary for Policy.	Chief of Staff	DM110253	9/9/2011
	U.S. Citizenship and Immigration Services.	Senior Counselor	DM110262	9/9/2011
		Special Assistant	DM110272	9/28/2011
	Federal Emergency Management Agency.	Senior Advisor	DM110274	10/11/2011
	Office of the Assistant Secretary for Policy.	Deputy Executive Director	DM110275	10/11/2011
		Director	DM120007	10/21/2011
	Office of the Executive Secretary for Operations and Administration.	Deputy Secretary Briefing Book Coordinator.	DM120002	10/27/2011
	Office of the Assistant Secretary for Public Affairs.	Speechwriter	DM120020	11/2/2011
	Federal Emergency Management Agency.	Senior Advisor	DM120019	11/4/2011
		Director of Public Affairs	DM120024	11/9/2011
	Office of the Chief of Staff	Advance Representative	DM120025	11/9/2011
	Office of the Assistant Secretary for Public Affairs.	Director of Special Projects	DM120026	11/9/2011
	Office of the Under Secretary for Science and Technology.	Special Assistant for Science and Technology.	DM120027	11/9/2011
	Office of the Under Secretary for Management.	Senior Advisor	DM120034	11/30/2011
	Office of the Under Secretary for Intelligence and Analysis.	Liaison for Community Partnership and Strategic Engagement.	DM120013	12/16/2011
	Office of the Assistant Secretary for Policy.	Policy Analyst	DM120039	1/3/2012
	Office of the Under Secretary for National Protection and Programs Directorate.	Cybersecurity Strategist	DM120050	1/17/2012
	Office of the Assistant Secretary for Intergovernmental Affairs.	Confidential Assistant	DM120061	2/9/2012
	Office of the Assistant Secretary for Policy.	Executive Assistant	DM120066	2/13/2012
	Office of the Assistant Secretary for Intergovernmental Affairs.	Local Affairs Coordinator	DM120073	3/13/2012
	Office of the Chief of Staff	Deputy White House Liaison	DM120075	3/13/2012
	Federal Emergency Management Agency.	Director of Public Affairs	DM120076	3/13/2012
	U.S. Customs and Border Protection.	Advisor	DM120078	3/15/2012
	Office of the Assistant Secretary for Policy.	Advisor for International Affairs and Chief Diplomatic Officer.	DM120079	3/15/2012
	U.S. Customs and Border Protection.	Senior Advisor	DM120085	3/23/2012
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM120084	3/29/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Under Secretary for National Protection and Programs Directorate.	Senior Advisor for Public Affairs	DM120086	3/29/2012
	Federal Emergency Management Agency.	Associate Director of Public Affairs/Press Secretary.	DM120089	3/30/2012
	Office of the Assistant Secretary for Public Affairs.	Deputy Press Secretary	DM120114	4/20/2012
	Privacy Officer	Special Assistant	DM120120	5/8/2012
	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM120123	5/16/2012
	Office of the Chief of Staff	Special Assistant	DM120126	5/22/2012
		Special Assistant	DM120131	6/1/2012
	Federal Emergency Management Agency.	Director of Legislative Affairs	DM120132	6/8/2012
Department of Housing and Urban Development.	Office of the Secretary	Special Policy Advisor	DU110023	7/8/2011
		Senior Advisor	DU110029	7/28/2011
	Office of Public Affairs	Deputy Press Secretary	DU110030	7/29/2011
	Office of the Administration	Scheduling Assistant	DU110032	8/26/2011
	Office of Housing	Program Analyst	DU110033	8/26/2011
	Office of Public Affairs	Press Secretary	DU120002	11/8/2011
	Office of Congressional and Intergovernmental Relations.	Senior Legislative Advisor	DU120007	11/8/2011
		Congressional Relations Specialist	DU120006	11/9/2011
		Deputy Chief of Staff	DU120009	11/15/2011
		Intergovernmental Relations Specialist.	DU120005	11/30/2011
		Congressional Relations Officer	DU120011	11/30/2011
	Office of Public Affairs	Assistant Press Secretary	DU120014	12/21/2011
	Office of the Chief Human Capital Officer.	Director of Scheduling	DU120013	12/23/2011
	Office of Housing	Senior Policy Advisor	DU120015	12/23/2011
	Office of Public Affairs	Assistant Press Secretary	DU120023	1/9/2012
	Office of the Secretary	Director of Advance	DU120021	2/28/2012
		Financial Analyst for Housing Finance.	DU120025	3/28/2012
	Office of Public Affairs	Deputy Assistant Secretary for Public Engagement.	DU120028	4/3/2012
	Office of Congressional and Intergovernmental Relations.	Deputy Assistant Secretary for Intergovernmental Affairs.	DU120029	4/3/2012
	Office of Public Affairs	Senior Advisor for Public Engagement.	DU120033	5/4/2012
	Office of Congressional and Intergovernmental Relations.	Congressional Relations Officer	DU120036	5/8/2012
	Office of the Secretary	Special Assistant	DU120034	5/9/2012
		Special Assistant	DU120037	5/22/2012
	Office of Congressional and Intergovernmental Relations.	General Deputy Assistant Secretary for Congressional and Intergovernmental Relations.	DU120040	6/22/2012
Department of the Interior	Secretary's Immediate Office	Press Secretary	DI110073	7/15/2011
	Office of the Deputy Secretary	Special Assistant	DI110079	8/22/2011
	Office of Congressional and Legislative Affairs.	Deputy Director	DI110086	9/26/2011
	Bureau of Safety and Environmental Enforcement.	Senior Advisor	DI110089	9/28/2011
	Secretary's Immediate Office	Senior Advisor	DI110087	10/3/2011
	Assistant Secretary of Indian Affairs.	Senior Advisor-Indian Affairs	DI110090	10/3/2011
	Bureau of Ocean Energy Management.	Science Advisor	DI110097	10/4/2011
	Bureau of Safety and Environmental Enforcement.	Special Assistant	DI110098	10/4/2011
	Secretary's Immediate Office	Communications Advisor	DI110094	10/6/2011
	Bureau of Ocean Energy Management.	Senior Advisor	DI120003	10/6/2011
	Office of the Deputy Secretary	Advisor	DI120001	10/12/2011
	Bureau of Ocean Energy Management.	Special Assistant	DI120007	10/20/2011
	Secretary's Immediate Office	Program Coordinator	DI120008	11/1/2011
		White House Liaison	DI120009	11/10/2011
		Program Coordinator	DI120014	12/22/2011
		Special Assistant	DI120017	12/30/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Assistant	DI120018	12/30/2011
		Deputy Director	DI120019	12/30/2011
		Trip Director	DI120025	1/23/2012
		Special Assistant	DI120023	1/26/2012
	Office of the Solicitor	Counselor	DI120026	1/27/2012
	Secretary's Immediate Office	Special Assistant	DI120028	3/12/2012
	Bureau of Safety and Environmental Enforcement.	Special Assistant	DI120033	4/6/2012
	Office of the Deputy Secretary	Counselor	DI120035	4/19/2012
	Assistant Secretary of Indian Affairs.	Senior Advisor	DI120044	4/26/2012
	Assistant Secretary of Fish and Wildlife and Parks.	Special Assistant Fish and Wildlife and Parks.	DI120045	5/3/2012
	Secretary's Immediate Office	Special Assistant	DI120031	5/4/2012
		Deputy Director of Scheduling	DI120046	5/16/2012
		Deputy Communications Director	DI120048	5/21/2012
	Assistant Secretary of Policy, Management and Budget.	Special Assistant	DI120050	5/22/2012
	Secretary's Immediate Office	Press Assistant	DI120051	6/1/2012
	Office of Congressional and Legislative Affairs.	Special Assistant	DI120052	6/19/2012
	Secretary's Immediate Office	Deputy Director, Office of Intergovernmental Affairs and Director of Latino Affairs.	DI120049	6/26/2012
Department of Justice	Antitrust Division	Senior Counsel	DJ110093	7/6/2011
	Executive Office for United States Attorneys.	Counsel	DJ110098	7/8/2011
	Civil Rights Division	Counsel	DJ110103	7/19/2011
	Environment and Natural Resources Division.	Counsel	DJ110105	7/29/2011
	Civil Rights Division	Senior Counsel	DJ110102	8/18/2011
	Office of Public Affairs	Press Secretary	DJ110112	8/18/2011
	Office of the Deputy Attorney General.	Senior Counsel	DJ110120	9/22/2011
	Office of Public Affairs	Press Assistant	DJ110121	10/6/2011
		Confidential Assistant	DJ120003	10/17/2011
		Deputy Director	DJ120009	11/1/2011
	Office of the Attorney General	White House Liaison	DJ120008	11/9/2011
	Office of the Deputy Attorney General.	Deputy Chief of Staff and Senior Counsel.	DJ120012	11/29/2011
	Foreign Claims Settlement Commission.	Special Assistant	DJ120013	11/30/2011
	Executive Office for United States Attorneys.	Counsel	DJ120015	12/6/2011
	Antitrust Division	Chief of Staff and Counsel	DJ120018	1/4/2012
	Civil Division	Senior Counsel	DJ120021	1/12/2012
	National Security Division	Counsel	DJ120024	1/30/2012
	Antitrust Division	Senior Counsel	DJ120028	2/22/2012
	Office on Violence Against Women	Special Assistant	DJ120030	3/2/2012
	Office of Public Affairs	Senior Public Affairs Specialist	DJ120031	3/8/2012
	Office of Justice Programs	Senior Advisor	DJ110052	4/24/2012
	Office of the Associate Attorney General.	Attorney Advisor	DJ120075	5/11/2012
	Civil Division	Counsel and Chief of Staff	DJ120073	5/17/2012
Department of Labor	Office of the Deputy Secretary	Policy Advisor	DL110029	7/13/2011
	Office of the Secretary	Special Assistant	DL110044	8/2/2011
	Office of Disability Employment Policy.	Special Assistant	DL110047	8/2/2011
	Office of Public Affairs	Special Assistant	DL110048	8/2/2011
		Chief Economist	DL110053	8/31/2011
	Office of Congressional and Intergovernmental Affairs.	Deputy Director	DL110040	9/7/2011
		Legislative Officer	DL110041	9/7/2011
		Senior Legislative Officer	DL110042	9/7/2011
	Wage and Hour Division	Special Assistant	DL110058	9/9/2011
	Office of the Secretary	Deputy Director of Recovery for Auto Communities and Workers.	DL110059	9/9/2011
	Office of the Assistant Secretary for Policy.	Policy Advisor	DL110057	9/21/2011
	Office of the Secretary	Special Assistant	DL120001	10/6/2011
		Policy Advisor	DL120002	10/14/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Administration and Management.	Special Assistant	DL120003	10/14/2011
	Office of Congressional and Intergovernmental Affairs.	Legislative Assistant	DL120009	11/3/2011
	Employee Benefits Security Administration.	Special Assistant	DL120011	11/3/2011
	Office of the Secretary	Staff Assistant	DL120013	11/18/2011
		Special Assistant	DL120015	11/21/2011
	Employment and Training Administration.	Senior Policy Advisor	DL120020	12/16/2011
	Office of Public Affairs	Special Assistant	DL120023	1/13/2012
	Bureau of International Labor Affairs.	Senior Policy Advisor for International Labor Affairs.	DL120024	1/31/2012
	Office of the Secretary	Special Assistant	DL120027	2/17/2012
	Office of Federal Contract Compliance Programs.	Special Assistant	DL120030	2/17/2012
	Office of Congressional and Intergovernmental Affairs.	Regional Representative	DL120031	2/24/2012
	Office of the Secretary	Special Assistant	DL120035	3/8/2012
	Employee Benefits Security Administration.	Senior Advisor	DL120036	3/9/2012
	Office of Public Affairs	Special Assistant	DL120037	3/15/2012
	Wage and Hour Division	Chief of Staff	DL120039	3/23/2012
	Office of the Secretary	Scheduler	DL120048	4/20/2012
		Special Assistant	DL120051	5/3/2012
	Office of the Deputy Secretary	Senior Policy Advisor	DL120049	5/4/2012
	Office of Congressional and Intergovernmental Affairs.	Legislative Officer	DL120065	6/25/2012
		Chief of Staff	DL120058	6/27/2012
		Senior Legislative Officer	DL120059	6/27/2012
National Aeronautics and Space Administration.	Office of the Administrator	Senior Advisor	NN110053	7/6/2011
	Office of Communications	Press Secretary	NN110060	9/22/2011
	Office of General Counsel	Special Assistant	NN110062	9/29/2011
		Special Assistant	NN120002	10/7/2011
	Office of Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist	NN120010	12/15/2011
	Legislative Affairs Specialist	NN120013	2/1/2012	
		Legislative Affairs Specialist	NN120048	4/6/2012
National Endowment for the Arts	National Endowment for the Arts	Senior Advisor	NA110005	8/30/2011
		Scheduler	NA120001	12/8/2011
National Endowment for the Humanities.	National Endowment for the Humanities.	Special Assistant	NH110004	8/5/2011
		Special Assistant	NH120001	4/3/2012
National Mediation Board	National Mediation Board	Confidential Assistant	NM120001	10/11/2011
National Transportation Safety Board.	Office of Board Members	Special Assistant	TB120002	12/19/2011
Office of Management and Budget	Office of the Director	Confidential Assistant	BO110027	7/19/2011
		Executive Assistant	BO110029	8/5/2011
	National Security Programs	Confidential Assistant	BO110030	8/25/2011
	Office of the Director	Confidential Assistant	BO110032	8/26/2011
	Office of Federal Financial Management.	Confidential Assistant	BO110033	9/9/2011
	Office of the Director	Confidential Assistant	BO110034	9/22/2011
		Senior Advisor	BO120001	11/10/2011
	Communications	Deputy Associate Director for Communications and Management.	BO120003	12/7/2011
	Office of the Director	Confidential Assistant	BO120008	12/16/2011
		Special Assistant	BO120004	12/23/2011
	Communications	Deputy Associate Director for Strategic Planning and Communications.	BO110036	2/9/2012
	Office of Management and Budget	Confidential Assistant	BO120013	2/16/2012
	Office of the Director	Confidential Assistant	BO120016	3/7/2012
	Natural Resource Programs	Confidential Assistant	BO120019	3/29/2012
	Health Division	Confidential Assistant	BO120021	3/30/2012
	Office of the Director	Confidential Assistant	BO120026	5/7/2012
		Confidential Assistant	BO120027	6/7/2012
Office of National Drug Control Policy.	Intergovernmental Public Liaison	Associate Director	QQ120003	6/22/2012
Office of Personnel Management	Office of the Director	Special Assistant	PM110014	8/9/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Congressional and Legislative Affairs.	Congressional Relations Officer	PM110017	8/9/2011
		Congressional Relations Officer	PM110018	8/9/2011
	Communications and Public Liaison.	Strategic Communications Specialist.	PM110023	9/6/2011
	Office of the Director	Director of Advance	PM120005	12/19/2011
	Congressional and Legislative Affairs.	Senior Advisor for Learning and Mentoring.	PM120006	12/19/2011
	Office of the Director	Senior Advisor for Innovation	PM120007	12/19/2011
	Communications and Public Liaison.	Communications Specialist	PM120009	12/21/2011
	Congressional and Legislative Affairs.	Congressional Relations Officer	PM120008	12/22/2011
	Communications and Public Liaison.	Speechwriter	PM120011	2/7/2012
	Planning and Policy Analysis	Deputy Performance Improvement Officer.	PM120013	3/7/2012
	Congressional and Legislative Affairs.	Deputy Director	PM120017	6/26/2012
Office of Science and Technology Policy.	Office of Science and Technology Policy.	Confidential Assistant	TS120001	11/21/2011
		Confidential Assistant	TS120003	4/27/2012
Office of the United States Trade Representative.	Public and Media Affairs	Public Affairs Specialist	TN110012	2/29/2012
Pension Benefit Guaranty Corporation.	Office of the Executive Director	Deputy Director for Policy	BG110007	9/26/2011
Presidents Commission on White House Fellowships.	Presidents Commission on White House Fellowships.	Special Assistant	WH110001	8/15/2011
		Communication Associate	WH120001	11/2/2011
		Special Assistant	WH120002	3/5/2012
Securities and Exchange Commission.	Division of Corporation Finance	Managing Executive	SE110006	7/22/2011
	Office of Compliance Inspections and Examinations.	Confidential Assistant	SE110007	7/22/2011
	Office of the Chairman	Special Assistant	SE110008	8/1/2011
		Confidential Assistant	SE120002	12/11/2011
	Division of Corporation Finance	Confidential Assistant	SE120001	12/21/2011
Selective Service System	Office of the Director	Executive Officer/Chief of Staff	SS120003	6/11/2012
Small Business Administration	Office of Native American Affairs	Assistant Administrator for Native American Affairs.	SB110034	7/15/2011
	Office of Government Contracting and Business Development.	Special Advisor for Government Contracting and Business Development.	SB110039	7/28/2011
	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator	SB110040	7/29/2011
	Office of the Administrator	Senior Advisor	SB110041	7/29/2011
		Director of Scheduling and Operations.	SB110043	8/4/2011
	Office of Capital Access	Special Advisor	SB110044	8/4/2011
	Office of International Trade	Associate Administrator	SB110045	8/4/2011
	Office of Communications and Public Liaison.	Assistant Administrator	SB110046	8/18/2011
		Special Advisor for Public Liaison	SB110049	9/9/2011
	Office of the Administrator	Special Assistant	SB110050	9/23/2011
	Office of Field Operations	Senior Advisor for Field Operations	SB120002	10/19/2011
	Office of the Administrator	Policy Advisor	SB120003	10/19/2011
	Office of Communications and Public Liaison.	Deputy Assistant Administrator	SB120009	1/6/2012
	Office of the Administrator	Senior Policy Advisor	SB120011	2/14/2012
	Office of Communications and Public Liaison.	Senior Speechwriter	SB120016	3/7/2012
		Press Secretary	SB120017	3/19/2012
	Office of the Administrator	Special Advisor	SB120019	3/29/2012
	Office of Communications and Public Liaison.	Deputy Press Secretary	SB120020	3/29/2012
	Office of Government Contracting and Business Development.	Special Advisor	SB120022	5/7/2012
	Office of Entrepreneurial Development.	Senior Advisor	SB120024	6/19/2012
Department of State	Office of the Under Secretary for Civilian Security, Democracy and Human Rights.	Special Adviser for Global Youth Issues.	DS110097	7/1/2011
	Foreign Policy Planning Staff	Staff Assistant	DS110099	7/11/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS110100	7/11/2011
	Bureau for Education and Cultural Affairs.	Staff Assistant	DS110098	8/31/2011
	Office of the Chief of Protocol	Assistant Chief for Diplomatic Partnerships.	DS110126	9/2/2011
	Bureau of Public Affairs	Deputy Assistant Secretary for Digital Media.	DS110129	9/2/2011
	Bureau of Economic and Business Affairs.	Special Assistant	DS110131	9/19/2011
	Office of the Under Secretary for Political Affairs.	Staff Assistant	DS110134	9/23/2011
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS110130	9/29/2011
	Bureau of Arms Control, Verification, and Compliance.	Public Affairs Specialist	DS110112	10/4/2011
	Office of the Deputy Secretary for Management and Resources.	Senior Advisor	DS110135	10/14/2011
	Office of the Under Secretary for Management.	Staff Assistant	DS120011	11/3/2011
	Office of the Chief of Protocol	Protocol Officer (DPD)	DS120004	11/8/2011
	Office of the Deputy Secretary for Management and Resources.	Staff Assistant	DS120016	12/12/2011
	Bureau of Public Affairs	Staff Assistant	DS120019	12/16/2011
	Office of the Under Secretary for Public Diplomacy and Public Affairs.	Senior Advisor	DS120020	1/12/2012
	Bureau of Population, Refugees and Migration.	Deputy Assistant Secretary	DS120027	1/18/2012
	Office of the Chief of Protocol	Senior Protocol Officer	DS120022	2/7/2012
		Protocol Officer	DS120061	3/30/2012
	Office of the Special Envoy for Climate Change.	Senior Advisor	DS120065	4/2/2012
	Bureau of Legislative Affairs	Legislative Management Officer	DS120063	4/4/2012
	Bureau of Conflict and Stabilization Operations.	Director of Overseas Operations	DS120069	4/19/2012
		Director of Policy and Programs	DS120068	4/20/2012
	Bureau of Legislative Affairs	Deputy Assistant Secretary	DS120071	4/20/2012
	Office of the Under Secretary for Arms Control and International Security Affairs.	Staff Assistant	DS120073	5/1/2012
	Bureau of Population, Refugees and Migration.	Staff Assistant	DS120075	5/17/2012
	Bureau of Public Affairs	Public Affairs Officer	DS120076	5/18/2012
	Bureau of International Security and Nonproliferation.	Senior Advisor	DS120081	5/30/2012
	Office of the Chief of Protocol	Protocol Officer	DS120088	5/30/2012
	Bureau of Conflict and Stabilization Operations.	Special Assistant	DS120087	6/1/2012
	Office of the Under Secretary for Civilian Security, Democracy and Human Rights.	Special Advisor for Global Youth Issues.	DS120091	6/1/2012
Trade and Development Agency	Office of the Director	Chief of Staff	TD120001	3/1/2012
Department of Transportation	Associate Administrator for Policy and Governmental Affairs.	Associate Administrator	DT110051	8/15/2011
	Assistant Secretary for Governmental Affairs.	Associate Director	DT110053	9/2/2011
	Secretary	Associate Director for Scheduling and Advance.	DT110055	9/23/2011
	Secretary	Scheduler	DT110056	9/26/2011
	Assistant Secretary for Governmental Affairs.	Deputy Assistant Secretary	DT120002	10/7/2011
		Associate Director	DT120013	12/2/2011
	General Counsel	Associate General Counsel	DT120015	12/2/2011
	Immediate Office of the Administrator.	Associate Administrator for Governmental, International, and Public Affairs.	DT120017	1/3/2012
	Office of Congressional Affairs	Associate Director	DT120019	1/3/2012
	Assistant Secretary for Transportation Policy.	Deputy Director for Public Engagement.	DT120025	1/13/2012
	Public Affairs	Deputy Director	DT120023	1/17/2012
	Assistant Secretary for Transportation Policy.	Associate Director	DT120024	1/17/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Associate Administrator for Public Affairs.	Associate Administrator for Communications and Legislative Affairs.	DT120018	1/26/2012
	Public Affairs	Press Secretary	DT120026	1/26/2012
	Secretary	Advance Specialist	DT120027	1/26/2012
	Administrator	Director for Governmental Affairs	DT120032	2/8/2012
	Public Affairs	Associate Director for Speechwriting.	DT120057	5/7/2012
	Secretary	Special Assistant for Scheduling and Advance.	DT120066	6/15/2012
	Public Affairs	Deputy Press Secretary	DT120070	6/19/2012
Department of the Treasury	Assistant Secretary (Legislative Affairs).	Special Assistant	DY110116	7/22/2011
	Under Secretary for International Affairs.	Senior Advisor	DY110120	7/28/2011
	Assistant Secretary (Legislative Affairs).	Special Assistant	DY110125	8/12/2011
	Assistant Secretary for Financial Markets.	Senior Advisor	DY110129	8/14/2011
	Assistant Secretary (Public Affairs)	Spokesperson	DY110131	8/19/2011
	Secretary of the Treasury	Advance Specialist	DY110132	8/31/2011
	Assistant Secretary (Economic Policy).	Special Assistant	DY110134	9/7/2011
	Secretary of the Treasury	Senior Advisor	DY110138	9/9/2011
	Under Secretary for Domestic Finance.	Senior Advisor	DY110139	9/9/2011
	Secretary of the Treasury	White House Liaison	DY120009	10/21/2011
		Senior Advisor	DY120010	10/27/2011
		Advance Specialist	DY120017	11/4/2011
	Assistant Secretary (Public Affairs)	Senior Advisor	DY120016	11/15/2011
		Press Assistant	DY120028	11/30/2011
	Assistant Secretary for Financial Institutions.	Senior Advisor	DY120029	12/5/2011
	Assistant Secretary (Public Affairs)	Media Affairs Specialist	DY120031	12/7/2011
		Spokesperson	DY120032	12/12/2011
		Special Assistant	DY120030	12/23/2011
	Secretary of the Treasury	Deputy Executive Secretary	DY120057	1/26/2012
	Assistant Secretary (Public Affairs)	Spokesperson	DY120059	2/7/2012
		Senior Advisor	DY120062	2/16/2012
	Under Secretary for International Affairs.	Senior Advisor	DY120064	2/22/2012
		Managing Director, China Operations.	DY120068	3/22/2012
	Assistant Secretary for Financial Stability.	Senior Advisor	DY120093	6/1/2012
	Assistant Secretary (Economic Policy).	Deputy Assistant Secretary for Microeconomic Analysis.	DY120094	6/1/2012
	Assistant Secretary (Public Affairs)	Spokesperson	DY120097	6/19/2012
		New Media Specialist	DY120098	6/21/2012
United States International Trade Commission.	Office of the Chairman	Staff Assistant	TC120003	2/1/2012
		Staff Assistant	TC120004	2/1/2012
Department of Veterans Affairs	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV110084	7/28/2011
	Office of the Secretary and Deputy	Special Assistant	DV120023	3/7/2012
		Special Assistant	DV120032	4/10/2012
		Special Assistant, White House Liaison.	DV120056	5/24/2012

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p.218.

Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2013–01289 Filed 1–22–13; 8:45 am]

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POSTAL REGULATORY COMMISSION

[Docket No. CP2013–43; Order No. 1624]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request concerning an additional Global Plus 1C contract. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* January 24, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://*

www.prc.gov. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

Notice of filing. On January 14, 2013, the Postal Service filed a notice announcing that it is entering into an additional Global Plus 1C contract (Agreement).[1] The Postal Service seeks to have the Agreement included within the Global Plus 1C product on the grounds of functional equivalence to a previously approved baseline agreement. *Id.* at 2.

Product history. The Commission added Global Plus 1C to the competitive product list by operation of Order No. 1151.[2] It concurrently designated the agreements filed in companion Docket Nos. CP2012–12 and CP2012–13 as the baseline agreements for purposes of establishing the functional equivalency of other agreements proposed for inclusion with the Global Plus 1C product. Order No. 1151 at 7.

The Agreement that is the subject of this filing is the customer's first Global Plus 1 contract with the Postal Service. Notice at 3.

II. Contents of Filing

The filing includes the Notice, along with the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certification required under 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 11–6; and
- Attachment 4—an application for non-public treatment of material filed under seal.

The material filed under seal consists of unredacted copies of the Agreement and supporting financial documents. *Id.* at 2. The Postal Service filed redacted versions of the sealed financial documents in public Excel spreadsheets. *Id.* at 3.

Functional equivalency. The Postal Service asserts that the instant Agreement and the baseline agreements are functionally equivalent because they share similar cost and market characteristics. *Id.* at 4. It notes that the pricing formula and classification established in Governors' Decision No. 08–8 ensure that each Global Plus 1C contract meets the criteria of 39 U.S.C. 3633 and related regulations. *Id.* The Postal Service also indicates that the pricing formula relied on for these Global Plus 1C contracts is included in Governors' Decision No. 11–6. *Id.* The Postal Service further asserts that the functional terms of the instant Agreement are very similar to those of the baseline agreements and that the benefits are comparable. *Id.*

The Postal Service states that prices offered under the instant Agreement and the baseline agreements may differ, depending on volume or postage commitments made by the customers and when an agreement is signed (due to updated costing information). *Id.* at 5. It also identifies other differences in contractual terms, but asserts that the differences do not affect either the fundamental service being offered or the fundamental structure of the Agreement.[3]

Effective date; term. The scheduled effective date of the Agreement is January 27, 2013, subject to regulatory oversight.[4] Attachment 1 at 10. The Agreement is expected to be in effect for approximately 1 year. The Agreement terminates either on the day before the date in January 2014 on which any change in Qualifying Mail published rates occurs or, if there is no change in the published rates during January 2014, on January 31, 2014.[5] Notice at 3–4; Attachment 1 at 10.

III. Commission Action

The Commission establishes Docket No. CP2013–43 for consideration of matters raised in the Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR 3015.5 and the policies of sections 3632, 3633, and 3642. Comments are due no later than January 24, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site at *http://www.prc.gov.* Information on how to obtain access to nonpublic material appears at 39 CFR 3007.

The Commission appoints Allison J. Levy to represent the interests of the general public (Public Representative) in this case.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–43 for consideration of matters raised in the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, the Commission designates Allison J. Levy to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than January 24, 2013.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–01207 Filed 1–22–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 14, 2013 (Notice). The Notice was filed in accordance with 39 CFR 3015.5. *Id.* at 1.

[2] Docket Nos. MC2012–6, CP2012–12, and CP2012–13, Order Adding Global Plus 1C to the Competitive Product List and Approving Related Global Plus 1C Agreements, January 19, 2012 (Order No. 1151).

[3] *Id.* at 7. The list includes, among other things, the non-inclusion of Global Bulk Economy service, the addition and revision of articles, and related renumbering of articles. *See id.* at 5–7.

[4] The Postal Service is required to file notice of a decision concerning a rate not of general applicability with the Commission not later than 15 days before the effective date of the decision. 39 U.S.C. 3632(b)(3); 39 CFR 3015.5(a). The Postal Service filed notice of the Agreement on January 14, 2013. *Id.* at 1.

[5] Article 3 of the Agreement outlines the requirements for mail to be considered as Qualifying Mail. *Id.* at 2–3.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of AlphaTrade.com; Order of Suspension of Trading

January 18, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AlphaTrade.com because it has not filed any periodic reports for any reporting period subsequent to September 30, 2010.

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST on January

18, 2013, through 11:59 p.m. EST on February 1, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–01398 Filed 1–18–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68677; File No. SR–NASDAQ–2013–003]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase the Record-Keeping and Substitution Listing Fees Payable by Companies Listed on Nasdaq

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 2, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to modify the record-keeping and substitution listing fees payable by companies listed on Nasdaq. While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule on January 2, 2013.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets.[3]

* * * * *

5910. The [NASDAQ] *Nasdaq* Global Market

(a)–(d) No change.

(e) Recordkeeping Fee.

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of [$2,500] *$7,500* to Nasdaq and submit the appropriate form as designated by Nasdaq.

(f) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of [$7,500] *$15,000* to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

5920. The Nasdaq Capital Market

(a)–(c) No change.

(d) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of [$2,500] *$7,500* to Nasdaq and submit the appropriate form as designated by Nasdaq.

(e) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of [$7,500] *$15,000* to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

* * * * *

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify the fees charged to Nasdaq-listed companies for record-keeping changes and substitution listings. Currently, a company owes a $2,500 record-keeping fee when it makes a change to its name, the par value or title of its security, or its symbol.[4] This fee was adopted in 2003 and has never been changed.[5] Nasdaq proposes to increase this record-keeping fee to $7,500, for notifications made after January 2, 2013.

In addition, a company currently owes a $7,500 substitution listing fee when it affects a reverse stock split, re-incorporation or a change in the company's place of organization, forms a holding company that replaces the listed company, reclassifies or exchanges the company's listed shares for another security, lists a new class of securities in substitution for a previously-listed class of securities, or makes any technical change whereby the shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.[6] This fee was adopted in 2005 and has never been changed.[7] Nasdaq proposes to increase this substitution listing fee to $15,000, for notifications made after January 2, 2013.

Nasdaq also proposes to correct capitalization in the heading of Rule 5910 to be consistent with the capitalization used in the remainder of the Rule 5000 Series.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Nasdaq believes that the proposed fees are reasonable because they will reflect Nasdaq's higher costs related to processing record keeping changes and substitution listings since the fees were set in 2003 and 2005, respectively. In that regard, Nasdaq notes that expenses surrounding the processing and distribution of these changes, including technology costs and salaries, have increased since the fees were set, but that the fees have not been concomitantly increased. In addition, Nasdaq has developed an electronic notification system for listed companies and expects to launch early in 2013 an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

[4] *See* Rule 5910(e) and 5920(d).

[5] Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (approving SR–NASD–2003–127).

[6] *See* Rules 5910(d) and 5920(c) [sic] and Rule 5005(a)(40).

[7] Securities Exchange Act Release No. 52712 (November 1, 2005), 70 FR 67511 (November 7, 2005) (approving SR–NASD–2004–162).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4) and (5).

interface allowing companies to notify Nasdaq about these changes through an on-line portal.[10] This web-based interface will simplify the notification process for the company and help eliminate errors that may otherwise have resulted from re-keying information. While over time, Nasdaq hopes that this technology will reduce the costs associated with maintaining the process, Nasdaq has invested significant up-front development costs in creating the system. Nasdaq has also committed resources to its online reference library, which includes a number of FAQs providing advice about these changes and the related forms and fees.[11]

Nasdaq also believes that the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all companies listed on Nasdaq that effect one of these changes. In this manner, the proposed fees will help assure that the expenses arising from changes initiated by certain companies are borne by those companies.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily switch exchanges if they deem the listing fees excessive.[12] In such an environment, NASDAQ must continually review its fees to assure that they remain competitive. In that regard, Nasdaq notes that the proposed fees remain similar to the fees charged by the New York Stock Exchange.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues. In addition, Nasdaq's proposed fees are similar to the fees charged by its competitors. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–003 on the subject line.

[10] *See* the NASDAQ OMX Listing Center at *https://listingcenter.nasdaqomx.com/Show_Doc.aspx?File=listing_information.html#forms.* While the Change in Company Record and Substitution Listing Event forms are currently available as pdfs, which have to be emailed to Nasdaq, they are being converted into online forms, which can be completed and submitted to Nasdaq electronically.

[11] *https://listingcenter.nasdaqomx.com/MaterialHome.aspx?mcd=LQ.*

[12] The Justice Department recently noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

[13] NYSE charges $7,500 for ''changes that involve modifications to [NYSE] records, for example, changes of name, par value, title of security or designation, and for applications relating to poison pills.'' *See* Section 902.03 of the NYSE Listed Company Manual and Securities Exchange Act Release No. 68024 (October 10, 2012), 77 FR 63388 (October 16, 2012) (SR–NYSE–2012–51). In addition, NYSE charges $15,000 for a new listing where the ''change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights.'' These changes include a change in a company's state of incorporation or a reincorporation or formation of a holding company that replaces a listed company, and a reverse stock split. *See* Section 902.03 of the NYSE Listed Company Manual.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2013–003. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–003 and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01245 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68662; File No. SR–NSX–2012–15]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 To Amend the Listing Rules for Compensation Committees To Comply With Rule 10C–1 Under the Act

January 15, 2013.

I. Introduction

On September 26, 2012, National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's rules for compensation committees of listed issuers to comply with Rule 10C–1 under the Act. On October 10, 2012, NSX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on October 17, 2012.[4] The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 13, 2013.[5] The Commission received no comment letters on the proposed rule change.[6] This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of Proposed Rule Change

A. Background: Rule 10C–1 Under the Act

On March 30, 2011, to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[7] the Commission proposed Rule 10C–1 under the Act,[8] which directs each national securities exchange (hereinafter, ''exchange'') to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C–1.[9]

Rule 10C–1 requires, among other things, each exchange to adopt rules providing that each member of the compensation committee[10] of a listed issuer must be a member of the board of directors of the issuer, and must otherwise be independent.[11] In determining the independence standards for members of compensation committees of listed issuers, Rule 10C–1 requires the exchanges to consider relevant factors, including, but not limited to: (a) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the issuer to the director (hereinafter, the ''Fees Factor''); and (b) whether the director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer (hereinafter, the ''Affiliation Factor'').[12]

In addition, Rule 10C–1 requires the listing rules of exchanges to mandate that compensation committees be given the authority to retain or obtain the advice of a compensation adviser, and have direct responsibility for the appointment, compensation and oversight of the work of any compensation adviser they retain.[13] The exchange rules must also provide that each listed issuer provide for appropriate funding for the payment of reasonable compensation, as determined by the compensation committee, to any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the filing in its entirety.

[4] *See* Securities Exchange Act Release No. 68039 (October 11, 2012), 77 FR 63914 (''Notice'').

[5] *See* Securities Exchange Act Release No. 68313 (November 28, 2012), 77 FR 71853 (December 4, 2012).

[6] The Commission notes that comments were received on substantially similar proposals filed by the Nasdaq Stock Market LLC (Nasdaq) and the New York Stock Exchange, LLC (''NYSE''). For a summary and discussion of these comments *see* Securities Exchange Act Release Nos. 68640 (January 11, 2013) (''Nasdaq Approval Order'') and 68639 (January 11, 2013) (''NYSE Approval Order'').

[7] Public Law 111–203, 124 Stat. 1900 (2010).

[8] *See* Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) (''Rule 10C–1 Proposing Release'').

[9] *See* Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) (''Rule 10C–1 Adopting Release'').

[10] For a definition of the term ''compensation committee'' for purposes of Rule 10C–1, *see* Rule 10C–1(c)(2)(i)–(iii).

[11] *See* Rule 10C–1(a) and (b)(1).

[12] *See id. See also* Rule 10C–1(b)(1)(iii)(A), which sets forth exemptions from the independence requirements for certain categories of issuers. In addition, an exchange may exempt a particular relationship with respect to members of a compensation committee from these requirements as it deems appropriate, taking into consideration the size of an issuer and any other relevant factors. *See* Rule 10C–1(b)(1)(iii)(B).

[13] *See* Rule 10C–1(b)(2).

compensation adviser retained by the compensation committee.[14] Finally, among other things, Rule 10C–1 requires each exchange to provide in its rules that the compensation committee of each listed issuer may select a compensation consultant, legal counsel or other adviser to the compensation committee only after taking into consideration six factors specified in Rule 10C–1,[15] as well as any other factors identified by the relevant exchange in its listing standards.[16]

B. NSX's Proposed Rule Change, as Amended

To comply with Rule 10C–1, NSX proposes to amend several provisions of NSX Rule 15.5(d), ''Listed Company Corporate Governance Requirements.'' [17] Specifically, the Exchange proposes to amend NSX Rule 15.5(d)(5), relating to compensation committees.

1. Independence of Compensation Committee Members

NSX's rules currently require each issuer listed on the Exchange to have a compensation committee [18] composed entirely of ''independent directors'' as defined in NSX's Rules.[19] Rule 10C–1, as discussed above, provides that exchange standards must require compensation committee members to be independent, and further provides that each exchange, in determining independence for this purpose, must consider relevant factors, including the Fees Factor and Affiliation Factor described above.

To comply with this requirement, NSX proposes to amend its rules to provide that, for purposes of determining the independence of a member of its compensation committee, a listed company must consider the following factors: (i) The source of compensation of a member of the committee, including any consulting, advisory or other compensatory fee paid by the listed company to such member; and (ii) whether the member of the committee is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.[20] The Exchange believes this requirement will benefit investors by ensuring that the members of committees that oversee executive compensation are not subject to conflicts of interest.[21]

The proposed rules provide a transition period for companies to comply with these independence standards. Listed companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with these requirements.[22]

2. Authority of Committees To Retain Compensation Advisers; Independence of Compensation Advisers; and Funding

NSX's rules currently provide that the compensation committee of a listed company must have a written charter that addresses the committee's purpose and responsibilities, and sets forth the direct responsibilities that the committee must have as a minimum.[23] To comply with the requirements of Rule 10C–1 regarding the authority to retain compensation advisers [24] and the independence of such advisers,[25] NSX proposes that the compensation committee's charter must also include the responsibilities to: retain or obtain the advice of compensation consultants, independent legal counsel and other compensation advisers as determined in its sole discretion; [26] to appoint, compensate and oversee the work of any compensation consultant, independent legal counsel and other adviser that the committee retains; [27] and to select a compensation consultant, independent legal counsel or other adviser to the committee only after considering six enumerated factors that may affect the independence of the compensation adviser.[28]

The factors are: (i) The provision of other services to the issuer by the person that employs the compensation consultant, independent legal counsel or adviser; (ii) the amount of fees received from the issuer by the person that employs the compensation consultant, independent legal counsel or other adviser, as a percentage of the employer's total revenue; (iii) the policies and procedures of the person that employs the compensation consultant, independent legal counsel or other adviser that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the compensation consultant, independent legal counsel or other adviser with a member of the compensation committee; (v) any stock of the issuer owned by the compensation consultant, independent legal counsel or other adviser; and (vi) any business or personal relationship of the compensation consultant, independent legal counsel, other adviser or person employing the adviser with an executive officer of the issuer.[29]

To comply with Rule 10C–1's requirement with respect to funding of compensation advisers engaged by compensation committees,[30] NSX proposes to add a provision to its rules stating that listed companies must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser.[31]

3. Application to Smaller Reporting Companies

Rule 10C–1 includes an exemption for smaller reporting companies from all the requirements included within the rule.[32] Consistent with this Rule 10C–1 provision, NSX proposes to exempt smaller reporting companies, as defined in Rule 12b–2 under the Act (hereinafter, ''Smaller Reporting Companies'') from compliance with the proposed new independence standards

[14] *See* Rule 10C–1(b)(3).

[15] *See* Rule 10C–1(b)(4). The six factors, which NSX proposes to set forth explicitly in its rules, are specified in the text accompanying note 29, *infra.*

[16] Other provisions in Rule 10C–1 relate to exemptions from the rule and a requirement that each exchange provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for the exchange, under Rule 10C–1, to prohibit the issuer's listing. *See also infra* note 34 and accompanying text.

[17] The proposal also amends NSX Rule 15.5(b), to set forth a transition period for companies to comply with the new requirements. *See infra* note 22 and accompanying text.

[18] The proposed NSX Rule change sets forth the following definition of ''compensation committee'' for purposes of its compensation-related rules: ''A committee that oversees executive compensation, whether or not such committee also performs other functions or is formally designated as a compensation committee.'' *See* proposed NSX Rule 15.5(f).

[19] ''Independent directors,'' as defined in NSX Rule 15.5(d)(2) and used herein, includes a two-part test for independence. The definition sets forth five specific categories of directors who cannot be considered independent because of certain discrete relationships (''the bright-line tests''). In addition, no director qualifies as ''independent'' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).

[20] *See infra* note 34 and accompanying text describing a cure period proposed by NSX, under certain conditions, for a situation in which a member of the committee ceases to be independent.

[21] *See* Notice, *supra* note 4.

[22] *See* proposed amendment to NSX Rule 15.5(b).

[23] *See* NSX Rule 15.5(d)(5)(b).

[24] *See supra* text accompanying note 13, relating to Rule 10C–1(b)(2).

[25] *See supra* text accompanying note 15, relating to Rule 10C–1(b)(4).

[26] *See* proposed NSX Rule 15.5(d)(5)(b)(i)(D).

[27] *See* proposed NSX Rule 15.5(d)(5)(b)(i)(E).

[28] *See* proposed NSX Rule 15.5(d)(5)(b)(i)(F).

[29] *See* proposed NSX Rule 15.5(d)(5)(b)(i)(F)(1)–(6).

[30] *See supra* note 14 and accompanying text.

[31] *See* proposed NSX Rule 15.5(d)(5)(c).

[32] *See* Rule 10C–1(b)(5)(ii).

with respect to compensation committee service.[33]

Under the proposal, a company that ceases to be a Smaller Reporting Company will be allowed six months from the date that the company tests its status as such a company (''Smaller Reporting Company Determination Date'') to meet the independence standards applicable to compensation committees. However, the compensation committee will be required to comply with the rule requiring an independence assessment of compensation consultants and other advisers that it retains as of the Smaller Reporting Company Determination Date.

4. Opportunity To Cure Defects

Rule 10C–1 requires that an exchange's rules must provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects in the issuer's compliance with the Rule, and provides a specific cure period that may be used by an exchange, under certain conditions, when a member of a compensation committee ceases to be independent.[34] NSX's proposal states that listed companies that fail to comply with the requirements of the Exchange's compensation-related rules will be subject to the delisting procedures set forth in Rule 15.7 of the Exchange's rules, ''Suspension and/or Delisting by Exchange,'' unless the deficiencies are cured within 45 days from the date of notification by the Exchange. With respect to the rules specifically regarding the independence of compensation committee members, however, NSX proposes to allow the cure period permitted by Rule 10C–1: If a member of the compensation committee ceases to be independent for reasons outside of the member's control, that person, with notice by the listed company to the Exchange, may remain a member of the committee until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.

5. Exemptions

The Exchange proposes that its existing exemptions from its compensation-related listing rules remain unchanged. The Exchange's current listing rules provide exemptions for: controlled companies; limited partnerships and companies in bankruptcy; closed-end and open-end funds registered under the Investment Company Act of 1940 Act (''the 1940 Act''); passive business organizations in the form of trusts (such as royalty trusts); derivatives and special purpose securities; and issuers whose only listed equity security is a preferred stock.[35]

The Exchange states that these categories of issuers typically: (i) Are externally managed and do not directly employ executives (*e.g.,* limited partnerships that are managed by their general partner or closed-end funds managed by an external investment adviser); (ii) do not by their nature have employees (*e.g.,* passive business organizations in the form of trusts or issuers of derivative or special purpose securities); or (iii) have executive compensation policy set by a body other than the board (*e.g.,* bankrupt companies have their executive compensation determined by the bankruptcy court). The Exchange states that, in light of these structural differences, which, it states, are the reasons why these categories of issuers generally do not have compensation committees, it believes that it would be a significant and unnecessarily burdensome alteration in their governance structures to require them to comply with the proposed new requirements.

The Exchange currently does not require issuers whose only listed security is a preferred stock to comply with NSX Rule 15.5. The Exchange proposes to continue to exempt these issuers from compliance with the proposed amended rule. The Exchange believes this approach is appropriate because holders of listed preferred stock have significantly greater protections with respect to their rights to receive dividends and a liquidation preference upon dissolution of the issuer, and preferred stocks are typically regarded by investors as a fixed income investment comparable to debt securities, the issuers of which are exempt from compliance with Exchange Act Rule 10C–1.

III. Discussion

After careful review, the Commission finds that the NSX proposal, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[36] In particular, the Commission finds that the amended proposed rule change is consistent with the requirements of Section 6(b) of the Act,[37] as well as with Section 10C of the Act[38] and Rule 10C–1 thereunder.[39] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[40] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit, among other things, unfair discrimination between issuers.

The development and enforcement of meaningful listing standards for a national securities exchange is of substantial importance to financial markets and the investing public. Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives. The Commission believes that the NSX proposal will foster greater transparency, accountability, and objectivity in the oversight of compensation practices of listed issuers and in the decision-making processes of their compensation committees.

In enacting Section 10C of the Act as one of the reforms of the Dodd-Frank Act,[41] Congress resolved to require that ''board committees that set compensation policy will consist only of directors who are independent.''[42] In June 2012, as required by this legislation, the Commission adopted Rule 10C–1 under the Act, which directs the national securities exchanges to prohibit, by rule, the initial or continued listing of any equity security of an issuer (with certain exceptions) that is not in compliance with the rule's

[33] *See* proposed NSX Rule 15.5(e).

[34] *See* Rule 10C–1(a)(3).

[35] *See* NSX Rule 15.5(a)(1).

[36] In approving the NSX proposed NSX Rule change, as amended, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78j–3.

[39] 17 CFR 240.10C–1.

[40] 15 U.S.C. 78f(b)(5).

[41] *See supra* note 7.

[42] *See* H.R. Rep. No. 111–517, Joint Explanatory Statement of the Committee of Conference, Title IX, Subtitle E ''Accountability and Executive Compensation,'' at 872–873 (Conf. Rep.) (June 29, 2010).

requirements regarding issuer compensation committees and compensation advisers.

In response, NSX submitted the proposed rule change, which includes rules intended to comply with the requirements of Rule 10C–1. The Commission believes that the proposed rule change satisfies the mandate of Rule 10C–1 and otherwise will promote effective oversight of its listed issuers' executive compensation practices.

A. Independence of Compensation Committee Members

As discussed above, under Rule 10C–1, the exchanges must adopt listing standards that require each member of a compensation committee to be independent, and to develop a definition of independence after considering, among other relevant factors, the source of compensation of a director, including any consulting advisory or other compensatory fee paid by the issuer to the director as well as whether the director is affiliated with the issuer or any of its subsidiaries or their affiliates.

The Commission notes that Rule 10C–1 leaves it to each exchange to formulate a final definition of independence for these purposes, subject to review and final Commission approval pursuant to Section 19(b) of the Act. This discretion comports with the Act, which gives the exchanges the authority, as self-regulatory organizations, to propose the standards they wish to set for companies that seek to be listed on their markets consistent with the Act and the rules and regulations thereunder, and, in particular, Section 6(b)(5) of the Act. As the Commission stated in the Rule 10C–1 Adopting Release, ''given the wide variety of issuers that are listed on exchanges, we believe that the exchanges should be provided with flexibility to develop independence requirements appropriate for the issuers listed on each exchange and consistent with the requirements of the independence standards set forth in Rule 10C–1(b)(1).'' [43]

The enhanced independence standards proposed by NSX specifically require that, when evaluating the independence of a director responsible for determining executive compensation, a company's board of directors must consider the following factors: (i) the source of compensation of the director, including consulting, advisory or other compensatory fee paid by the company to the director; and (ii) whether the director is affiliated with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company, in accordance with the requirements of Rule 10C–1(b)(1).[44]

The Commission believes that by incorporating these independence standards, the Exchange has complied with the independence requirements of Rule 10C–1(b)(1), and that the proposed independence requirements, which are designed to protect investors and the public interest, are consistent with the requirements of Section 6(b)(5) of the Act. The Commission believes that the enhanced standards, in conjunction with the Exchange's existing general and ''bright line'' independence standards,[45] are sufficiently broad to encompass the types of relationships which would generally be material to a director's independence for determining executive compensation.

B. Authority of Committees To Retain Compensation Advisers; Independence of Compensation Advisers; and Funding

As discussed above, NSX proposes to require its listed companies to include provisions in the charters of their compensation committees that reflect the provisions of Rule 10C–1 setting forth the authority that must be given to compensation committees to retain compensation advisers, the responsibilities of compensation committees regarding the appointment, compensation, and oversight of such advisers, and the requirement that compensation committees assess the independence of such advisers. NSX further proposes, in accordance with Rule 10C–1, to require listed companies to provide appropriate funding for payment of reasonable compensation to a compensation adviser retained by the committee. As such, the Commission believes these provisions meet the mandate of Rule 10C–1 and are consistent with the Act.

In approving these provisions, the Commission notes that compliance with the rule requires an independence assessment of any compensation consultant, legal counsel, or other adviser that provides advice to the compensation committee, and is not limited to advice concerning executive compensation. The Commission notes that Rule 10C–1 includes an instruction that specifically requires a compensation committee to conduct the independence assessment with respect to ''any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house counsel,'' [46] and thus requires an independence assessment with respect to regular outside legal counsel.

As noted above, the compensation committee may select, or receive advice from, a compensation consultant, legal counsel, or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the six factors set forth in Rule 10C–1 [47] regarding independence assessments of compensation advisers, which will be set forth in detail in NSX's rules. Codifying the comprehensive list of factors, as set forth in Rule 10C–1, into the Exchange's own rules will ensure that issuers adequately assess the independence of potential compensation advisers.

In approving this aspect of the proposal, the Commission notes that compliance with the rule requires an independence assessment of any compensation consultant, legal counsel, or other adviser that provides advice to the compensation committee, and is not limited to advice concerning executive compensation. As it has stated elsewhere, the Commission anticipates that compensation committees will conduct such an independence assessment at least annually.[48]

C. Application to Smaller Reporting Companies

As noted by NSX, Rule 10C–1 provides that the requirements established by the rule shall not apply to any smaller reporting company. As such, the Commission believes that the Exchange's proposed exemption of Smaller Reporting Companies from the new requirements comports with Rule 10C–1 and is consistent with the Act. As noted in the Commission's Rule 10C–1 Adopting Release, exempting Smaller Reporting Companies from the requirements mandated by Rule 10C–1 could offer cost savings to such companies.

[43] As explained further in the Rule 10C–1 Adopting Release, prior to final approval, the Commission will consider whether the exchanges' proposed changes are consistent with the requirements of Section 6(b) and Section 10C of the Exchange Act.

[44] As noted above, NSX rules require all listed companies to have a compensation committee, and the proposal adds that a compensation committee means a committee that oversees executive compensation, whether or not such committee also performs other functions or is formally designated as a compensation committee. This definition of compensation committee is consistent with Section 6(b)(5) of the Act and should give companies flexibility while continuing to ensure that a structured committee is overseeing executive compensation.

[45] *See supra* note 19.

[46] *See* Instruction to paragraph (b)(4) of Rule 10C–1.

[47] *See* Rule 10C–1(b)(4).

[48] *See* NYSE Approval Order and Nasdaq Approval Order, *supra* note 6.

D. Opportunity To Cure Defects

NSX proposes, generally, to allow listed companies that fail to comply with the compensation-related rules 45 days from the date of notification by the Exchange to cure any deficiency. If the deficiency is not cured by this time, the company will be subject to the delisting procedures set forth in the Exchange's rules regarding suspension and delisting. With respect, specifically, to the independence requirements for compensation committee members, the Exchange proposes to provide the cure period permitted by Rule 10C–1 for these rules.

The Commission notes that NSX's rules relating to delisting procedures require the Exchange to provide: (1) Notice to the issuer of the Exchange's decision to delist the issuer's securities; (2) an opportunity for the issuer to file an appeal pursuant to the Exchange's rules governing adverse actions; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange's final determination to delist the security via a press release and posting on the Exchange's Web site; and (4) the prompt delivery to the issuer of a copy of the form that the Exchange filed with the Commission, as required, upon its institution of proceedings to delist the issuer's security.[49]

The Commission believes that NSX's proposed grant of 45 days to a company that fails to meet the new standards (other than the independence requirements) before instituting the Exchange's general procedures for companies out of compliance with its listing requirements, as well as the particular cure period it proposes to provide to a company that fails to meet the new independence standards, adequately meet the mandate of Rule 10C–1. The Commission believes that these cure provisions also are consistent with investor protection and the public interest since they give a company a reasonable time period to cure non-compliance with these important requirements before they will be delisted.

E. Exemptions

As NSX notes, its existing rules relating to compensation afford an exemption to controlled companies, limited partnerships, companies in bankruptcy, closed-end and open-end funds registered under the 1940 Act, passive business organizations in the form of trusts (such as royalty trusts), derivatives and special purpose securities as described above, and issuers whose only listed equity security is a preferred stock. The Exchange proposes to extend the exemptions for these entities to the new requirements of the proposed rule change.

The Commission notes that Rule 10C–1 allows exchanges to exempt from the listing rules adopted pursuant to Rule 10C–1 certain categories of issuers, as the national securities exchange determines is appropriate.[50] The Commission believes that, given the specific characteristics of the aforementioned types of issuers,[51] it is reasonable and consistent with Section 6(b)(5) of the Act for the Exchange to extend their existing exemptions from the new requirements.

IV. Conclusion

In summary, and for the reasons discussed in more detail above, the Commission believes that the rules being adopted by NSX, taken as whole, should benefit investors by helping listed companies make informed decisions regarding the amount and form of executive compensation. NSX's new rules will help to meet Congress's intent that compensation committees that are responsible for setting compensation policy for executives of listed companies consist only of independent directors.

NSX's rules also, consistent with Rule 10C–1, require compensation committees of listed companies to assess the independence of compensation advisers, taking into consideration six specified factors. This should help to assure that compensation committees of NSX-listed companies are better informed about potential conflicts when selecting and receiving advice from advisers. Similarly, the provisions of NSX's standards that require compensation committees to be given the authority to engage and oversee compensation advisers, and require the listed company to provide for appropriate funding to compensate such advisers, should help to support the compensation committee's role to oversee executive compensation and help provide compensation committees with the resources necessary to make better informed compensation decisions.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[52]

It is therefore ordered, pursuant to Section 19(b)(2)[53] of the Act, that the proposed rule change, SR–NSX–2012–15, as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01281 Filed 1–22–13; 8:45 am]

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[49] *See* NSX Rule 15.7.

[50] The Commission notes, moreover, that, in the case of limited partnerships and open-end funds registered under the 1940 Act, Rule 10C–1 itself provides exemptions from the independence requirements of the Rule. The Commission notes that controlled companies are provided an automatic exemption from the application of the entirety of Rule 10C–1 by Rule 10C–1(b)(5).

[51] *See supra* Section II.B.5.

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68574; File No. SR–Phlx–2012–130]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change To Amend Performance Evaluations With Respect to Quote Submissions of Streaming Quote Traders and Remote Streaming Quote Traders

January 3, 2013.

Correction

In notice document 2013–00201, appearing on pages 1906–1907 in the issue of Wednesday January 9, 2013, make the following correction:

On page 1906, in the second column, the Subject is corrected to read as set forth above.

[FR Doc. C1–2013–00201 Filed 1–22–13; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68676; File No. SR–NASDAQ–2013–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees for Review of Delisting Determinations and Appeal of Panel Decisions

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2013. The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to modify the fees applicable to companies seeking review of a denial of initial listing or a delisting or reprimand determination.

While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule by imposing the new fee for hearings on companies who receive a Staff Delisting Determination on or after January 2, 2013. NASDAQ will implement the new fee for appeals on companies who receive a Panel Decision on or after January 2, 2013.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing

(1)–(2) No changes.

(3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination, the Company must submit a hearing fee *of $10,000. However, if the hearing request relates to a Staff Delisting Determination dated before January 2, 2013, the Company must submit a hearing fee* [to The Nasdaq Stock Market, LLC, to cover the cost of the hearing,] as follows:

(A) when the Company has requested a written hearing, $4,000; or

(B) when the Company has requested an oral hearing, whether in person or by telephone, $5,000.

(4)–(6) No changes.

(b)–(d) No changes.

5820. Appeal to the Nasdaq Listing and Hearing Review Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) Procedure for Requesting Appeal

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of [$4,000] *$10,000* to the Nasdaq Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. *However, if the appeal relates to a Panel Decision dated before January 2, 2013, the applicable fee is $4,000.* An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Nasdaq Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions.

(b)–(e) No changes.

* * * * *

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the NASDAQ Listing Rule Series 5800, companies may seek review of a determination by NASDAQ Staff to deny initial listing or delist a company's securities or to issue a Public Reprimand Letter, by requesting an oral or written hearing before an independent Hearings Panel. Listing Rule 5815(a)(3) provides that to request a hearing, the Company must, within 15 calendar days of the date of the Staff Delisting Determination, submit a hearing fee in the amount of $4000 for a written hearing or $5,000 for an oral hearing. Companies may also appeal a Panel decision to the NASDAQ Listing and Hearing Review Council (the ''NLHRC''). Listing Rule 5820(a) requires a company seeking an appeal to submit a written request and a fee of $4,000 within 15 days of the date of the Panel Decision.

NASDAQ last changed these fees in 2001.[3] NASDAQ proposes to increase these fees to $10,000. NASDAQ also proposes to eliminate the distinction in fees between a written and an oral hearing.

NASDAQ is increasing the fees because the costs incurred in preparing for and conducting appeals have increased since the fees were last changed. The costs of the delisting process include significant Staff time and resources to prepare for and conduct hearings and appeals. Staff prepares written submissions in support of a delisting determination; attends hearings; provides legal counsel and support to independent Panelists and the NLHRC; drafts final decisions; manages and coordinates the appeals dockets; and monitors post-hearing compliance efforts. NASDAQ also incurs the costs of transcription of the proceedings and expenses for the Panelists and members of the NLHRC. In addition, the Exchange incurs costs to upgrade electronic systems for tracking companies and maintaining a clear record. It also maintains lists on its Web site, updated every business day, that reflect the status of all companies in the deficiency process.[4] Finally, NASDAQ expends regulatory resources to ensure transparent communication of appeal rules and procedures to listed companies by continually improving our electronic interface with them.[5]

All of these expenses have increased in the eleven years since the fees were set in 2001. In addition, appeals have become more complicated and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44374 (April 5, 2001) 66 FR 18837 (April 11, 2001) (approving SR–NASD–2001–17).

[4] *See https://listingcenter.nasdaqomx.com/assets/DelDefOpenReport.pdf* and *https://listingcenter.nasdaqomx.com/assets/IssuesPendingDelisting.pdf.*

[5] NASDAQ has developed a user-friendly electronic NASDAQ Listing Center and Reference Library, the maintenance of which requires resources on an on-going basis. *See https://listingcenter.nasdaqomx.com/MaterialHome.aspx?mcd=LQ.* Users can view more than 30 Frequently Asked Questions about the hearings and appeals processes and summaries of almost 100 NLHRC decisions. See also *https://listingcenter.nasdaqomx.com/assets/Get_Started_Guide.pdf.*

contentious than when fees were last modified. As a result, NASDAQ devotes more Staff time and resources now to a typical appeal than was historically the case. In response to increasing complexities, NASDAQ has made new hires in its investigatory group and on several occasions engaged an outside law firm or an investigative firm to assist in connection with matters under review.

Accordingly, NASDAQ proposes to increase fees to $10,000 for a Panel hearing, whether the company elects a written or an oral hearing; and $10,000 for an appeal to the NLRHC. NASDAQ recognizes that in the past, fees for a written hearing have been lower than fees for an oral one. The Exchange believes that the basis for this historical distinction is unclear, and upon review, found to be unwarranted. The cost to a company that elects a written hearing may be lower because the company's related expenses, such as travel and legal representation, may be avoided. However, the costs to the Exchange associated with a written hearing are virtually identical to those associated with an oral hearing, differing only by the cost of transcribing a hearing. NASDAQ believes that the fees should reflect that Staff and Panels expend the same resources, time, and effort in ensuring a full and fair hearing for all hearing participants, and both processes afford the same benefit to the issuer. Therefore, while the proposed amendment preserves the availability of a written hearing to any company that requests one, NASDAQ proposes to charge the same fee for a written hearing as for an oral one.

The revised fees for a hearing will be applicable to issuers that are sent a Staff Delisting Determination on or after January 2, 2013. The revised fees for an appeal of a Panel Decision will be applicable to issuers that receive a Panel Decision on or after January 2, 2013. The current fees will remain in effect for any company that receives a Staff Determination or a Panel Decision before that date.[6]

The revised fees will allow NASDAQ to recoup a portion of the expenses it incurs in the delisting process that will more closely approximate the actual costs associated with the appeal process. The Exchange has reviewed all costs associated with delisting appeals and does not expect or intend that the fees will exceed the costs.[7] Moreover, the Exchange believes that the proposed fees for a Panel or NLHRC review of a delisting determination are comparable to the appeal fees of other national securities exchanges. For example, NYSE MKT LLC has recently increased its fees for appeal of a Staff delisting determination to $8,000 for a written and $10,000 for an oral hearing, and $10,000 for an appeal of a Panel decision to the Exchange Committee on Securities.[8] NYSE rules provide that a listed company must pay a $20,000 fee in connection with a delisting appeal.[9]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general and with Sections 6(b)(4) and (5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

Specifically, the proposed fee increase is reasonable because it will better reflect NASDAQ's costs related to the appeal process. NASDAQ has not increased the fees for an appeal since 2001,[12] but has handled increasingly complex matters while providing issuers and investors with an increasingly efficient and transparent appeal process. The fees will help offset the costs of conducting appeals, which serve to ensure that NASDAQ's listing standards are properly enforced for the protection of investors. The proposed changes are equitable and not unfairly discriminatory because they would apply equally to all companies that choose to appeal a delisting determination. In addition, aligning the fees for hearings with the underlying costs of the delisting process will help minimize the extent that companies that are compliant with all listing standards may subsidize the costs of review for companies that are non-compliant.

NASDAQ also believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act[13] in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market systems, and in general to protect investors and the public interest. Specifically, the fees are designed to provide adequate resources for appropriate preparation to conduct Panel hearings and appeals of Panel Decisions, which help to assure that the Exchanges' listing standards are properly enforced and investors are protected. Finally, the proposed change maintains a fair procedure by which listed companies may avail themselves of an appeal.

NASDAQ also believes that the proposed changes are consistent with Section 6(b)(7) of the Act,[14] in that the proposed fees are consistent with the provision by the Exchange of a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange. In particular, the Exchange believes that the proposed amended fees should not deter listed issuers from availing themselves of the right to appeal because the fees will still be set at a level that will be affordable for listed companies. NASDAQ does not believe that the proposed fee is unduly burdensome or would discourage any company from seeking a hearing or appeal. Finally, NASDAQ notes that the proposed fees are comparable to the fees charged for similar appeal processes by other exchanges.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As discussed above, this proposed fee is based on the increase in costs to the Exchange to provide a delisting review process, which is in turn necessary to ensure investor protection as well as a transparent process for issuers. Moreover, the market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by

[6] Companies are notified of the fees associated with a request for a hearing in the Staff Delist Determination letter. They are notified of the fees associated with an appeal in the Panel Decision, which includes a notice of the right to appeal.

[7] A precise cost-per-hearing analysis is not possible given the need to maintain an appeals infrastructure for which the Exchange incurs expenses irrespective of the number of hearings requested in a given year. Economies of scale may result in a lower cost-per-hearing in a year when NASDAQ receives more requests than when it receives fewer requests. Over the past 2 years, the number of hearings requests has been lower than in the previous 2 years, but the complexity of the appeal issues has demanded significantly greater Exchange resources.

[8] Securities and Exchange Act Release No. 67907 (September 21, 2012), 77 FR 59442 (September 27, 2012) (SR–NYSEMKT–2012–45). See also Sections 1203 and 1205 of the NYSE MKT Company Guide.

[9] Section 804.00 of the NYSE Listed Company Manual.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] Securities Exchange Act Release No. 44374, *supra.*

[13] 15 U.S.C. 78f(b)(5).

[14] 15. U.S.C. 78f(b)(7).

[15] See footnotes 8 and 9, *supra,* and accompanying text.

each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to align their fees on the costs incurred by the process they offer. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–004 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2013–004. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–004 and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01244 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68675, File No. SR–FINRA–2012–053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Establish Optional TRACE Data Delivery Services and Related Fees

January 16, 2013.

I. Introduction

On November 30, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish optional TRACE data delivery services and related fees. The proposed rule change was published for comment in the **Federal Register** on December 13, 2012.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA utilizes the Trade Reporting and Compliance Engine (''TRACE'') to collect from its members and to publicly disseminate information on transactions in eligible fixed income securities. The FINRA Automated Data Delivery System (''FINRA ADDS'') is a secure Web site that provides a firm, by market participant identifier (''MPID''), access to TRACE trade journal files. These files are available for Asset-Backed Securities transactions and separately for corporate bonds and Agency Debt Securities (''Corporate/Agency Debt Securities''). The FINRA ADDS service is free, and there are no limits on the number of reports that a firm may request or the number of firm personnel associated with a specified MPID that may submit such requests.

Currently, to access the transaction information in FINRA ADDS, entitled users of the MPID must submit a request for a trade journal file for a specified date, which must be within 30 calendar days prior to the date of the request. A single report is a trade journal file for one date listing all transactions to which the requesting MPID was a party that were reported on that date either in Asset-Backed Securities or Corporate/Agency Debt Securities. The FINRA ADDS report provides all of the transaction reports in which the MPID is a party to a transaction (whether the trade was reported by the firm or another member) on the specified date. If a firm uses multiple MPIDs, persons authorized to use the specified MPID must make the data request to FINRA ADDS and the data provided by FINRA ADDS is limited to transactions involving that MPID.

FINRA has proposed to establish two new optional TRACE data delivery services, TRACE Data Delivery Plus and TRACE Data Delivery Secure File Transfer Protocol (''TRACE Data Delivery SFTP''), and fees in connection

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68387 (December 7, 2012), 77 FR 74249 (December 13, 2012) (SR–FINRA–2012–053) (the ''Notice'').

with these services. Firms would have the option to enroll in neither, one, or both of these services.

TRACE Data Delivery Plus would provide greater access to TRACE trade journal files by allowing an MPID subscriber to obtain reports for Asset-Backed Securities or Corporate/Agency Debt Securities data for transactions to which the MPID was a party that were reported more than 30 calendar days before the MPID's request (*i.e.,* transaction data in trade journal files no longer available through the free FINRA ADDS service).[4] The subscriber would be able to download the requested report(s) on demand.[5]

To provide TRACE Data Delivery Plus, FINRA has proposed to amend Rule 7730 to charge an MPID subscriber a monthly fee. The proposed monthly fee is based on two factors: (1) The average number of transactions per month to which the MPID was a party that was reported to TRACE in the prior calendar year, which number is used to categorize the MPID in one of four tiers;[6] and (2) the number of FINRA ADDS reports received in a given month for transaction data that is no longer available through the free FINRA ADDS service (*i.e.,* transaction data regarding transactions that were reported more than 30 calendar days prior to the date of the request) (''Plus reports'').[7] The proposed monthly fees for Plus reports are:

Tier based on average number of transactions per month MPID subscriber was a party to in prior calendar year	0–5 Plus reports received per month	6–25 Plus reports received per month	> 25 Plus reports received per month
Tier 1: 10,000 +	$60	$80	$100
Tier 2: 3,000–9,999	40	55	70
Tier 3: 500–2,999	20	30	40
Tier 4: <500	10	15	20

TRACE Data Delivery SFTP is an optional service that would provide a subscribing firm with an automated interface to retrieve (without sending a request or query) its prior day's TRACE trade journal files from FINRA ADDS automatically via SFTP. FINRA has proposed to amend Rule 7730 to establish two fees to provide the TRACE Data Delivery SFTP: (1) A one-time set-up fee of $250 per subscriber; and (2) a monthly fee of $200 per subscriber.

FINRA has indicated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date would be no later than 120 days following publication of the *Regulatory Notice.*

III. Discussion

After carefully reviewing the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, as well as with Section 15A(b)(5) of the Act,[10] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

FINRA stated that it proposed the described optional data services in response to feedback from firms requesting access to more of their TRACE transaction history and increased flexibility to access such data.[11] The Commission believes that the proposed rule change to establish these data delivery services is consistent with the Act because it will provide member firms with flexible access to more of their TRACE transaction history, thereby assisting them in overseeing their trading in fixed income securities. Further, the Commission believes that the proposed fees are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2012–053) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

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[4] As with the free FINRA ADDS service, firms interested in TRACE Data Delivery Plus must subscribe per MPID. To access transaction information for multiple MPIDs, a firm must obtain a subscription for each MPID.

[5] Subscribers to TRACE Data Delivery Plus also will have the option to obtain automated daily delivery of the subscriber's TRACE trade journal files to the FINRA ADDS Web site. The automated daily delivery of the subscriber's TRACE trade journal files to the Web site will not constitute a request for a report for purposes of calculating the monthly fee described below. In contrast, firms using the free FINRA ADDS service must submit a request for data (*e.g.,* if an MPID wants daily delivery of the prior day's Asset-Backed Security trade journal file, the MPID must log in each day and submit a request).

[6] Once assigned to a tier, a subscriber would remain in the tier for the remainder of the calendar year. For example, an MPID that subscribes in September 2012 would be assigned to a tier based upon the TRACE transactions reported in 2011 in which the MPID was a party, and would remain in that tier until December 31, 2012. In 2013, the MPID would be re-evaluated and assigned to a tier for 2013 fee purposes, based upon the MPID's trading in TRACE-Eligible Securities in 2012.

[7] A subscriber's monthly fee would be assessed each month and could vary, depending on the number of reports FINRA provides in response to the subscriber's requests. The fee would not be charged for data requests that FINRA is unable to provide. For example, FINRA ADDS would be unable to provide a report for a Corporate/Agency Debt Securities trade journal file for a date prior to February 6, 2012, the date such securities were migrated from legacy TRACE technology to the Multi-Product Platform (''MPP'').

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(5).

[11] *See* Notice, 77 FR at 74250.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68671; File No. SR–NYSEArca–2012–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

January 16, 2013.

I. Introduction

On September 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). On October 2, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published in the **Federal Register** on October 18, 2012.[4] The Commission received no comments on the proposal. On November 29, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Shares would be issued by the ALPS ETF Trust (''Trust'').[8] ALPS Advisors, Inc. would be the Fund's investment adviser (''Adviser''), and Rich Investment Solutions, LLC would be the Fund's investment sub-adviser (''Sub-Adviser'').[9] The Bank of New York Mellon (''BNY'') would serve as custodian, fund accounting agent, and transfer agent for the Fund. ALPS Distributors, Inc. would be the Fund's distributor (''Distributor''). NYSE Arca would be the ''Index Provider'' for the Fund.[10]

Description of the Fund

The Fund would seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index (''Index''). The Index reflects the performance of a portfolio consisting of over-the-counter (''OTC'') ''down-and-in put'' options that have been written on 20 of the most volatile U.S. stocks that also have market capitalization of at least $5 billion.

In seeking to replicate, before expenses, the performance of the Index, the Fund would generally sell (*i.e.,* write) 90-day OTC down-and-in put options, as described below, in proportion to their weightings in the Index on economic terms which mirror those of the Index. Each option written by the Fund would be covered through investments in three-month Treasury bills (''T-bills'') at least equal to the Fund's maximum liability under the option (*i.e.,* the strike price). The Sub-Adviser would seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.[11]

The Exchange submitted this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.'' [12] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in relevant part, that the components of an index of US Component Stocks, upon the initial listing of a series of Investment Company Units pursuant to Rule 19b–4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act.[13] As described further below, the Index consists of OTC down-and-in put options. The Exchange has represented that the Shares would conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index includes OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

Index Methodology and Construction

The Index measures the return of a hypothetical portfolio consisting of OTC down-and-in put options which have been written on each of 20 stocks and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the filing to specify that a list of components of the Index (as defined below), with percentage weightings, would be available on the Exchange's Web site, and that the Exchange may halt trading in the Shares (as defined below) if the Index value, or the value of the components of the Index, is not available or not disseminated as required.

[4] *See* Securities Exchange Act Release No. 68043 (October 12, 2012), 77 FR 64153 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 68320 (November 29, 2012), 77 FR 72429 (December 5, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated January 16, 2013 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 22, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (''Registration Statement'') under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28262 (May 1, 2008) (File No. 812–13430).

[9] The Adviser is affiliated with a broker-dealer and would implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it would implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

[10] NYSE Arca is not affiliated with the Trust, the Adviser, the Sub-Adviser, or the Distributor. NYSE Arca is affiliated with a broker-dealer and would implement a fire wall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

[11] While the Fund would not invest in traditional reverse convertible securities (*i.e.,* those which convert into the underlying stock), the down-and-in put options written by the Fund would have the effect of exposing the Fund to the return of reverse convertible securities (based on equity securities) as if the Fund owned such reverse convertible securities directly.

[12] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[13] *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

a cash position calculated as described below. The 20 stocks that would underlie the options in the Index are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the Index Provider. These stocks would be required to be NMS stocks, as defined in Rule 600 of Regulation NMS.

A down-and-in option is a contract that becomes a typical option (*i.e.,* the option ''knocks in'' at a predetermined strike price) once the underlying stock declines to a specified price (''barrier price''). These types of options have the same return as ''reverse convertible'' securities, which convert into the underlying stock (or settle in cash) only upon a decline in the value of the underlying stock rather than a rise (as is the case with typical convertible instruments).

Each option included in the Index would be a ''European-style'' option (i.e., an option which can only be exercised at its expiration) with a 90-day term. The strike prices of the option positions included in the Index would be determined based on the closing prices of the options' underlying stocks as of the beginning of each 90-day period. The barrier price of each such option would be 80% of the strike price. At the expiration of each 90-day period, if an underlying stock closes at or below its respective barrier price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock would be deemed to be made, and the Index value would be correspondingly reduced. If the underlying stock does not close at or below the barrier price, then the option expires worthless and the entire amount of the premium payment would be retained within the Index.

The components of the Index would be OTC down-and-in put options written on 20 NMS stocks selected based on the following screening parameters:

1. U.S. listing of U.S. companies;
2. Publicly listed and traded options available;
3. Market capitalization greater than $5 billion;
4. Top 20 stocks when ranked by 3-month implied volatility;
5. Each underlying NMS stock would have a minimum trading volume of at least 50 million shares for the preceding six months; and
6. Each underlying NMS stock would have a minimum average daily trading volume of at least one million shares and a minimum average daily trading value of at least $10 million for the preceding six months.

The selection of the 20 underlying NMS stocks would occur each quarter (March, June, September, and December) two days prior to the third Friday of the month, in line with option expiration for listed options. The selection of the 20 underlying stocks would not, however, be limited to those with listed options expiring in March, June, September, or December.

The Index value would reflect a cash amount invested in on-the-run three-month T-Bills, plus the premium collected on the short position in the 20 down-and-in put options written by the Index each quarter. The notional amount of each of the 20 down-and-in put options would be equal to 1/20th of the cash amount in the Index at the beginning of each quarter. The cash amount (initially 1,000 for the origination date of the Index) would be incremented by premiums generated each quarter from the 20 down-and-in put options sold, then decremented by cash settlements of any down-and-in put options expiring in-the-money and the distribution amount (as described below). The cash amount would be invested in T-Bills and would accrete by interest earned on the T-Bills.

The End of Day Index Value would be calculated as follows: End of Day Index Value = Beginning of Quarter Index Value + Premium Generated − Option Values + Accrued Interest − distribution amount, where:

- Beginning of Quarter Index Value is 1,000 for the origination date of the Index; thereafter, it is the previous quarter-end End of Day Index Value;
- Premium Generated is the sum of Option Values for each of the 20 down-and-in put options sold by the Index at the end of the previous quarter;
- Option Value is the settlement value of each of the 20 down-and-in put options written by the Index at the end of each quarter. The notional amount of each down-and-in put option sold by the Index for the current quarter is 1/20th of the Beginning of Quarter Index Value;
- Accrued Interest is the daily interest earned on the cash amount held by the Index and invested in T-Bills;
- Cash amount of the Index for any quarter is the Beginning of Quarter Index Value plus the Premium Generated for that quarter; and
- Distribution amount for any quarter and paid out at the beginning of the next quarter is 2.5% of the End of Day Index Value for the final day of the quarter. If such an amount exceeds the amount of the Premium Generated, then the distribution amount would equal the Premium Generated.

A total return level for the Index would be calculated and published at the end of each day. The total return calculation would assume the quarterly index distribution is invested directly in the Index at the beginning of the quarter in which it is paid.

The Exchange has provided the following example. Stock ''ABC'' trades at $50 per share at the start of the 90-day period, and a down-and-in 90-day put option was written at an 80% barrier (resulting in a strike price of $50 per share and a barrier price of $40 per share) for a premium of $4 per share:

- *Settlement above the barrier price:* If at the end of 90 days the ABC stock closed at any value above the barrier price of $40, then the option would expire worthless and the Index's value would reflect the retention of the $4 per share premium. The Index's value thus would be increased by $4 per share on the ABC option position.
- *Settlement at the barrier price:* If at the end of 90 days ABC closed at the barrier price of $40, then the option would settle in cash at the closing price of $40, and the Index's value would be reduced by $10 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $6 per share on the ABC option position.
- *Settlement below the barrier price:* If at the end of 90 days, ABC closed at $35, then the option would settle in cash at the closing price of $35, and the Index's value would be reduced by $15 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $11 per share on the ABC option position.

As discussed above, the Index's value is equal to the value of the options positions comprising the Index, plus a cash position. The cash position starts at a base of 1,000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month T-Bill rate. The cash position is decreased by cash settlement on options which ''knock in'' (*i.e.,* where the closing price of the underlying stock at the end of the 90-day period is at or below the barrier price). The cash position is also decreased by a deemed quarterly cash distribution, currently targeted at the rate of 2.5% of the value of the Index. However, if the option premiums generated during the quarter are less

than 2.5%, the deemed distribution would be reduced by the amount of the shortfall.

The Fund's Investments

The Fund, under normal circumstances,[14] would invest at least 80% of its total assets in component securities that comprise the Index and in T-Bills which would be collateral for the options positions. The Fund would enter into the option positions determined by the Index Provider by writing (*i.e.,* selling) OTC 90-day down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index. By writing an option, the Fund would receive premiums from the buyer of the option, which would increase the Fund's return if the option does not ''knock in'' and thus expires worthless. However, if the option's underlying stock declines by a specified amount (or more), the option would ''knock in'' and the Fund would be required to pay the buyer the difference between the option's strike price and the closing price. Therefore, by writing a down-and-in put option, the Fund would be exposed to the amount by which the price of the underlying is less than the strike price. Accordingly, the potential return to the Fund would be limited to the amount of option premiums it receives, while the Fund can potentially lose up to the entire strike price of each option it sells. Further, if the value of the stocks underlying the options sold by the Fund increases, the Fund's returns would not increase accordingly.

Typically, the writer of a put option incurs an obligation to buy the underlying instrument from the purchaser of the option at the option's exercise price, upon exercise by the option purchaser. However, the down-and-in put options to be sold by the Fund would be settled in cash only. The Fund may need to sell down-and-in put options on stocks other than those underlying the option positions contained in the Index if the Fund is unable to obtain a competitive market from OTC option dealers on a stock underlying a particular option position in the Index, thus preventing the Fund from writing an option on that stock.[15]

Every 90 days, the options included within the Index are cash settled or expire, and new option positions are established. The Fund would enter into new option positions accordingly. This 90-day cycle likely would cause the Fund to have frequent and substantial portfolio turnover. If the Fund receives additional inflows (and issues more Shares accordingly in large numbers known as ''Creation Units'') during a 90-day period, the Fund would sell additional OTC down-and-in put options which would be exercised or expire at the end of such 90-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 90-day period, the Fund would terminate the appropriate portion of the options it has sold accordingly.

Secondary Investment Strategies

The Fund may invest its remaining assets in money market instruments,[16] including repurchase agreements [17] or other funds which invest exclusively in money market instruments, convertible securities, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index), forward foreign currency exchange contracts, and in swaps,[18] options (other than options that the Fund principally would write), and futures contracts.[19] Swaps, options (other than options the the Fund principally would write), and futures contracts (and convertible securities and structured notes) may be used by the Fund in seeking performance that corresponds to the Index and in managing cash flows.[20] The Fund would not invest in money market instruments as part of a temporary defensive strategy to protect against potential stock market declines. The Adviser anticipates that it may take approximately three business days (*i.e.,* each day the New York Stock Exchange (''NYSE'') is open) for additions and deletions to the Index to be reflected in the portfolio composition of the Fund.

The Fund may invest in the securities of other investment companies (including money market funds). Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund would monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current

[14] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equities or options markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[15] The Fund would transact only with OTC options dealers that have in place an International Swaps and Derivatives Association agreement with the Fund.

[16] The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; (iv) repurchase agreements; and (v) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[17] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they would be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser would monitor the continued creditworthiness of Qualified Institutions. The Fund also may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

[18] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap agreements would usually be done on a net basis, the Fund receiving or paying only the net amount of the two payments. The net amount of the excess, if any, of the Fund's obligations over its entitlements with respect to each swap would be accrued on a daily basis and an amount of cash or highly liquid securities having an aggregate value at least equal to the accrued excess would be maintained in an account at the Trust's custodian bank.

[19] The Fund may utilize U.S. listed exchange-traded futures. In connection with its management of the Trust, the Adviser has claimed an exclusion from registration as a commodity pool operator under the Commodity Exchange Act (''CEA''). Therefore, it is not subject to the registration and regulatory requirements of the CEA, and there are no limitations on the extent to which the Fund may engage in non-hedging transactions involving futures and options thereon, except as set forth in the Registration Statement.

[20] Swaps, options (other than options that the Fund principally would write), and futures contracts would not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills, as described above.

circumstances, an adequate level of liquidity is being maintained, and would consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended

The Fund would not invest in non-U.S. equity securities. The Fund's investments would be consistent with the Fund's investment objective and would not be used to enhance leverage.

Pricing Fund Shares

The Fund's OTC down-and-in put options on equity securities would be valued pursuant to a third-party option pricing model. Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. Securities for which market quotations are not readily available, including restricted securities, will be valued by a method that the Fund's Board of Trustees believe accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, trading halt in a security, an unscheduled early market close, or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE. In such a case, the value for a security is likely to be different from the last quoted market price. In addition, due to the subjective and variable nature of fair market value pricing, it is possible that the value determined for a particular asset may be materially different from the value realized upon such asset's sale.

Creations and Redemptions of Shares

The Trust would issue and sell Shares of the Fund only in ''Creation Units'' of 100,000 Shares each on a continuous basis through the Distributor, without a sales load, at its net asset value (''NAV'') next determined after receipt, on any business day, of an order in proper form. Creation Units of the Fund generally would be sold for cash only, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit (''Deposit Cash''), plus a transaction fee.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), would make available on each business day, prior to the opening of business on NYSE Arca (currently 9:30 a.m. Eastern Time (''E.T.'')), the amount of the Deposit Cash to be deposited in exchange for a Creation Unit of the Fund.

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (ii) a Depository Trust Company (''DTC'') participant, and, in each case, must have executed an agreement with the Distributor, with respect to creations and redemptions of Creation Units.

All orders to create Creation Units, whether through a Participating Party or a DTC participant, must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Units at the NAV next determined after receipt of a redemption request in proper form by the Fund through BNY and only on a business day. The Fund would not redeem Shares in amounts less than a Creation Unit.

With respect to the Fund, BNY, through the NSCC, would make available prior to the opening of business on NYSE Arca (currently 9:30 a.m. E.T.) on each business day, the amount of cash that would be paid (subject to possible amendment or correction) in respect of redemption requests received in proper form on that day (''Redemption Cash'').

The redemption proceeds for a Creation Unit generally would consist of the Redemption Cash, as announced on the business day of the request for redemption received in proper form, less a redemption transaction fee.

Initial and Continued Listing

The Exchange represents that the Shares would conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of down-and-in put options based on ''US Component Stocks'' [21] rather than US Component Stocks themselves. The Exchange further represents that, for initial and/or continued listing, the Fund would be in compliance with Rule 10A–3 under the Exchange Act,[22] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares would be outstanding at the commencement of trading on the Exchange. The Exchange would obtain a representation from the issuer of the Shares that the NAV would be calculated daily and made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.alpsetfs.com*), which would be publicly available prior to the public offering of the Shares, would include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site would include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[23] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[24]

On a daily basis, the Adviser would disclose for each portfolio security and other financial instrument of the Fund

[21] NYSE Arca Equities Rule 5.2(j)(3) defines the term ''US Component Stock'' to mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[22] 17 CFR 240.10A–3.

[23] The Bid/Ask Price of the Fund would be determined using the mid-point of the highest bid and the lowest offer for Shares on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices would be retained by the Fund and its service providers.

[24] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') would be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund would be able to disclose at the beginning of the business day the portfolio that would form the basis for the NAV calculation at the end of the business day.

the following information: ticker symbol (if applicable), name of security and financial instrument, number of securities or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Fund's portfolio holdings, including information regarding its option positions, would be disclosed each day on the Fund's Web site. The Web site information would be publicly available at no charge.

The NAV per Share for the Fund would be determined once daily as of the close of the NYSE, usually 4:00 p.m. E.T., each day the NYSE is open for trading. NAV per Share would be determined by dividing the value of the Fund's portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding. As discussed above, the OTC down-and-in put options would be valued pursuant to a third-party option pricing model.[25]

Investors could also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports would be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares would be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information would be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares would be available via the Consolidated Tape Association (''CTA'') high-speed line. The value of the Index and the values of the OTC down-and-in put options components in the Index (which would each be weighted at 1/20 of the Index value) would be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. A list of components of the Index, with percentage weightings, would be available on the Exchange's Web site. Each of the stocks underlying the OTC down-and-in put options in the Index also would underlie standardized options contracts traded on U.S. options exchanges, which would disseminate quotation and last-sale information with respect to such contracts. In addition, the Intraday Indicative Value would be calculated and disseminated by the Exchange, and widely disseminated by one or more major market data vendors, at least every 15 seconds during the Core Trading Session.[26] The Exchange states that the dissemination of the Intraday Indicative Value would allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange states that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[27] Trading in Shares of the Fund would be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Fund's portfolio holdings and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the Intraday Indicative Value, the Index value, or the value of the components of the Index is not available or is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. The Exchange would obtain a representation from the Fund that the NAV for the Fund would be calculated daily and would be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it would halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares would trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Investment Company Units) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[28]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts)

[25] *See* ''Pricing Fund Shares'' *supra.*

[26] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at 64157. The IIV calculations are based on local market prices and may not reflect events that occur subsequent to the local market's close. *See* Registration Statement, *supra* note 8, at 11.

[27] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[28] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

provides that an Equity Trading Permit (''ETP'') Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange would inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin (''Information Bulletin'' or ''Bulletin''). Specifically, ETP Holders would be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin would also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[29] As described above, while the Fund would not invest in traditional reverse convertible securities, the down-and-in put options written by the Fund would have the effect of exposing the Fund to the return of reverse convertible securities as if the Fund owned such reverse convertible securities directly. Therefore, the Bulletin would state that ETP Holders that carry customer accounts should follow the FINRA guidance set forth in the FINRA Regulatory Notice.

As disclosed in the Registration Statement, the Fund is designed for investors who seek to obtain income through selling options on select equity securities which the Index Provider determines to have the highest volatility. Because of the high volatility of the stocks underlying the options sold by the Fund, it is possible that the value of such stocks would decline in sufficient magnitude to trigger the exercise of the options and cause a loss which may outweigh the income from selling such options. The Registration Statement states that, accordingly, the Fund should be considered a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange's Information Bulletin regarding the Fund, described below, would provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Information Bulletin

Prior to the commencement of trading, the Exchange would inform its ETP Holders in the Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Intraday Indicative Value would not be calculated or publicly disseminated; (4) how information regarding the Intraday Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin would reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin would discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin would also disclose that the NAV for the Shares would be calculated after 4:00 p.m. E.T. each trading day.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[30]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2012–108 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[31] to determine whether the proposed rule change, as modified by Amendment No. 1 thereto, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[32] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[33] requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange's proposal would allow the Exchange to list and trade Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Fund would seek investment results that correspond generally to the performance, before the Fund's fees and

[29] The Exchange notes that NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

[30] *See* Notice and Registration Statement, *supra* notes 4 and 8, respectively.

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *Id.*

[33] 15 U.S.C. 78f(b)(5).

expenses, of the Index. The Index does not meet the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of US Component Stocks, because the Index consists of OTC down-and-in put options, written on 20 of the most volatile U.S. stocks that have market capitalization of at least $5 billion, as further described above. In accordance with its investment strategy, the Fund would sell OTC down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index.

The Commission solicits comment on whether the proposal is consistent with the Exchange Act and whether the Exchange has sufficiently met its burden in presenting a statutory analysis of how its proposal is consistent with the Exchange Act. In particular, the grounds for disapproval under consideration include whether the Exchange's proposal is consistent with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [34] First, the Commission continues to evaluate the potential impact of the discontinuous payoff structure of the OTC down-and-in put options that would be written by the Fund on the potential for manipulation of the securities underlying the options or the Shares. In addition, the Commission continues to evaluate the proposed disclosure regarding the strategy, risks and potential rewards, assumptions, and expected performance of the Fund, including the impact of the Fund's exposure through the writing of OTC down-and-in put options, which would have the effect of exposing the Fund to the return of reverse convertible securities. Furthermore, the Commission continues to evaluate the sufficiency of the transparency regarding the pricing of the OTC down-and-in put options, and the impact on the ability of investors to accurately price and hedge the Shares.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[35]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 13, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 27, 2013.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether investors would be able to understand the strategy, risks and potential rewards, assumptions and expected performance of the Fund, including the effect of the Fund's exposure to its down-and-in put options? With respect to the trading of the Fund's Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices *are adequately designed to ensure the suitability of recommendations regarding* the Fund's Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what way(s)? With respect to the trading of the Fund's Shares on the Exchange, do commenters believe that the proposed disclosure of the nature of, and the risks of investing in, the Shares is sufficient? Why or why not? If not, should the Exchange be required to enhance its disclosure relating to the Shares? If so, in what way(s) should the disclosure be enhanced?

2. The Fund states that the OTC down-and-in put options that it will write may experience greater discontinuity in pricing as they approach expiration, especially if the underlying equity price is close to the barrier level.[36] For example, in the example provided by the Exchange described above, where Stock ABC trades at $50 per share at the start of the 90-day period, and a down-and-in 90-day put option is written at an 80% barrier (resulting in a strike price of $50 per share and a barrier price of $40 per share), as the price of Stock ABC goes from $40 to $40.01, the value of the option goes from $10 to $0. Do commenters believe that this discontinuous payoff structure of down-and-in put options could give rise to the potential for manipulation? Does this type of barrier option have the potential to provide an incentive for someone who has a position in the option or the Fund to manipulate the price of the underlying stock when it is near the knock-in price on the expiration date? Why or why not?

3. Do commenters believe that the market for OTC down-and-in put options is sufficiently liquid and that pricing of those options is sufficiently transparent for investors in the Shares? Why or why not? Do commenters believe that investors would be able to accurately value such options? Why or why not?

4. Do commenters believe that the market for OTC down-and-in put options is sufficiently liquid and that pricing of those options is sufficiently transparent for authorized participants and market makers to effectively arbitrage the OTC market and the market for the Shares through the trading day? Why or why not?

5. The Commission understands that some market makers might use listed options to synthetically replicate down-and-in put options that may not be sufficiently liquid to buy and sell intraday. Do commenters believe the replication of down-and-in-put options through the purchase and sale of specific listed options would be an effective way for market makers to arbitrage the value of a down-and-in put option against the price of the Shares? Why or why not?

6. Are there other methods for authorized participants or market makers to hedge the market risk derived from arbitraging any differences between the market price of the Shares and the expected NAV per Share of the Fund?

[34] *Id.*

[35] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[36] *See* Registration Statement, *supra* note 8, at 3.

7. Do commenters believe that the ability of market makers and authorized participants to arbitrage throughout the day will be sufficiently robust to ensure that prices of the Shares closely track the intraday NAV per Share of the Fund? Are there circumstances in which significant premiums or discounts could develop?

8. Do commenters believe that the third-party model that would be used to value the Fund's OTC down-and-in put options would accurately reflect prices at which the Fund could enter into new OTC down-and-in put options or unwind existing OTC down-and-in put options? Why or why not? Should the Exchange or the Fund be required to provide further disclosure relating to the formula and methodology of such third-party pricing model? Would such disclosure better help investors to price the OTC down-and-in put options held by the Fund?

9. Are there any characteristics unique to barrier options on equity securities that would make them more difficult to value than options on equity securities without a barrier feature? If so, what are they and how could they potentially impact the valuation?

10. Are there any circumstances under which the nature of barrier options would cause market makers to widen bid and offer spreads for the Shares? For example, if a significant number of components stocks are at or near a 20% loss a few days before expiration of the down-and-out-put options, would market makers widen their spreads to reflect the added uncertainty?

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–NYSEArca–2012–108 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 Numbers SR–NYSEArca–2012–108. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE Arca–2012–108 and should be submitted on or before February 13, 2013. Rebuttal comments should be submitted by February 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

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[37] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68674; File No. SR– Phlx–2013–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Pricing Schedule

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange to amend the Exchange's Pricing Schedule at Section A, entitled ''Customer Rebate Program,'' Section I entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,''[3] Section II entitled ''Multiply Listed Options Fees''[4] and at Section IV entitled ''Other Transaction Fees.'' Specifically, the Exchange proposes to amend the Customer Rebate Program, Select Symbols,[5] Simple and Complex Order[6] fees and rebates, the applicability of Payment for Order Flow[7] and PIXL[8] Pricing.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[3] The rebates and fees in Section I apply to certain Select Symbols which are listed in Section I of the Pricing Schedule.

[4] The pricing in Section II includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[5] The Select Symbols are listed in Section I of the Pricing Schedule.

[6] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[7] The Payment for Order Flow program started on July 1, 2005 as a pilot and after a series of orders extending the pilot became effective on April 29, 2012. *See* Securities Exchange Act Release No. 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR–Phlx–2005–44); 57851 (May 22, 2008), 73 FR 31177 (May 20, 2008) (SR–Phlx–2008–38); 55891 (June 11, 2007), 72 FR 333271 (June 15, 2007) (SR–Phlx–2007–39); 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR–Phlx–2006–25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR–Phlx–2005–88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR–Phlx–2005–58); and 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[8] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Rule 1080(n).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to accomplish various objectives. First, the Exchange proposes to amend the Customer Rebate Program to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange. Towards this end, the Exchange proposes the addition of Category D to the Customer Rebate Program relating to Customer Simple Orders in Select Symbols. The Exchange also proposes to offer certain credits when an order, which is sent to the Exchange, is routed to an away market. Second, the Exchange proposes to remove certain Select Symbols from Section I and instead assess the fees and offer caps as specified in Section II of the Pricing Schedule. The Exchange believes that the pricing in Section II, coupled with the proposed enhancements to the Customer Rebate Program may encourage an increase in Customer transactions in those symbols. Third, the Exchange proposes to amend the Section I pricing in Simple and Complex Orders and PIXL Pricing to also encourage additional Customer order flow by not assessing fees to Customers. The Exchange proposes to lower the Simple Order Fees for Removing Liquidity and certain PIXL Pricing to encourage additional Simple Order transactions. Fourth, the Exchange proposes to increase the Simple Order Fees for Adding Liquidity, adopt Complex Order Fees for Adding Liquidity and increase certain Complex Orders Fees for Removing Liquidity to permit the Exchange to offer additional rebates in the Customer Rebate Program in Section A. Fifth, the Exchange proposes to lower the Complex Order Specialist and Market Fees for Removing Liquidity in Select Symbols, as well as auctions and openings, and amend the applicability of Payment for Order Flow Fee for Select Symbols and broadcast messages to encourage greater Customer order interaction on the Exchange.

Customer Rebate Program

The Exchange is proposing to amend its Customer Rebate Program in Section A of the Pricing Schedule. Currently, the Exchange has a four-tiered Customer Rebate Program as follows:

Average daily volume threshold	Rebate per contract categories		
	Category A	Category B	Category C
0 to 49,999 contracts in a month	$0.00	$0.00	$0.00
50,000 to 99,999 contracts in a month	0.07	0.10	0.00
100,000 to 274,999 contracts in a month	0.10	0.14	0.05
over 275,000 contracts in a month	0.12	0.15	0.06

(a) Changes to the Tiers and Rebate Rates

At this time, the Exchange proposes to reduce the Customer Rebate Program to a three-tiered rebate structure. The Exchange proposes to amend Tier 1 which is currently 0 to 49,999 contracts in a month to 0 to 99,999 contracts in a month. The Exchange is not proposing to amend the rebate rates in Categories A, B or C for Tier 1. Those rebates will remain at $0.00 per contract. Next, the Exchange is proposing to amend Tier 2 which is currently 50,000 to 99,999 contracts in a month to 100,000 to 349,999 contracts in a month. The Exchange proposes to amend the Tier 2 rate in Category A from $0.07 to $0.10 per contract. The Exchange proposes to amend the Tier 2 rate in Category B from $0.10 to $0.12 per contract. The Exchange proposes to amend the Tier 2 rate in Category C from $0.00 to $0.13 per contract. The Exchange proposes to eliminate Tier 3 which is currently 100,000 to 274,999 contracts in a month.[9] The Exchange proposes to amend current Tier 4 which awards rebates over 275,000 contracts in a month and rename it Tier 3 and award rebates over 350,000 contracts in a month. The Exchange proposes to amend the new Tier 3 rate in Category A from $0.12 to $0.15 per contract. The Exchange would not amend the Tier 3 rate in Category B. The Exchange proposes to amend the Tier 3 rate in Category C from $0.06 to $0.15 per contract. The Exchange is not proposing to amend the types of orders that qualify for Categories A, B or C.[10]

The Exchange also proposes to add another Category of orders eligible for rebates entitled ''Category D.'' This new category would pay rebates to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Also, the rebate would be paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.[11] The Exchange proposes to pay the following Category D rebates: no rebate for Tier 1, a $0.05 per contract rebate for Tier 2 and a $0.07 per contract rebate for Tier 3. The Exchange also proposes to add the words ''Tier 1,'' ''Tier 2,'' and ''Tier 3'' to the Pricing Schedule to further clarify the tiers. The proposed Customer Rebate Program would be as follows:

Average daily volume threshold	Rebate per contract categories			
	Category A	Category B	Category C	Category D
Tier 1: 0 to 99,999 contracts in a month	$0.00	$0.00	$0.00	$0.00

[9] Currently, Tier 3 pays the following rebates: A Category A rebate of $0.10 per contract, a Category B rebate of $0.14 per contract and a Category C rebate of $0.05 per contract.

[10] The Exchange notes that it will evaluate the tiers monthly and may file modifications to the tiers periodically depending on market conditions.

[11] This application of the Category D rebate to PIXL Orders is similar to the current application of the Category A rebate to PIXL Orders.

Average daily volume threshold	Rebate per contract categories			
	Category A	Category B	Category C	Category D
Tier 2: 100,000 to 349,999 contracts in a month	0.10	0.12	0.13	0.05
Tier 3: over 350,000 contracts in a month	0.15	0.15	0.15	0.07

(b) Changes to Average Daily Volume Calculation

Currently, the Exchange calculates Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with the following: (i) Electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity; and (ii) electronic Qualified Contingent Cross Orders (''QCC Orders''),[12] as defined in Exchange Rule 1080(o) (''Threshold Volume''). Rebates are paid on Threshold Volume.

The Exchange proposes to amend the Average Daily Volume Calculation by eliminating Customer volume in Multiply-Listed Options that are electronically-delivered and executed except for volume associated with electronically-delivered and executed Simple Orders in Select Symbols that remove liquidity. The Exchange is proposing to amend the Average Daily Volume by eliminating the exclusion of the electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity. The QCC Orders would be the only exception when calculating Customer volume in Multiply-Listed Options that are electronically-delivered in the Average Daily Volume Threshold calculation.[13]

(c) Credit for Member Qualifying for Tier 2 and 3 Rebates

The Exchange proposes to reduce Routing Fees in Section V of the Exchange's Pricing Schedule for member organizations that qualify for Tier 2 or Tier 3 of the Customer Rebate Program. Specifically, the Exchange proposes to credit member organizations that qualify for either a Tier 2 or Tier 3 rebate with a credit of $0.04 per contract, which credit would be applied to Routing Fees, as specified in Section V of the Pricing Schedule, when a Customer order is routed to NASDAQ OMX BX, Inc. (''BX Options'') or the NASDAQ Options Market LLC (''NOM''). Member organizations that qualify for either a Tier 2 or Tier 3 rebate would be entitled to receive a $0.10 per contract credit, which credit would be applied to Routing Fees, specified in Section V of the Pricing Schedule, when a Customer order is routed to an away market other than BX Options or NOM.

The Exchange believes that the proposed amendments to the Customer Rebate Program, including the credit proposed for Routing Fees, would further incentivize members to transact Customer orders on the Exchange. The Exchange believes the proposed amendments will attract additional Customer order flow to the Exchange for the benefit of all market participants.

Section I Amendments

(a) Select Symbols

The Exchange displays a list of Select Symbols in its Pricing Schedule at Section I, which symbols are subject to the rebates and fees in that section. The Exchange is proposing to delete the following symbols from the list of Select Symbols in Section I of the Pricing Schedule: Arena Pharmaceuticals, Inc. (''ARNA''), Alcoa, Inc. (''AA''), Advanced Micro Devices, Inc. (''AMD''), Cisco Systems, Inc. (''CSCO''), SPDR DOW Jones Industrial Average (''DIA''), iShares MSCI EAFE Index Fund (''EFA''), iShares MSCI Brazil Index Fund (''EWZ''), Ford Motor Co. (''F''), (Direxion Daily Financial Bull 3x Shares (''FAS''), Direxion Daily Financial Bear 3X Shares (''FAZ''), iShares FTSE China 25 Index Fund (''FXI''), Market Vectors Gold Miners ETF (''GDX''), General Electric Company (''GE''), Intel Corporation (''INTC''), Nokia Corporation (''NOK''), Oracle Corporation (''ORCL''), Pfizer, Inc. (''PFE''),Research in Motion Limited (''RIMM''), ProShares UltraShort S&P 500 (''SDS''), Sirius XM Radio Inc. (''SIRI''), iShares Silver Trust (''SLV''), ProShares UltraShort 20+ Year Treasury (''TBT''), iShares Barclays 20 Year Treasury (''TLT''), Direxion Daily Small Cap Bear 3X Shares (''TZA''), United States Natural Gas (''UNG''), United States Oil (''USO''), Vale S.A. (''VALE''), iPath S&P 500 VIX ST Futures ETN (''VXX''), Verizon Communications Inc. (''VZ''), SPDR Select Sector Fund—Energy (''XLE''), SPDR Select Sector Fund (''XLI'') and Yahoo! Inc. (''YHOO'') (collectively, ''Proposed Deleted Symbols''). These Proposed Deleted Symbols would be subject to the fees, fee caps and related discounts in Section II of the Pricing Schedule entitled ''Multiply Listed Options Fees.'' The Exchange believes that by assessing the Proposed Deleted Symbols the pricing in Section II of the Pricing Schedule the Exchange will attract order flow to the Exchange.

(b) Simple Orders

The Exchange proposes to amend the Simple Order rebates and fees in Section I, Part A of the Pricing Schedule. Currently, the Exchange pays the following Simple Order Rebates for Adding Liquidity: Customer $0.26 per contract, Specialist[14] and Market Maker[15] $0.23 per contract, Firm and Broker-Dealer receive no rebate and Professional[16] receives a $0.23 per contract rebate. The Exchange proposes to not pay a Customer or Professional rebate and decrease the Specialist and Market Maker rebate from $0.23 to $0.20 per contract, however the Exchange would only pay a Specialist or Market Maker Rebate for Adding Liquidity in Simple Orders if the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional. In other words, the

[12] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer (''NBBO'') and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[13] QCC Orders are excluded today.

[14] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[15] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[16] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

Specialist or Market Maker would not receive a Simple Order Rebate for Adding Liquidity if they are contra to a Customer and instead would be assessed the Simple Order Fee for Adding Liquidity, which will be discussed below. The Rebate for Adding Liquidity for Customer, Broker-Dealer, Firm and Professional would be marked ''N/A'' as those market participants would be assessed a Fee for Adding Liquidity to be discussed below. In addition, the Exchange proposes to add a note to the Pricing Schedule indicating the above exception to the payment of the Specialist and Market Maker Rebate for Adding Liquidity in Simple Orders.

Currently, the Exchange assesses the following Simple Order Fees for Adding Liquidity: Customer, Specialist, Professional and Market Maker pay no fee, a Firm and Broker-Dealer pay $0.05 per contract. The Exchange proposes to amend the Simple Order Fees for Adding Liquidity as follows: a Customer would continue to not be assessed however instead of ''N/A'' the Exchange would reflect the fee as ''$0.00'' on the Pricing Schedule. A Specialist and Market Maker would be assessed a $0.10 per contract Simple Order Fee for Adding Liquidity, but only when contra to a Customer order. If the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional, then the Specialist or Market Maker would be entitled to the Simple Order Rebate for Adding Liquidity.

As explained above, Specialists and Market Makers receive a Rebate for Adding Liquidity when contra to a Specialist, Market Maker, Firm, Broker-Dealer and Professional. The Firm and Broker-Dealer Fees for Adding Liquidity would be increased from $0.05 to $0.45 per contract. A Professional would be assessed $0.45 per contract pursuant to this proposal as compared to no fee.

Currently the Exchange assesses the following Simple Orders Fees for Removing Liquidity: A Customer is assessed $0.43 per contract, a Specialist, Market Maker, Firm, Broker-Dealer and Professional are assessed $0.45 per contract. The Exchange proposes to decrease the Customer Fee for Removing Liquidity from $0.43 to $0.00 per contract. The Exchange also proposes to decrease the Specialist, Market Maker, Firm, Broker-Dealer and Professional fees from $0.45 to $0.44 per contract.

The Exchange believes that decreasing certain Simple Order fees will incentivize market participants to send order flow to the Exchange, particularly Customer order flow. In addition, the Exchange believes that the increased fees would allow the Exchange to offer additional Customer rebates as proposed in the Customer Rebate Program to attract liquidity to the Exchange.

(c) Complex Orders

The Exchange proposes to amend the Complex Order rebates and fees in Section I, Part B of the Pricing Schedule. The Exchange currently pays the following Complex Order Rebates for Adding Liquidity: a Customer is paid $0.32 per contract and Specialists, Market Makers, Firms, Broker-Dealers and Professionals are paid $0.10 per contract. The Exchange proposes to eliminate the Rebates for Adding Liquidity in Complex Orders. Currently, Customers are paid a $0.06 Complex Order Rebate for Removing Liquidity. No other market participant is paid a Complex Order Rebate for Removing Liquidity. The Exchange proposes to eliminate the Customer Complex Order Rebate for Removing Liquidity. The Exchange's proposal would therefore pay no rebates in Section I, Part B with respect to Complex Orders.

The Exchange proposes to adopt a Complex Order Fee for Adding Liquidity of $0.10 per contract that will be applicable to Specialists, Market Makers, Firms, Broker-Dealers and Professionals. Customers would not be assessed a Complex Order Fee for Adding Liquidity.

The Exchange currently assesses the following Complex Order Fees for Removing Liquidity: $0.39 per contract for Specialists, Market Makers, Firms, Broker-Dealers and Professionals. Customers are not assessed a Complex Order Fee for Removing Liquidity. The Exchange is proposing to decrease the Specialist and Market Maker Complex Order Fees for Removing Liquidity from $0.39 to $0.25 per contract. The Exchange proposes to increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from $0.39 to $0.50 per contract. A Customer would continue to not be assessed a Complex Order Fee for Removing Liquidity. The Exchange is proposing to decrease certain fees to incentivize market participants to transact Complex Orders on the Exchange and the Exchange is proposing to increase certain fees in order that it may offer additional rebates in the Customer Rebate Program as described herein.

(d) Complex Auctions, Non-Complex Auctions and the Opening Process

Today the Exchange pays market participants for Customer executions that occur as part of a Complex electronic auction [17] and the opening process the Complex Order Rebate for Removing Liquidity. Customer executions that occur as part of a non-Complex auction [18] are paid the Simple Order Rebate for Removing Liquidity, except when contra to another Customer order. Today, the Exchange does not assess a Fee for Removing Liquidity for transactions that occur either as part of a Complex electronic auction or a non-Complex electronic auction.

The Exchange proposes to no longer pay rebates for Customer executions that occur as part of a Complex electronic auction, the opening process or a Complex Order or a non-Complex auction. In addition, the Exchange would not assess any fees for transactions that occur as part of a Complex electronic auction, the opening process or a non-Complex electronic auction, as is the case today for Customer orders. The Exchange believes that assessing no fees and paying no rebates for transactions executed during certain auctions and the opening process would benefit market participants. While no rebates would be paid, there would also be no fees assessed.

Currently, the Specialists and Market Makers pay the Simple Order Fee for Removing Liquidity during the opening the process. The Exchange proposes to assess Specialists and Market Makers the Simple Order Fee for Adding Liquidity if contra to a Customer during the opening process. Specialists and Market Makers will continue to pay the Simple Order Fee for Removing Liquidity during the opening the process if contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.

(e) Payment for Order Flow Fees

Currently, Payment for Order Flow [19] Fees are not collected on transactions in

[17] A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA'').

[18] A non-Complex electronic auction includes the Quote Exhaust auction and, for purposes of these fees, the opening process.

[19] The Payment for Order Flow (''PFOF'') Program assesses fees to Specialists and Market Makers resulting from Customer orders (''PFOF Fees''). The PFOF fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Market Maker to order flow providers who are members or member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. Any excess PFOF funds billed but not utilized by the Specialist or Market Maker are carried forward unless the Specialist or Market Maker elects to have those funds rebated on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the

Continued

Select Symbols.[20] The Exchange is proposing to amend the Pricing Schedule to collect Payment for Order Flow Fees on transactions in Select Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity, in which case the Payment for Order Flow fees would not apply. The Exchange believes that assessing Payment for Order Flow Fees on Select Symbols, similar to other Multiply Listed Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity would attract additional Customer order flow to the Exchange.

The Exchange also proposes to make a technical amendment in Section II of the Pricing Schedule to amend the Pricing Schedule to change the term ''Single contra-side'' in Part B of Section II of the Pricing Schedule to ''Simple Order'' for consistency in use of its terms.

(f) Order Exposure Alert

The Exchange recently filed to amend Rule 1080(m) to provide for the broadcast of certain orders that are on the Phlx Book.[21] The Exchange proposed to broadcast orders on the Phlx Book by issuing order exposure alerts to all Phlx XL II[22] participants and market participants that subscribe to certain data feeds. The Exchange proposes to specify in Section II of its Pricing Schedule that no Payment for Order Flow Fees would be assessed on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options, including Select Symbols. By eliminating Payment for Order Flow Fees the Exchange desires to spur Specialists and Market Makers to transact against orders that triggered the broadcast message.

Section IV Amendments

(a) PIXL

The Exchange proposes to amend Section IV of the Pricing Schedule at Part A. Currently, the Exchange assesses an Initiating Order[23] a $0.07 per contract or $0.05 per contract fee if the Customer Rebate Program Threshold Volume, defined in Section A, is greater than 275,000 contracts per day in a month. The Exchange is proposing to instead assess an Initiating Order a $0.07 per contract or $0.05 per contract fee if the Customer Rebate Program Threshold Volume defined in Section A is greater than *100,000* contracts per day in a month.

In addition, the Exchange also proposes to permit Phlx members and member organizations under common ownership to aggregate their Customer Rebate Program Threshold Volume in order to determine if they qualify for the $0.07 or $0.05 per contract Initiating Order fee. Common ownership is defined as 75 percent common ownership or control.

Today, when a PIXL order in a Select Symbol[24] is contra to a PIXL Auction Responder, the Exchange will either pay a Rebate for Adding Liquidity or assess a Fee for Adding Liquidity in Section I of the Pricing Schedule. Today, a Responder is assessed $0.30 per contract. The Exchange proposes to amend the PIXL pricing for order executions in Select Symbols as follows: when a PIXL Order in a Select Symbol is contra to a PIXL Auction Responder, the PIXL Order would be assessed the Fee for Adding Liquidity in Section I and the Responder would be assessed $0.30 per contract, unless the Responder is a Customer, in which case the fee would be $0.00 per contract.

Additionally, today when a PIXL Order in a Select Symbol is contra to a resting order or quote that was on the PHLX book prior to the auction, the PIXL Order is assessed $0.30 per contract and the resting order or quote is either paid the Rebate for Adding Liquidity or assessed the Fee for Adding Liquidity in Section I. Today, if the resting order or quote that was on the PHLX book was entered during the Auction, the PIXL Order receives the Rebate for Adding Liquidity or is assessed the Fee for Adding Liquidity in Section I and the resting order or quote is assessed $0.30 per contract. The Exchange proposes to amend the PIXL pricing for order executions in Select Symbols as follows: when the PIXL Order is contra to a resting order or quote that was on the PHLX book prior to the auction, the PIXL Order would be assessed the Fee for Removing Liquidity not to exceed $0.30 per contract and the resting order or quote would be assessed the Fee for Adding Liquidity in Section I. Further, the Exchange proposes that if the resting order or quote that was on the PHLX book was entered during the Auction, the PIXL Order would be assessed the Fee for Adding Liquidity in Section I and the resting order or quote would be assessed the Fee for Removing Liquidity not to exceed $0.30 per contract.

The Exchange proposes to eliminate the payment of rebates, not assess fees and lower the Threshold Volume to 100,000 contracts per day in a month in order to incentivize market participants to transact PIXL Orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[25] in general, and furthers the objectives of Section 6(b)(4) of the Act[26] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Customer Rebate Program

The Exchange's proposal to amend its Customer Rebate Program in Section A of the Pricing Schedule is reasonable because the Exchange believes that the amended Customer Rebate Program, including the addition of Category D, would further incentivize market participants to transact Customer order flow on the Exchange, which liquidity will benefit all market participants. The Exchange believes that reducing the Customer Rebate Program to a three-tiered rebate structure and amending the tier volumes is reasonable because it should incentivize market participants to increase the amount of Customer orders that are transacted on the Exchange to obtain a rebate. The Exchange proposes herein to amend the Average Daily Volume Threshold to only exclude QCC Orders,[27] which

amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable Specialist or Market Maker who paid into that pool of funds.

[20] The Select Symbols are listed in Section I of the Pricing Schedule.

[21] *See* Securities Exchange Act Release No. 68517 (December 21, 2012), 77 FR 77134 (December 31, 2012) (SR–Phlx–2012–136).

[22] This proposal refers to ''PHLX XL®'' as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

[23] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. See Exchange Rule 1080(n).

[24] Select Symbols are subject to the rebates and fees in Section I of the Pricing Schedule.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4).

[27] Today, the Average Daily Volume Threshold is calculated by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except

should permit market participants to include additional orders in the Average Daily Volume Threshold and obtain larger rebates on eligible contracts. In addition, other exchanges employ similar incentive programs.[28]

The Exchange believes that the proposal to amend the rebate tiers is equitable and not unfairly discriminatory because while market participants would need to transact a greater number of contracts to achieve a Tier 2 or 3 rebate, the Exchange is also amending the Average Daily Volume Threshold to allow market participants to receive a rebate on a greater number of eligible contracts. The Exchange's proposal to amend its rebates is equitable and not unfairly discriminatory for the following reasons. With respect to Tier 1 which is currently 0 to 49,999 contracts in a month and would be 0 to 99,999 contracts in a month pursuant to this proposal, the Exchange would continue to pay no rebate. For those market participants executing from 1 to 49,999 contracts, this is the same as today. For those market participants that currently transact 50,000 to 99,999 contracts, they would not be eligible for a rebate under the proposal. The Exchange believes that market participants would be incentivized to transact a greater number of contracts in order to obtain a rebate in Tiers 2 or 3. With respect to Tier 2 which is currently 50,000 to 99,999 contracts in a month, the proposal would amend the contract volume to 100,000 to 349,999 contracts in a month which today is the volume necessary to obtain a Tier 2 rebate or a Tier 3 rebate if the number of contracts is greater than 275,000. A Category A[29] rebate would remain the same as the Exchange proposes to increase Tier 2 in Category A from $0.07 to $0.10 per contract. The Exchange would pay a lower rebate in Category B[30] which would increase from $0.10 to $0.12 per contract. Today, a Tier 2, Category B rebate receives a $0.14 per contract rebate up to 274,999 contracts. A market participant executing between 100,000 to 274,999 contracts today would receive a lower rebate ($0.12 per contract as compared to $0.14 per contract). A Category C[31] rebate would increase for those market participants transacting between 100,000 to 274,999 contracts. Today, a market participant receives no rebate for transacting up to 99,999 contracts in Category C. The Exchange is proposing to pay $0.13 per contract in Category C to market participants that execute between 100,000 and 349,999 contracts in a month. The Exchange also proposes to increase the volume required for current Tier 4 which awards rebates over 275,000 contracts in a month to create a new Tier 3 to award rebates over 350,000 contracts in a month. A market participant executing over 275,000 contracts today in Category A would receive a $0.12 per contract rebate. As mentioned, that rebate would decrease between 100,000 to 349,999 contracts to $0.10 per contract, but would increase over 350,000 contracts to $0.15 per contract. A market participant executing over 275,000 contracts today in Category B would receive $0.15 per contract. As mentioned, that rebate would decrease between 100,000 to 349,999 contracts to $0.12 per contract and would remain the same over 350,000 contracts. A market participant executing over 275,000 contracts today in Category C would receive a $0.06 rebate. As mentioned, that rebate would increase between 100,000 to 349,999 contracts to $0.13 per contract and would also increase over 350,000 contracts to $0.15 per contract. The Exchange believes that while market participants in Categories A and B would need to execute additional contracts to receive the same or greater rebates, the Exchange believes that it continues to incentivize those market participants to direct Customer orders to the Exchange. With respect to Category C, the Exchange is providing greater incentives to transact Customer Complex Orders in Select Symbols.

The Exchange believes that the addition of Category D is reasonable because the Exchange is incentivizing market participants to transact Customer Simple Orders in Select Symbols by offering a rebate. The Exchange also believes that the Category D rebates are equitable and not unfairly discriminatory because all market participants that direct Customer Simple Orders in Select Symbols are eligible for the rebates. The Exchange would pay a Category D rebate of $0.05 per contract to a market participant that transacts between 100,000 and 349,999 contracts in a month. Additionally, the Exchange would pay a Category D rebate of $0.07 per contract to a market participant that transacts over 350,000 contracts in a month.[32]

The Exchange's amended rebate calculation is reasonable because the Exchange proposes to include Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with QCC Orders as defined in Exchange Rule 1080(o). Volume associated with electronically-delivered Customer Simple Orders in Select Symbols that remove liquidity would be included as part of this proposal. This volume is currently excluded. The Exchange believes that the inclusion of the electronically-delivered Customer Simple Orders in Select Symbols that remove liquidity would allow market participants to obtain greater rebates. In addition, the Exchange believes that the amended rebate calculation is equitable and not unfairly discriminatory because the calculation would apply uniformly to all market participants.

The Exchange's proposal to reduce Routing Fees[33] in Section V of the Exchange's Pricing Schedule for member organizations that qualify for a Tier 2 or Tier 3 Customer Rebate in Section A of the Pricing Schedule is reasonable because the Exchange proposes to provide an additional incentive for transacting Customer orders on the Exchange. The Exchange believes that providing a credit of $0.04 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options or NOM and a $0.10 per contract credit toward the Routing Fee specified in Section V of the Pricing

volume associated with: (i) Electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity; and (ii) electronic QCC Orders, as defined in Exchange Rule 1080(o).

[28] *See* the Chicago Board Options Exchange, Incorporated's (''CBOE'') Fees Schedule. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain volume thresholds in a month (Volume Incentive Program).

[29] A Category A rebate is paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest.

[30] A Category B rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II.

[31] A Category C rebate is paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I.

[32] The Exchange would not pay a Category D rebate for contract volume below 100,000 contracts.

[33] Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS that are assessed on the Exchange, membership fees at away markets, and technical costs associated with routing options. The Routing Fees enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market.

Schedule if the Customer order is routed to away market other than BX Options or NOM would encourage market participants to transact their Customer orders on the Exchange because they have the opportunity to receive a Tier 2 or Tier 3 rebate and also reduce Routing Fees. The Exchange believes that the proposal to reduce Routing Fees in Section V of the Exchange's Pricing Schedule for members that qualify for a Tier 2 or Tier 3 Customer Rebate in Section A of the Pricing Schedule is equitable and not unfairly discriminatory because any market participant that transacts Customer orders may qualify for the credit. Also, the Routing Fees specified in Section V of the Pricing Schedule are lower for a Customer order routed to BX Options or NOM today and higher for an away market other than BX Options or NOM.[34]

Section I Amendments

The Exchange believes that it is reasonable to remove the Proposed Deleted Symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the pricing in Section II of the Pricing Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Pricing Schedule, which would not include the Proposed Deleted Symbols. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Proposed Deleted Symbols.

The Exchange's proposal to amend the Simple Order rebates and fees in Section I, Part A of the Pricing Schedule is reasonable because the Exchange is proposing to only pay rebates to Specialists and Market Makers in limited circumstances and only when the Exchange is able to fund that rebate with a Simple Order Fee for Removing Liquidity. In other words, if a Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional, these market participants pay Simple Order Fees for Removing Liquidity, which fund the rebate to the Specialist or Market Maker. When a Specialist or Market Maker is contra to a Customer, then the Specialist or Market Maker would pay the Simple Order Fee for Adding Liquidity because the Customer is assessed no Simple Order Fee for Removing Liquidity pursuant to this proposal and instead receives the rebates defined in Category D. The Exchange is reducing the Simple Order Fees for Removing Liquidity because it is no longer paying certain Simple Order rebates to Customers or Professionals. The Exchange believes that its proposal to assess Simple Order Fees for Adding Liquidity is reasonable because as explained herein, the Exchange is funding the rebates it offers to Specialists and Market Makers with those Simple Order Fees for Adding Liquidity.

The Exchange's proposal to amend the Simple Order rebates and fees in Section I, Part A of the Pricing Schedule is equitable and not unfairly discriminatory for the reasons which follow. With respect to Customers, the Exchange would no longer assess a Customer the $0.43 per contract Simple Order Fee for Removing Liquidity, the Exchange would continue not to assess a Customer a Simple Order Fee for Adding Liquidity, as is the case today. In light of eliminating these fees, the Exchange proposes to no longer pay the $0.26 per contract Simple Order Rebate for Adding Liquidity. Customer order flow is assessed no fee because incentivizing members to continue to offer Customer trading opportunities in Simple Orders benefits all market participants through increased liquidity. The Exchange instead proposes to pay Customer rebates for Simple Orders in Select Symbols as part of proposed Category D to the Customer Rebate Program in Section A.[35] Market participants would continue to be incentivized to send Customer order flow to the Exchange and would receive rebates as part of the Customer Rebate Program and would also not pay fees.

With respect to the Simple Order Rebate for Adding Liquidity, the Exchange proposes to reduce the rebates for Specialists and Market Makers from $0.23 to $0.20 per contract and not pay a Professional a rebate[36] because the Exchange proposes to offer market participants greater rebates as part of the Customer Rebate Program in Section A. The Exchange proposes to only pay Specialists and Market Makers a Simple Order Rebate for Adding Liquidity, in limited circumstances, because unlike other market participants, Specialists and Market Makers have burdensome quoting obligations[37] to the market. Specialists and Market Makers would only be paid a Simple Order Rebate for Adding Liquidity when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer and Professional. The Exchange believes that its proposal to only pay a Specialist or Market Maker a Simple Order Rebate for Adding Liquidity as long as the Specialist or Market Maker is not contra to a Customer is equitable and not unfairly discriminatory because the Exchange is only paying Specialists and Market Makers a Simple Order Rebate to Add Liquidity when it is able to fund that rebate with a Fee for Removing Liquidity. In the case of a Customer, the Exchange proposes not to assess a Customer a Simple Order Fee for Removing Liquidity and therefore in that instance the Exchange would assess the Specialist or Market Maker the Simple Order Fee for Adding Liquidity.

With respect to the Simple Order Fees for Adding Liquidity, the Exchange currently only assesses Firms, Broker-Dealer and Professionals a $0.05 per contract fee. The Exchange proposes to increase those fees to $0.45 per contract for Firms, Broker-Dealer and Professionals to permit the Exchange to continue to pay Customer rebates as proposed in Section A of the Pricing Schedule. The Exchange would assess

[34] The Exchange assesses a fixed fee of $0.10 per contract for non-NASDAQ OMX exchanges and a $0.04 per contract fee for BX Options and NOM. These fixed costs represent overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which are in addition to the transaction fee assessed by the away market. Also, market participants whose orders routed to away markets are entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. As explained in a previous rule change, the actual cash outlays for the Exchange to route to BX Options and NOM is lower as compared to routing to other non-NASDAQ OMX exchanges. *See* Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR–Phlx–2012–129). The Exchange noted in that rule change that the costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis.

[35] The Exchange believes that market participants would continue to be incentivized to send Customer order flow to the Exchange because the Customer Rebate Program would pay rebates on electronic orders, as is the case today for the rebates that are being eliminated in Section I, Parts A and B. Transactions in the Select Symbols originating on the Exchange floor are subject to pricing in Section II and would not be subject to the rebates in the Customer Rebate Program, as is the case today. The rebates in Section I, Parts A and B are paid on electronic orders today. Also, the Customer Rebate Program would pay rebates on both adding and removing liquidity similar to the rebates that are being eliminated in Section I, Parts A and B.

[36] Today, a Professional is paid a $0.23 per contract Simple Order Rebate for Adding Liquidity.

[37] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

these market participants the same fee because as explained herein the proposed differentiation as between Customers, Specialists and Market Makers and other market participants (Professionals, Firms and Broker-Dealers) recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. As noted previously, the Exchange is proposing not to assess Customers Simple Order fees. The Exchange proposes to assess Specialists and Market Makers a lower fee of $0.10 per contract to recognize the obligations born by these market participants.

With respect to the Simple Order Fees for Removing Liquidity, the Exchange proposes to decrease the fee from $0.45 to $0.44 per contract for Specialists, Market Makers, Professionals, Firms and Broker-Dealers. The Exchange proposes to continue to assess, uniformly, the same fees for all market participants except Customers, as is the case today. As noted previously, the Exchange is proposing not to assess Customers Simple Order fees.[38]

The Exchange's proposal to make technical amendments to the Simple Order Fees for Adding Liquidity to remove ''N/A'' and instead note the fee as ''$0.00'' on the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange proposes to indicate that no fee is being assessed to clarify the Pricing Schedule.

As stated herein, the Exchange's proposal to amend Complex Order rebates and fees in Section I, Part B of the Pricing Schedule are reasonable because the Exchange is proposing to only pay rebates in limited circumstances [39] and only when the Exchange is able to fund that rebate with a Complex Order Fee for Removing Liquidity as described more fully above. The Exchange is proposing to decrease certain fees to incentivize Specialists and Market Makers to add Complex Order liquidity to the market and the Exchange is proposing to increase certain fees for Firms, Broker-Dealers and Professionals in order that it may offer additional rebates in the Customer Rebate Program in Section A as described herein.

The Exchange's proposal to amend the Complex Order rebates and fees in Section I, Part B of the Pricing Schedule are equitable and not unfairly discriminatory for the reasons which follow. The Exchange is proposing to eliminate the Complex Order Rebate for Adding Liquidity and the Rebate for Removing Liquidity because the Exchange is amending its Customer Rebate Program in Section A of the Pricing Schedule to include an opportunity to obtain greater rebates. The Exchange is proposing to adopt a Complex Order Fee for Adding Liquidity and assess all market participants, except Customers a fee of $0.10 per contract. The Exchange believes that uniformly assessing market participants, other than Customers, a $0.10 per contract Complex Order Fee for Adding Liquidity is equitable and not unfairly discriminatory. The Exchange proposes to no longer assess Customers Complex Order fees. Today, the Exchange does not assess a Customer Complex Order Fee for Removing Liquidity and would likewise assess no Customer Complex Order Fee for Adding Liquidity with this proposal. Customer order flow is assessed no fee because incentivizing members to continue to offer Customer trading opportunities in Complex Orders benefits all market participants through increased liquidity.

With respect to the Complex Order Fees for Removing Liquidity, as previously noted, the Exchange would continue to not assess a Customer a Complex Order Fee for Removing Liquidity. Today, Specialists, Market Makers, Firms, Broker-Dealers and Professionals all pay a $0.39 per contract Complex Order Fee for Removing Liquidity. The Exchange proposes to reduce the Specialist and Market Maker fee to $0.25 per contract and increase the Firm, Broker-Dealer and Professional fees to $0.50 per contract. The Exchange assesses Specialists and Market Maker lower fees as compared to other market participants, other than Customers, because Specialists and Market Makers have burdensome quoting obligations [40] to the market. In this case, the Exchange is proposing to increase the fee differential in assessing the Complex Order Fee for Removing Liquidity as between Specialist and Market Makers and other non-Customer market participants from 0 to $0.25 per contract ($0.25 vs. $0.50 per contract). The Exchange believes that this fee differential is equitable and not unfairly discriminatory because Specialists and Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants including, but not limited to, PFOF and other costs associated with market making activities,[41] which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The Exchange believes that the fees assessed to Specialists and Market Makers in Complex Orders remain aligned with fees assessed to Firms, Broker-Dealer and Professionals when other costs are taken into account.

The Exchange's proposal to amend the Pricing Schedule to change ''Single contra-side'' in Part B of Section II of the Pricing Schedule to ''Simple'' is reasonable, equitable and not unfairly discriminatory because it would further clarify the Pricing Schedule.

The Exchange's proposal to amend Part C of Section I of the Pricing Schedule to no longer pay rebates for Customer executions that occur as part of a Complex electronic auction, the opening process or a non-Complex auction is reasonable because the Exchange proposes to pay Customer rebates as proposed in Section A of the Pricing Schedule. Also, the Exchange has proposed a similar elimination of Customer rebates in Section I, Parts A and B of the Pricing Schedule. In addition, the Exchange's proposal to not assess any fees for transactions that occur as part of a Complex electronic auction, the opening process or a non-Complex electronic auction is reasonable because those transactions would not be subject to rebates. Today, the Exchange does not assess Customer fees on Complex electronic auctions, the opening process or non-Complex electronic auctions. The Exchange believes that it is reasonable to neither pay rebates nor assess fees on these types of transactions and market participants would continue to be incentivized to transact these types of orders on the Exchange.

The Exchange believes that its proposal to no longer pay rebates for Customer executions that occur as part of a Complex electronic auction, the opening process or a non-Complex auction and to no longer assess fees for transactions that occur as part of a Complex electronic auction, the opening process or a non-Complex electronic auction is equitable and not unfairly

[38] Today, the Exchange reduces its Fees for Removing Liquidity, applicable to Specialists and Market Makers, by $0.05 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution. This is not changing with this proposal.

[39] The Exchange is only proposing to pay rebates to Specialists and Market Makers when they are not contra to a Customer order as described herein.

[40] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[41] Specialists and Market Makers pay for certain data feeds including the SQF Port Fee. SQF Port Fees are listed in the Exchange's Pricing Schedule at Section VII. SQF is an interface that allows Specialists and Market Makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

discriminatory because the Exchange proposes to not pay rebates or assess fees during auctions and opening, as specified herein, uniformly with respect to all market participants.

The Exchange's proposal to collect Payment for Order Flow Fees on transactions in Select Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity, is reasonable because it would attract additional Customer order flow to the Exchange because of the benefit that order flow providers would obtain from the Payment for Order Flow Program.[42]

The Exchange's proposal to assess Specialists and Market Makers the Simple Order Fee for Adding Liquidity if contra to a Customer during the opening process is reasonable because the Exchange desires to incentivize Specialists and Market Makers to transact orders during the opening process by lowering costs when the Specialist or Market Maker trades against a Customer.

The Exchange's proposal to assess Specialists and Market Makers the Simple Order Fee for Adding Liquidity if contra to a Customer during the opening process is equitable and not unfairly discriminatory because Specialists and Market Makers serve an important role on the Exchange with regard to order interaction. The Exchange believes that incentivizing Specialists and Market Makers to transact a greater number of orders at the open by offering lower pricing would benefit all market participants through increased order interaction.

The Exchange's proposal to collect Payment for Order Flow Fees on transactions in Select Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity is equitable and not unfairly discriminatory because the Exchange today collects assesses Specialists and Market Makers Payment for Order Flow Fees on all Multiply Listed Options except Select Symbols. The Exchange believes that not assessing Specialists and Market Makers Payment for Order Flow Fees when the Simple Order Fee for Removing Liquidity is assessed is equitable and not unfairly discriminatory because the Exchange does not desire to unfairly disadvantage Specialists and Market Makers by assessing them a $0.44 per contract Simple Order Fee for Removing Liquidity as well as a $0.25 per contract Payment for Order Flow fee. The Exchange believes that in this instance the fee would be much higher as compared to other market participants and does not proposes to assess the fee.

The Exchange's proposal to not assess PFOF on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options is reasonable the Exchange believes that it would serve to incentivize Specialists and Market Makers to remove liquidity from the Phlx Book. The Exchange believes that the broadcast message, which alerts market participants to orders placed on the Phlx book combined with the opportunity to not be assessed PFOF in Penny Pilot Options would serve to incentivize participants to remove liquidity. The Exchange believes that all market participants would benefit from such an incentive which would lead to greater order interaction and may further reduce fees related to routing.

The Exchange's proposal to not assess PFOF on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange would not assess any Specialist or Market Maker such a PFOF fee regardless of whether or not that Specialist or Market Maker was aware of the alert at the time of execution.

Section IV Amendments

The Exchange's proposal to amend Section IV of the Pricing Schedule at Part A to decrease the Threshold Volume from 275,000 to 100,000 contracts per day in a month is reasonable because the lower Threshold Volume should allow a greater number of market participants to obtain the requisite volume to be assessed the lower $0.05 per contract fee. The Exchange's proposal to amend Section IV of the Pricing Schedule at Part A to decrease the Threshold Volume from 275,000 to 100,000 contracts per day in a month is equitable and not unfairly discriminatory because it would be uniformly assessed on all market participants.

In addition, the Exchange's proposal to permit Phlx members and member organizations under common ownership[43] to aggregate their Customer Rebate Program Threshold Volume in order to determine if they qualify for the $0.07 or $0.05 per contract Initiating Order fee is reasonable because the Exchange desires to provide all market participants the ability to obtain the lower Initiating Order Fee. The Exchange believes that its proposal to permit Phlx members and member organizations under common ownership to aggregate their Customer Rebate Program Threshold Volume for purposes of the Initiating Order fee is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate for purposes of the fee even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap.[44]

The Exchange's proposal to amend the PIXL pricing for order executions in Select Symbols by assessing a PIXL Order the Fee for Adding Liquidity in Section I and the Responder the $0.30 per contract fee unless the Responder is a Customer, in which case no fee is assessed, when a PIXL Order in a Select Symbol is contra to a PIXL Auction Responder is reasonable because the Exchange is proposing to only pay Rebates to Add Liquidity in Section I to Specialists and Market Makers in certain circumstances[45] and is not otherwise paying rebates except as proposed in Section A of the Pricing Schedule as part of the Customer Rebate Program. The Exchange does not desire to assess Customers fees and therefore is amending the PIXL pricing to not assess a fee if the Responder is contra to a Customer. The Exchange desires to incentivize market participants to send Customer order flow by offering the Customer Rebates in Section A and not assessing Customers fees in Section I of the Pricing Schedule. Customer order flow benefits all market participants by increased liquidity. In addition, the Exchange believes that the proposed amendments to Section IV would align the pricing with respect to Select Symbols to the amendments that are proposed herein in Section I, Parts A and B. The Exchange also believes that market participants would still be able to obtain rebates for PIXL orders

[42] The PFOF Program assists Specialists and Market Maker establish PFOF arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Market Maker.

[43] Common ownership is defined as 75 percent common ownership or control.

[44] *See* Section II of the Pricing Schedule. Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Equity option transaction fees; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.

[45] The Rebate for Adding Liquidity will be paid to a Specialist or Market Maker only when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.

because the Exchange proposes to pay rebates on PIXL Orders in Section I symbols that execute against non-Initiating Order interest as part of proposed Category D of the Customer Rebate Program.

The Exchange's proposal to amend the PIXL pricing for order executions in Select Symbols by assessing the Fee for Removing Liquidity not to exceed $0.30 per contract when the PIXL Order is contra to a resting order or quote that was on the PHLX book prior to the auction and assessing the resting order or quote the Fee for Adding Liquidity in Section I is reasonable because the Exchange has amended certain of its Fees for Removing Liquidity in Section I below $0.30 per contract and desires to assess the lower fee where applicable to market participants to further incentivize market participants to transact PIXL orders in Select Symbols. The Exchange's elimination of the Rebate to Add Liquidity with respect to PIXL Orders and the resting order or quote is reasonable because the Exchange is proposing to only pay Rebates to Add Liquidity in Section I to Specialists and Market Makers in certain circumstances [46] and is not otherwise paying rebates except as proposed in Section A of the Pricing Schedule.[47]

The Exchange's proposal to amend the PIXL Pricing by eliminating the Rebates to Add Liquidity in Select Symbols and assess the Fee for Removing Liquidity not to exceed $0.30 per contract is equitable and not unfairly discriminatory because the Exchange would uniformly apply the pricing to all market participants transacting PIXL orders. The Exchange's elimination of the Rebates for Adding Liquidity would impact Specialists and Market Makers because they are the only market participants entitled to rebates in certain circumstances in Section I. The Exchange believes this is equitable and not unfairly discriminatory because Specialists and Market Makers also benefit from being assessed the lower Fee for Removing Liquidity in Complex Orders as proposed herein, while other market participants are assessed $0.30 per contract. The Exchange assessed this lower fee because these market participants bear obligations not born by other market participants. The Exchange also believes that assessing the Fee for Removing Liquidity not to exceed $0.30 per contract specifically benefits Customers because they would not be assessed a fee pursuant to this proposal with respect to Simple Orders. Incentivizing Customer order flow benefits all market participants through increased liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

The Exchange believes that the Customer Rebate Program will encourage Customer order flow to be directed to the Exchange, which will benefit all market participants. The Exchange believes that not assessing Customers fees in Section I would also encourage market participants to direct Customer orders to the Exchange. The Exchange also believes that encouraging Specialists and Market Makers to remove liquidity from the book by incentivizing them with lower fees would benefit order interaction on the Exchange to the benefit of all market participants and therefore does not create a burden on competition. To the extent that the Exchange is increasing certain fees, those fees would permit the Exchange to offer the proposed Customer Rebate Program which benefits the market. Further, the fee increases impact all non-Customer members in a similar fashion and are comparable to fees assessed at other venues for transactions in similarly situated options. With respect to the Complex Order Fee for Removing Liquidity, the Exchange believes that the differential as between Specialists and Market Makers as compared to Firms, Broker-Dealers and Professionals must be considered in light of other fees which are applied to Specialists and Makers and are not assessed on Firms, Broker-Dealers and Professionals, such as the PFOF fee of $0.25 per contract. When this additional fee and other fees paid by Specialists and Market Makers are taken into consideration, the Exchange does not believe that the proposed increase to the Complex Order Fee for Removing Liquidity creates a burden on these market participants. Rather, the cost to transact orders for non-Customers become more closely aligned when the total costs is transacting a Complex Order is taken into account as Specialists and Market Makers are contra to a Customer in most cases. Additionally, a $0.25 per contract differential among non-Customers is not uncommon when competing for order flow. The Exchange notes that its floor fees for non-Customers in Multiply-Listed Options is $0.25 per contract, except for Firms which are not assessed a fee when facilitating a Customer order pursuant to Exchange Rule 1064. The Exchange believes that other pricing amendments impact all market participants alike as proposed. The Exchange believes that the proposed rule change will continue to promote competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[48] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[46] The Rebate for Adding Liquidity will be paid to a Specialist or Market Maker only when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.

[47] Market participants would still be able to obtain rebates for PIXL orders because the Exchange proposes to pay rebates on PIXL Orders in Section I symbols that execute against non-Initiating Order interest as part of proposed Category D of the Customer Rebate Program.

[48] 15 U.S.C. 78s(b)(3)(A)(ii).

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–Phlx–2013–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number *SR–Phlx–2013–01.* 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2013–01 and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01226 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68653; File No. SR–CHX–2012–13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 3, and Order Granting Accelerated Approval for Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3, To Amend the Listing Rules for Compensation Committees To Comply With Securities Exchange Act Rule 10–C–1 and Make Other Related Changes

January 14, 2013.

I. Introduction

On September 26, 2012, Chicago Stock Exchange, Inc. (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's rules for compensation committees of listed issuers to comply with Rule 10C–1 under the Act and make other related changes. On October 10, 2012, CHX filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, was published for comment in the **Federal Register** on October 16, 2012.[4] The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 14, 2013.[5] The Commission received no comment letters on the proposal.[6] On January 7, 2013, the Exchange filed Amendment No. 3 to the proposed rule change.[7]

This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background: Rule 10C–1 under the Act

On March 30, 2011, to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[8] the Commission proposed Rule 10C–1 under the Act,[9] which directs each national securities exchange (hereinafter, ''exchange'') to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C–1.[10]

Rule 10C–1 requires, among other things, each exchange to adopt rules providing that each member of the compensation committee [11] of a listed issuer must be a member of the board of directors of the issuer, and must otherwise be independent.[12] In determining the independence standards for members of compensation committees of listed issuers, Rule 10C–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 indicated that the proposal had been approved by CHX's board of directors on September 27, 2012. Amendment No. 2 replaced the original filing in full.

[4] *See* Securities Exchange Act Release No. 68033 (October 10, 2012), 77 FR 63370 (''Notice'').

[5] *See* Securities Exchange Act Release No. 68311 (November 28, 2012), 77 FR 71852 (December 4, 2012).

[6] The Commission notes that comments were received on substially similar proposals filed by New York Stock Exchange, LLC and The Nasdaq Stock Market LLC. For a discussion and summary of these comments *see* Securities Exchange Act Release Nos. 68011 (October 9, 2012) (''NYSE Notice) (File No. SR–NYSE–2012–49); 68013 (October 9, 2012) (''Nasdaq Notice'') (File No. SR–NASDAQ–2012–109); 68639 (January 11, 2013) (''NYSE Approval Order''); and 68640 (January 11, 2013) (''Nasdaq Approval Order'').

[7] In Amendment No. 3 to SR–CHX–2012–013, CHX: (a) Removed a proposed amendment to Rule 4 concerning delisting standards, *see infra* notes 21–22 and accompanying text; (b) added commentary to state that the independence assessment of compensation advisers required of compensation committees does not need to be conducted for in-house counsel and advisers whose roles are limited to those entitled to an exception from the adviser disclosure rules under Item 407(e)(3)(iii) of Regulation S–K, *see infra* notes 53–55 and accompanying text; and (c) added commentary to state that the independence assessment of compensation advisers required of compensation committees does not require the adviser to be independent, only that the compensation committee consider the enumerated factors before selecting or receiving advise from the adviser; *see infra* notes 56–58 and accompanying text; (d) removed a proposed exemption from the rule; and (e) reincorporated existing Rules 19(d) and 19(p)(3) as ''sunset provisions'' with text that would be effective until July 1, 2013, rather than delete them in their entirety and otherwise modified the transition schedule for currently listed companies with provisions of the proposed rule. *See infra* notes 72–74 and accompanying text.

[8] Public Law 111–203, 124 Stat. 1900 (2010).

[9] *See* Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) (''Rule 10C–1 Proposing Release'').

[10] *See* Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) (''Rule 10C–1 Adopting Release'').

[11] For a definition of the term ''compensation committee'' for purposes of Rule 10C–1, *see* Rule 10C–1(c)(2)(i)–(iii).

[12] *See* Rule 10C–1(a) and (b)(1).

1 requires the exchanges to consider relevant factors, including, but not limited to: (a) The source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the issuer to the director (hereinafter, the ''Fees Factor''); and (b) whether the director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer (hereinafter, the ''Affiliation Factor'').[13]

In addition, Rule 10C–1 requires the listing rules of exchanges to mandate that compensation committees be given the authority to retain or obtain the advice of a compensation adviser, and have direct responsibility for the appointment, compensation and oversight of the work of any compensation adviser they retain.[14] The exchange rules must also provide that each listed issuer provide for appropriate funding for the payment of reasonable compensation, as determined by the compensation committee, to any compensation adviser retained by the compensation committee.[15] Finally, among other things, Rule 10C–1 requires each exchange to provide in its rules that the compensation committee of each listed issuer may select a compensation consultant, legal counsel or other adviser to the compensation committee only after taking into consideration six factors specified in Rule 10C–1,[16] as well as any other factors identified by the relevant exchange in its listing standards.[17]

B. CHX's Proposed Rule Change as Amended

To comply with Rule 10C–1, CHX proposes to amend three sections of its rules in Article 22 concerning corporate governance requirements for companies listed on the Exchange: Rule 2, ''Admittance to Listing;'' Rule 19(d), ''Corporate Governance—Compensation Committee;'' and Rule 19(p)(3), ''Corporate Governance—Definitions—Independent Director.'' In addition, CHX proposes to make some other changes to its rules regarding compensation committees. To accomplish these changes, the Exchange proposes to replace current Rules 19(d) and 19(p)(3) with new operative text that will be effective on July 1, 2013. Current Rules 19(d) and 19(p)(3), which would remain effective until June 30, 2013,[18] provides that compensation of the executive officers of a listed company shall be determined, or recommended to the company's board for determination, either by a compensation committee comprised solely of ''Independent Directors;'' [19] or as an alternative to a formal committee, by a majority of the board's Independent Directors.[20]

1. Admittance to Listing

CHX proposes to clarify that the Exchange's Board of Governors may only admit securities for listing ''once the requirements of this Article are met.'' [21] The Exchange believes that this modification largely adopts much of the current Rule 2, while only clarifying this fact.[22]

2. Compensation Committee Composition and Independence Standards

CHX proposes to retain its existing requirement that each issuer must have a compensation committee, composed entirely of Independent Directors, as defined in current Rule 19(p)(3),[23] to oversee executive compensation or, in the alternate, a majority of the issuer's independent directors providing such oversight.[24] CHX proposes to modify, however, its definition of compensation committee to include the following three, rather than two, options: (1) A committee designated as a compensation committee: (2) in the absence of a committee designated as a compensation committee, a committee performing functions typically performed by a compensation committee, including oversight of executive compensation, even if it performs other functions; or (3) in the absence of any such committees, the members of the board of directors who oversee executive compensation on behalf of the board, who together must comprise a majority of the board's independent directors.[25] The existing alternative option to a formal committee, as described above, would therefore continue to be available to issuers. In addition, CHX proposes that the Independent Directors serving on a Compensation Committee must meet the additional requirements described below.[26]

CHX also proposes that an issuer must adopt a formal written charter or board resolution related to the Compensation Committee.[27] The charter or board resolution must address the scope of the Compensation Committee's responsibilities and how it carries out those responsibilities, including structure, processes and membership requirements.[28] Generally, the proposed rule would require the charter or board resolution to specify the Compensation Committee's responsibilities for determining, or recommending to the board for determination, the compensation of the CEO and all other executive officers of the company; and provide that the CEO may not be present during voting or deliberation on his or her own compensation.[29] In addition, the charter or board resolution must specify the Compensation Committee's responsibilities and authority set forth in the Exchange's rules with respect to retaining its own advisers; appointing, compensating, and overseeing such advisers; considering certain independence factors before selecting

[13] *See id. See also* Rule 10C–1(b)(1)(iii)(A), which sets forth exemptions from the independence requirements for certain categories of issuers. In addition, an exchange may exempt a particular relationship with respect to members of a compensation committee from these requirements as it deems appropriate, taking into consideration the size of an issuer and any other relevant factors. *See* Rule 10C–1(b)(1)(iii)(B).

[14] *See* Rule 10C–1(b)(2).

[15] *See* Rule 10C–1(b)(3).

[16] *See* Rule 10C–1(b)(4). The six factors, which CHX proposes to set forth in its rules, are specified in the text accompanying note 51, *infra*.

[17] Other provisions in Rule 10C–1 relate to exemptions from the rule and a requirement that each exchange provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for the exchange, under Rule 10C–1, to prohibit the issuer's listing.

[18] *See* Amendment No. 3, *supra* note 7.

[19] ''Independent Directors,'' as defined in CHX Rule 19(p)(3) and used herein, includes a two-part test for independence. The rule sets forth seven specific categories of directors who cannot be considered independent because of certain discrete relationships (''the bright-line tests''); and also provides that a listed company's board must make an affirmative determination that each independent director has no relationship that, in the opinion of the board, ''would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' *Id.*

[20] The current rule also provides that the chief executive officer (''CEO'') may not be present during voting or deliberations regarding the CEO's own compensation. *See* Rule 19(d)(1).

[21] *See* proposed Rule 2.

[22] *See* Notice, *supra* note 4.

[23] *See* proposed Rule 19(d)(1).

[24] *See id.*

[25] See proposed Rule 19(d)(1)(A)–(C). For ease of reference throughout this release, in our discussion of the CHX rules we are approving, references to an issuer's ''Compensation Committee'' include all three options.

[26] See proposed Rule 19(d)(1). For the current definition of ''Independent Director,'' *see supra* note 19.

[27] *See* proposed Rule 19(d)(2). The Commission notes that Rule 10C–1 does not require a listed issuer specifically to have a charter. As noted above, however, *see supra* notes 14–16 and accompanying text, Rule 10C–1 does require a compensation committee to have certain specified authority and responsibilities. Often, listed issuers will specify authority and responsibilities of this kind in a charter in any case. The proposed rule requires issuers to have a charter or board resolution, and to include this authority and set of responsibilities in addition to the required content discussed *infra* at text accompanying notes 46–51.

[28] *See* proposed Rule 19(d)(2)(A).

[29] *See* proposed Rule 19(d)(2)(B); *see also* proposed Rule 19(d)(3).

and receiving advice from advisers; and receiving funding from the company to engage such advisers, which are discussed in detail below.[30]

As noted above, CHX's rules currently require each member of a listed company's Compensation Committee to be an Independent Director as defined in CHX Rule 19(p)(3).[31] CHX will retain Rule 19(p)(3), which would continue to contain the bright line test and provide that no director qualifies as ''independent'' unless the board of directors of the issuer affirmatively determines that the director has no relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Rule 10C–1, as discussed above, provides that exchange standards must require compensation committee members to be independent, and further provides that each exchange, in determining independence for this purpose, must consider relevant factors, including the Fees Factor and Affiliation Factor described above. In its proposal, CHX discussed its consideration of these factors,[32] and proposed the following:[33]

With respect to the Fees Factor and the Affiliation Factor, CHX proposes to adopt a provision stating that the board of directors of the listed company would be required, in affirmatively determining the independence of any director who will serve on the Compensation Committee of the board, to consider all factors specifically relevant to determining whether a director has a relationship to the issuer which is material to that director's ability to be independent from management in connection with the duties of a Compensation Committee member, including, but not limited to the following factors: (i) The source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the issuer to the director; and (ii) whether such director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer.[34]

With respect to the Fees Factor, CHX also proposes additional guidance that the board, when considering the sources of a director's compensation, should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the issuer's executive compensation.[35]

With respect to the Affiliation Factor, CHX proposes, similarly, to provide additional guidance to provide that the board should consider whether an affiliate relationship places the director under the direct or indirect control of the listed company or its senior management, or creates a direct relationship between the director and members of senior management, '' * * * in each case of a nature that would impair her ability to make independent judgments about the issuer's executive compensation.'' [36]

Although Rule 10C–1 requires that exchanges consider ''relevant factors'' not limited to the Fees Factor and Affiliation Factor, CHX states that, after reviewing its current and proposed listing rules, it concluded not to propose any specific numerical tests with respect to the factors specified in proposed Rule 19(p)(3)(B) or to adopt a requirement to consider any other specific factors.[37] In its proposal, CHX stated that it did not intend to adopt an absolute prohibition on a board making an affirmative finding that a director is independent solely on the basis that the director or any of the director's affiliates are shareholders owning more than some specified percentage of the issuer.[38] Further, as stated in its filing, CHX believes that its existing ''bright-line'' independence standards, as set forth in current Rule 19(p)(3)(A)–(G), and the additional independence requirements proposed in Rule 19(p)(3)(B) are sufficiently broad to encompass the types of relationships which would generally be material to a director's independence for compensation committee service.[39] Additionally, CHX stated that Rule 19(p)(3) already requires the board to consider any other material relationships between the director and the issuer or its management that are not the subject of ''bright-line'' tests in existing Rule 19(p)(3)(A)–(G).[40] CHX believes that these requirements with respect to general director independence, when combined with the specific considerations required by proposed Rule 19(p)(3)(B), represent an appropriate standard for compensation committee independence.[41]

CHX proposes a cure period for a failure of a listed company to meet its Compensation Committee composition requirements for independence. Under the provision, if a member of an issuer's compensation committee or functional equivalent ceases to be an independent director for reasons outside the member's reasonable control, that member may remain a member of the compensation committee or functional equivalent until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the member to no longer be an independent director.[42] The proposed rule also requires a company relying on this provision to provide notice to CHX promptly.[43]

CHX also proposes Rule 19(d)(5)(A)(i) to make an exception that allows a director who is not independent to be temporarily appointed to such a committee under exceptional and limited circumstances, as long as that director is not currently an officer, employee or family member of a current officer or employee. The exception applies, however, only if the committee is comprised of at least three members and the board determines that the individual's membership on the committee is required in the best interests of the company and its shareholders.[44] CHX believes this exception will allow issuers to efficiently deal with unforeseen and exceptional circumstances, so as to ensure the smooth function of its compensation committee or functional equivalent, while minimizing the risk of abuse.[45]

[30] *See* proposed Rule 19(d)(2)(C); *see also* proposed Rule 19(d)(4) and *infra* notes 47–51 and accompanying text. Because smaller reporting companies are not required to comply with the provisions relating to compensation advisers in proposed CHX Rule 19(d)(4), see *infra* notes 61–62, their charters or board resolutions are not required to reflect these responsibilities.

[31] *See supra* note 19.

[32] *See* Notice, *supra* note 4.

[33] These additional factors would not apply to the selection of members of the Compensation Committee of a smaller reporting company.

[34] *See* proposed Rule 19(p)(3)(B).

[35] *See* proposed Rule 19(p)(3)(B)(i).

[36] *See* proposed Rule 19(p)(3)(B)(ii).

[37] *See* Notice, *supra* note 4.

[38] *See* Notice, *supra* note 4.

[39] *See* Notice, *supra* note 4. CHX proposes to reorganize the numbering of its existing bright-line tests to allow for the inclusion of additional factors specific to compensation committees. *See* proposed Rule 19(p)(3)(A)(i)–(vii).

[40] *See* Notice, *supra* note 4.

[41] *See* Notice, *supra* note 4.

[42] *See* proposed Rule 19(d)(5)(A)(ii). CHX stated that its proposed rule outlines the opportunity to cure defects almost precisely as stated in Rule 10C–1. *See* Notice, *supra* note 4.

[43] *See* proposed Rule 19(d)(5)(A)(ii). CHX does not otherwise propose any new procedures for an issuer to have an opportunity to cure defects with respect to its proposed requirements, but CHX does have existing delisting procedures that provide issuers with notice, opportunity for a hearing, opportunity for appeals, and an opportunity to cure defects before an issuer's securities are delisted. *See* Article 22, Rule 4, ''Removal of Securities.'' For example, Rule 4(b) provides procedure for providing deficient companies with notice; Rube 4(c)–(d) provides procedures for an issuer to avail itself of a hearing; and Rule 4(e) provides procedures for issuers to appeal to CHX's Executive Committee.

[44] *See* proposed Rule 19(d)(5)(A)(i).

[45] *See* Notice, *supra* note 4.

3. Authority of Committees To Retain Compensation Advisers; Funding; and Independence of Compensation Advisers and Factors

In its proposed rule change, CHX proposes to fulfill the requirements imposed by Rule 10C–1(b)(2)–(4) under the Act concerning compensation advisers by setting forth those requirements in its own rules and requiring these new rights and responsibilities to be included in the compensation committee's charter or board resolution.[46] Thus, proposed Rule 19(d)(4)(A)–(B) and (D) proposes to adopt the requirements that CHX believes are required by Rule 10C–1(b)(2)–(3) that: (A) The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser;[47] (B) the Compensation Committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel or other adviser retained by the Compensation Committee;[48] and (D) the listed company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.[49]

Proposed Rule 19(d)(4)(E), as amended, also sets forth explicitly, in accordance with Rule 10C–1, that the Compensation Committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser, other than in-house legal counsel, only after taking into consideration the following six factors set forth in Rule 10C–1 regarding independence assessments of compensation advisers.[50]

The six factors, which are set forth in full in the proposed rule, are: (i) The provision of other services to the listed company by the person that employs the compensation consultant, legal counsel or other adviser; (ii) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser; (iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee; (v) any stock of the issuer owned by the compensation consultant, legal counsel or other adviser; and (vi) any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an executive officer of the issuer.[51]

As proposed, Rule 19(d)(4)(F) would not include any specific additional factors for consideration, as CHX stated that it believes that this list will require compensation committees and functional equivalents to consider a variety of factors that may bear upon the likelihood that a compensation adviser can provide independent advice to the Compensation Committee, but will not prohibit committees from choosing any particular adviser or type of adviser.[52]

Proposed Rule 19(d)(4)(F), as modified by Amendment No. 3,[53] further states that, as provided in Rule 10C–1, a Compensation Committee is required to conduct the independence assessment outlined in proposed Rule 19(d)(4)(E) with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than (i) in-house legal counsel[54] and (ii) any compensation consultant, legal counsel or other adviser whose role is limited to the following activities for which no disclosure would be required under Item 407(e)(3)(iii) of Regulation S–K: Consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the listed company, and that is available generally to all salaried employees; or providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.[55]

Proposed Rule 19(d)(4)(F), as modified by Amendment No. 3, also clarifies that nothing in the rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the Compensation Committee consider the enumerated independence factors before selecting or receiving advice from a compensation adviser.[56] It further clarifies that Compensation Committees may select or receive advice from any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors set forth in Rule 19(d)(4)(E).[57] The Exchange clarified that, while the Compensation Committee is required to consider the independence of compensation advisers, the Compensation Committee is not precluded from selecting or receiving advice from compensation advisers that are not independent.[58]

4. Application to Smaller Reporting Companies

Rule 10C–1 includes an exemption for smaller reporting companies from all the requirements included within the Rule.[59] Consistent with this Rule 10C–1 provision, CHX, as a general matter, proposes that a smaller reporting

[46] Rule 10C–1(b)(4), does not include the word ''independent'' before ''legal counsel'' and requires an independence assessment for any legal counsel to a compensation committee, other than in-house counsel. In proposed Rule 19(d)(4)(F), as modified by Amendment No. 3, CHX provides for two limited exceptions. *See infra* notes 53–55 and accompanying text.

[47] CHX proposes that this requirement will not apply to issuers that do not maintain a formal committee of the board of directors for determining executive compensation. As noted by CHX, the reason behind this exclusion is that since an action by independent directors acting outside of a formal committee structure would generally be considered action by the full board of directors, it is unnecessary to apply this requirement to directors acting outside of a formal committee structure, as they retain all the powers of the board of directors in making executive compensation determinations. *See* Notice, *supra* note 4.

[48] The proposal also includes a provision, derived from Rule 10C–1, stating that nothing in the rule may be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser to the compensation committee; nor to affect the ability or obligation of the compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee. *See* proposed Rule 19(d)(4)(C).

[49] *See* Notice, *supra* note 4. CHX proposes that this requirement will not apply to issuers that do not maintain a formal committee of the board of directors for determining executive compensation. In Amendment No. 3, CHX removed the word ''independent'' from the term ''legal counsel'' used in proposed Rule 19(d)(4)(A)–(D) to conform the instructions with guidance now provided in Rule 19(d)(4)(F), as amended. *See* Amendment No. 3, *supra* note 7.

[50] See Rule 10C–1(b)(4).

[51] *See also* Rule 10C–1(b)(4)(i)–(vi).

[52] *See* Notice, *supra* note 4.

[53] *See supra* note 7. CHX's proposal as submitted originally only contained an exception for in-house legal counsel. As described below, the Exchange amended its proposal to add an exception for advisers whose role is limited to certain broad-based plans or to providing non-customized information.

[54] *See* proposed Rule 19(d)(4)(F).

[55] *See* Amendment No. 3, *supra* note 7, and proposed Rule 19(d)(4)(F).

[56] *See* Exhibit 5 to Amendment No. 3, *supra* note 7.

[57] *See id.*

[58] *See* Amendment No. 3, *supra* note 7.

[59] *See supra* Section II.A; *see also* Rule 10C–1(b)(5)(ii).

company, as defined in Rule 12b–2 [60] under the Act (hereinafter, a ''Smaller Reporting Company''), not be subject to the new requirements set forth in its proposal specifically to comply with Rule 10C–1.[61] Thus, CHX proposes not to require Smaller Reporting Companies to comply with either the enhanced independence standards for members of compensation committees relating to compensatory fees and affiliation or the compensation adviser authority and funding requirements or adviser independence considerations.

CHX notes that, under current CHX rules, Smaller Reporting Companies are already subject to the general independence requirements for compensation committees, and as such, CHX believes that requiring such issuers to continue to comply with existing standards is not overly burdensome.[62]

5. Exemptions

CHX proposes to exempt six categories of issuers from all of the compensation committee requirements of Rule 19(d).[63] These include exemptions to the following issuers: limited partnerships; [64] companies in bankruptcy; [65] closed-end and open-end management companies that are registered under the Investment Company Act of 1940 (''Investment Company Act''); [66] passive business organizations (such as royalty trusts) or derivatives and special purpose entities; [67] issuers listing only preferred or debt securities; [68] and controlled companies.[69]

Concerning foreign private issuers,[70] CHX current commentary in Paragraph .03(4) of the Interpretations and Policies of Rule 19 permits any such issuer to follow its home country practice in lieu of many of CHX's corporate governance listing standards, including the Exchange's compensation-related listing rules. Paragraph .03(4) current provides that foreign private issuers are permitted to follow home country practice in lieu of the provisions of Rule 19(d), but this allowance is granted on condition that the issuer discloses in its annual report filed with the Commission any significant ways in which its corporate governance practices differ from those followed by domestic companies under CHX-listing standards. Under proposed 19(d)(5)(B)(iv), CHX proposes that this continue to apply to the new compensation related requirements, so long as the foreign private issuer also discloses in its annual report the reasons that it does not have an independent compensation committee. CHX believes that foreign private issuers are already subject to corporate regulations of their respective home countries and requiring such issuers to comport with Rule 10C–1 would be cumulative, if not contradictory.[71]

6. Transition to the New Rules for Companies Listed as of the Effective Date

The proposed rule change, as amended, provides that certain of the new requirements for listed companies will be effective on July 1, 2013 and others will be effective after that date.[72] Specifically, CHX proposes to amend the Interpretations and Policies .05(6) to Rule 19 to provide transition periods by which listed companies would be required to comply with the new Rule 19(p)(3)(B) compensation committee director independence standards. Pursuant to the proposal, listed companies would have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the new standards for compensation committee director independence.[73] Existing compensation committee independence standards would continue to apply pending the transition to the new independence standards. CHX proposes that all other proposed sections would become effective on July 1, 2013 for purposes of compliance by currently listed issuers that are not otherwise exempt.[74]

7. Compliance Schedules: IPOs; Companies Transferring From Other Markets and Smaller Reporting Companies

With respect to issuers listing securities on the Exchange in connection with an initial public offering, existing CHX Interpretation and Policy .05(3) provides that such issuers will be required to comply with the new governance standards for each applicable committee that the issuer establishes. Specifically, under the rule, the compensation committee for the issuer must have one independent member at the time of listing, a majority of independent members within 90 days of listing and all independent members within one year.

With respect to companies that transfer from other markets, existing CHX Interpretation and Policy .05(4) to Rule 19 provides that (1) any issuers transferring during another market's transition period to new governance standards will be allowed to comply with CHX's requirements within any transition period that has been provided by the other marketplace and (2) any issuer transferring from a market that does not have governance standards substantially similar to CHX shall have one year from the date of listing to be in compliance. CHX does not propose to change this rule, and so it will also apply to the newly adopted portions of Rules 19(d) and 19(p), described above.

CHX proposes to create a compliance schedule for companies that cease to be

[60] 17 CFR 240.12b–2.

[61] *See* proposed Rule 19(d)(5)(C).

[62] *See* Notice, *supra* note 4.

[63] *See id.* In addition, such exempt companies would also thereby be exempt from the enhanced independence requirements for compensation committee composition described in proposed Rule 19(p)(3)(B). *See also* proposed Rule 19(d)(5)(B).

[64] CHX notes that limited partnerships are already exempt from the current compensation committee requirements because the Exchange believes the ownership/management structure renders the independent director requirements inapplicable and argues the same reasoning renders the adviser requirements unnecessary. *See* Notice, *supra* note 4.

[65] CHX believes exempting such companies will avoid overburdening issuers struggling to emerge from bankruptcy. *See* Notice, *supra* note 4. Like limited partnerships, such companies are already exempt from existing requirements under paragraph .03(1) of the Interpretations and Policies of Rule 19.

[66] CHX believes that, because investment companies are already subject to the requirements of the Investment Company Act, including requirements concerning potential conflicts of interest related to investment adviser compensation, Rule 19(d) would be duplicative and unnecessary. *See* Notice, *supra* note 4.

[67] CHX believes that such entities are structured fundamentally different from conventional issuers. *See* Notice, *supra* note 4.

[68] CHX believes such issuers, which are already exempt from existing requirements on CHX, should continue to be exempt from the additional requirements of Rule 10C–1 because they are either often subject to requirements of the exchange where they are primarily listed, often provide stockholders with significantly greater protections, or do not impart ownership interest. *See* Notice, *supra* note 4.

[69] CHX notes that controlled companies are already exempt from existing compensation committee requirements under existing Rule 19(d)(3)(B) and will continue to be exempt from existing and proposed compensation committee requirements under proposed Rule 19(d)(5)(B)(vi).

[70] CHX proposes, in Rule 19(d)(5)(B)(iv), that the term ''foreign private issuer'' will have the same meaning as Rule 3b-4 under the Exchange Act for purposes of Rule 19.

[71] *See* Notice, *supra* note 4.

[72] During the transition periods described herein, existing compensation committee independence standards would continue to apply pending the transition to the new independence standards.

[73] CHX originally proposed that this transition period would also apply to the charter or board resolution and adviser independence consideration, but has amended these transition periods to require that issuers must comply with these requirements by July 1, 2013. *See* Amendment No. 3, *supra* note 7.

[74] CHX originally proposed that these transitions would become effective immediately upon approval by the Commission, but has amended these transition periods to require that issuers must comply by July 1, 2013. *See* Amendment No. 3, *supra* note 7.

a Smaller Reporting Company. To the extent a Smaller Reporting Company ceases to qualify as such, the proposed rule change, as modified by Amendment No. 2, establishes a compliance schedule based on certain dates relating to the company's change in status.[75] Specifically, such a company would be required, if otherwise applicable, to: (i) Have a compensation committee of which the members meet the additional independence requirements of Rule 19(p)(3)(B) within six months of the date on which the issuer failed to qualify as a smaller reporting company and (ii) comply with Rule 19(d)(4) concerning compensation advisers as of the date on which the issuer failed to qualify as a Smaller Reporting Company.

III. Discussion and Commission Findings

After careful review, the Commission finds that the CHX proposal, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[76] In particular, the Commission finds that the amended proposed rule change is consistent with the requirements of Section 6(b) of the Act,[77] as well as with Section 10C of the Act[78] and Rule 10C–1 thereunder.[79] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[80] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit, among other things, unfair discrimination between issuers.

The development and enforcement of meaningful listing standards for a national securities exchange is of substantial importance to financial markets and the investing public. Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives. The Commission believes that the CHX proposal will foster greater transparency, accountability, and objectivity in the oversight of compensation practices of listed issuers and in the decision-making processes of their compensation committees.

In enacting Section 10C of the Act as one of the reforms of the Dodd-Frank Act,[81] Congress resolved to require that "board committees that set compensation policy will consist only of directors who are independent."[82] In June 2012, as required by this legislation, the Commission adopted Rule 10C–1 under the Act, which directs the national securities exchanges to prohibit, by rule, the initial or continued listing of any equity security of an issuer (with certain exceptions) that is not in compliance with the rule's requirements regarding issuer compensation committees and compensation advisers.

In response, CHX submitted the proposed rule change, which includes rules intended to comply with the requirements of Rule 10C–1 and additional provisions designed to strengthen the Exchange's listing standards relating to Compensation Committees. The Commission believes that the proposed rule change satisfies the mandate of Rule 10C–1 and otherwise will promote effective oversight of its listed issuers' executive compensation practices.

The Commission believes that the proposed rule change, as modified by Amendment Nos. 1, 2 and 3, appropriately revises CHX's rules for Compensation Committees of listed companies, for the following reasons:

A. Admittance to Listing

The Commission believes that the clarification to the admittance to listing standards, which makes explicit the fact that the Exchange's Board of Governors may only admit securities for listing once the requirements of Article 22, which contains the Exchange's listing standards, are met, is reasonable and consistent with the Act. The Commission agrees with CHX that the modification largely adopts much of current Rule 2, while only clarifying an existing fact with respect to listing securities on CHX.[83]

B. Compensation Committee Composition

As discussed above, under Rule 10C–1, the exchanges must adopt listing standards that require each member of a compensation committee to be independent, and to develop a definition of independence after considering, among other relevant factors, the source of compensation of a director, including any consulting, advisory or other compensatory fee paid by the issuer to the director, as well as whether the director is affiliated with the issuer or any of its subsidiaries or their affiliates.

The Commission notes that Rule 10C–1 leaves it to each exchange to formulate a final definition of independence for these purposes, subject to review and final Commission approval pursuant to Section 19(b) of the Act. As the Commission stated in the Rule 10C–1 Adopting Release, "given the wide variety of issuers that are listed on exchanges, we believe that the exchanges should be provided with flexibility to develop independence requirements appropriate for the issuers listed on each exchange and consistent with the requirements of the independence standards set forth in Rule 10C–1(b)(1)."[84] This discretion comports with the Act, which gives the exchanges the authority, as self-regulatory organizations, to propose the standards they wish to set for companies that seek to be listed on their markets consistent with the Act and the rules and regulations thereunder, and, in particular, Section 6(b)(5) of the Act.

As noted above, CHX proposes to maintain its requirements that an issuer have a compensation committee, composed entirely of independent directors, as defined in current Rule 19(p)(3), to oversee executive compensation, or in the alternate, a majority of the independent directors providing such oversight.[85] However, the Exchange proposes to modify its definition of compensation committee

[75] *See* proposed Rule 19(d)(5)(C). In the proposal as originally submitted, the compliance schedule was to require compliance immediately with all requirements.

[76] In approving the CHX proposed rule change, as amended, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[77] 15 U.S.C. 78f(b).

[78] 15 U.S.C. 78j–3.

[79] 17 CFR 240.10C–1.

[80] 15 U.S.C. 78f(b)(5).

[81] *See supra* note 8.

[82] *See* H.R. Rep. No. 111–517, Joint Explanatory Statement of the Committee of Conference, Title IX, Subtitle E "Accountability and Executive Compensation," at 872–873 (Conf. Rep.) (June 29, 2010).

[83] *See* Notice, *supra* note 4.

[84] As explained further in the Rule 10C–1 Adopting Release, prior to final approval, the Commission will consider whether the exchanges' proposed rule changes are consistent with the requirements of Section 6(b) and Section 10C of the Act.

[85] *See* Rule 19(d)(1).

to include the following three options: (1) A committee designated as a compensation committee: (2) in the absence of a committee designated as a compensation committee, a committee performing functions typically performed by a compensation committee, including oversight of executive compensation; or (3) in the absence of any such committees, the members of the board of directors who oversee executive compensation on behalf of the board, who together must comprise a majority of the board's independent directors. The alternative option to a formal committee, as described above, would therefore continue to be available to issuers. The Commission believes that these three alternatives are consistent with the definitions provided Rule 10C–1, and should provide issuers with flexibility while continuing to ensure Independent Director oversight of executive compensation.

In addition to retaining its existing independence standards that currently apply to board and Compensation Committee members, which include certain bright-line tests,[86] CHX has enhanced its listing requirements regarding Compensation Committees by adopting additional standards for independence to comply with the Fees Factor and Affiliation Factor, as well as the other standards set forth in Rule 10C–1. The CHX's proposal also adopts the cure procedures provided as an option in Rule 10C–1(a)(3) for Compensation Committee members who cease to be independent for reasons outside their reasonable control.

Further, as discussed in more detail below, the CHX proposal adopts the requirement that the Compensation Committee have a written charter or board resolution that addresses the committee's purpose and responsibilities, and adds requirements to specify the compensation committee's authority and responsibilities as to compensation advisers as set forth under Rule 10C–1. Taken as a whole, the Commission believes that these changes will strengthen the oversight of executive compensation in CHX-listed companies and further greater accountability, and will therefore further the protection of investors consistent with Section 6(b)(5) of the Act.

The Commission believes that the Exchange's proposal, which requires the consideration of the additional independence factors for Compensation Committee members, is designed to protect investors and the public interest and is consistent with the requirements of Sections 6(b)(5) and 10C of the Act and Rule 10C–1 thereunder.

With respect to the Fees Factor of Rule 10C–1, the Exchange rules state when considering the source of a director's compensation in determining independence for Compensation Committee service, the board should consider whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the listed company's executive compensation. In addition to the continued application of the CHX's current independence standards and bright-line tests, CHX's new rules also require the board to consider all relevant factors in making independence determinations for Compensation Committee membership. The Exchange believes that these requirements of proposed Article 19(p)(3)(B) of the Exchange's Rules, in addition to the general director independence requirements, represent an appropriate standard for Compensation Committee independence that is consistent with the requirements of Rule 10C–1 and the Fees Factor.

The Commission believes that the provisions noted above to address the Fees Factor give a board broad flexibility to consider a wide variety of fees, including any consulting, advisory or other compensatory fee paid by the issuer or entity, when considering a director's independence for compensation committee service. While the Exchange does not bar all compensatory fees, the approach is consistent with Rule 10C–1 and provides a basis for a board to prohibit a director from being a member of the Compensation Committee, should the director receive compensation that impairs the ability to make independent decisions on executive compensation matters, even if that compensation does not exceed the threshold in the bright-line test.[87] The Commission, therefore, believes that the proposed compensatory fee requirements comply with Rule 10C–1 and are designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Act. The Commission notes that the compensatory fee consideration may help ensure that Compensation Committee members are less likely to have received fees, from either the issuer or another entity, which could potentially influence their decisions on compensation matters.

With respect to the Affiliation Factor of Rule 10C–1, CHX has concluded that an outright bar from service on a company's Compensation Committee of any director with an affiliation with the company, its subsidiaries, and their affiliates is inappropriate for compensation committees. Under CHX's rules, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on Compensation Committees. The Exchange has provided guidance that the board should consider whether an affiliate relationship places the director under the direct or indirect control of the listed company or its senior management, ''in each case of a nature that would impair her ability to make independent judgments about the issuer's executive compensation.'' [88] The Commission believes that CHX's approach of requiring boards only to consider such affiliations is reasonable and consistent with the requirements of the Act.

The Commission notes that Congress, in requiring the Commission to direct the exchanges to consider the Affiliation Factor, did not declare that an absolute bar was necessary. Moreover, as the Commission stated in the Rule 10C–1 Adopting Release, ''In establishing their independence requirements, the exchanges may determine that, even though affiliated directors are not allowed to serve on audit committees, such a blanket prohibition would be inappropriate for compensation committees, and certain affiliates, such as representatives of significant shareholders, should be permitted to serve.'' [89] In determining that CHX's affiliation standard is consistent with Sections 6(b)(5) and 10C under the Act, the Commission notes that CHX's proposal requires a company's board, in selecting Compensation Committee members, to consider whether any such affiliation would impair a director's judgment as a member of the Compensation Committee. The CHX rule further states that, in considering affiliate relationships, a board should consider whether such affiliate

[86] *See* Notice, *supra* note 4. *See also supra* note 19.

[87] *See supra* note 39, referencing the seven existing bright-line tests.

[88] *See* proposed Rule 19(p)(3)(B)(ii).

[89] Rule 10C–1 Adopting Release. At the same time, the Commission noted that significant shareholders may have other relationships with the listed company that would result in such shareholders' interests not being aligned with those of other shareholders and that the exchanges may want to consider these other ties between a listed issuer and a director. While the Exchange did not adopt any additional factors, the current affiliation standard would still allow a company to prohibit a director whose affiliations ''impair his ability to make independent judgment'' as a member of the committee. *See also supra* notes 36–41 and accompanying text.

relationship places the director under the direct or indirect control of the listed company or its senior management such that it would impair the ability of the director to make independent judgments on executive compensation. We believe that this should give companies the flexibility to assess whether a director who is an affiliate, including a significant shareholder, should or should not serve on the company's Compensation Committee, depending on the director's particular affiliations with the company or its senior management.

As to whether CHX should adopt any additional relevant independence factors, the Exchange stated that it reviewed its rules in light of Rule 10C–1, and concluded that its existing rules together with its proposed rules are sufficiently broad to encompass the types of relationships which would generally be material to a director's independence for Compensation Committee service. The Commission believes that, through this review, the Exchange has complied with the requirement that it consider relevant factors, including, but not limited to, the Fees and Affiliation Factors in determining its definition of independence for Compensation Committee members. The Commission notes that Rule 10C–1 requires each exchange to consider relevant factors in determining independence requirements for members of a compensation committee, but does not require the exchange's proposal to reflect any such additional factors.

CHX also proposes that the ''Exceptional and Limited Circumstances'' provision in its current rules, which allows one director who fails to meet the Exchange's Independent Director definition to serve on a compensation committee under certain conditions, apply to the enhanced independence standards discussed above that the Exchange is adopting to comply with Rule 10C–1. The Commission believes that the discretion granted to each exchange by Rule 10C–1, generally, to determine the independence standards it adopts to comply with the Rule includes the leeway to carve out exceptions to those standards, as long as they are consistent with the Act.

Regarding the justification for such an exception, the Commission notes that it long ago approved as consistent with the Act the same exception and concept in the context of CHX's current rules with respect to compensation committees, as well as for nominations committees and audit committees.[90] Although the additional independence standards required by Rule 10A–3 for audit committees are not subject to this exception, the Commission notes that Rule 10C–1 grants exchanges more discretion than Rule 10A–3 when considering independence standards for compensation committee membership.

In summary, the Commission believes the flexibility provided in CHX's new Compensation Committee independence standards provides companies with guidance, while allowing them to identify those relationships that might raise questions of independence for service on the compensation committee. It provides further flexibility for companies in circumstances where one member of the committee ceases to meet the independence requirements, under specified conditions, for reasons outside the member's reasonable control. For these reasons, we believe the independence standards are consistent with the investor protection provision of Section 6(b)(5) of the Act.

C. Authority of Committees To Retain Compensation Advisers; Funding; and Independence of Compensation Advisers and Factors

As discussed above, CHX proposes to set forth explicitly in its rules the requirements of Rule 10C–1 regarding a compensation committee's authority to retain compensation advisers, its responsibilities with respect to such advisers, and the listed company's obligation to provide appropriate funding for payment of reasonable compensation to a compensation adviser retained by the committee. As such, the Commission believes these provisions meet the mandate of Rule 10C–1 [91] and are consistent with the Act.[92]

In addition, the Commission believes that requiring companies to specify the enhanced compensation committee responsibilities through the Compensation Committee's written charter or board resolution will help to assure that there is adequate transparency as to the rights and responsibilities of compensation committee members. As discussed above, the proposed rule change requires the Compensation Committee of a listed company to consider the six factors relating to independence that are enumerated in the proposal before selecting a compensation consultant, legal counsel or other adviser to the Compensation Committee. The Commission believes that this provision is consistent with Rule 10C–1 and Section 6(b)(5) of the Act.

In approving this aspect of the proposal, the Commission notes that compliance with the rule requires an independence assessment of any compensation consultant, legal counsel, or other adviser that provides advice to the Compensation Committee, and is not limited to advice concerning executive compensation. However, CHX has proposed, in Amendment No. 3, to add language to the provision regarding the independence assessment of compensation advisers [93] to state that the Compensation Committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S–K: (a) Consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice. This exception is based on Item 407(e)(3)(iii) of Regulation S–K, which provides a limited exception to the Commission's requirement for a registrant to disclose any role of compensation consultants in determining or recommending the amount and form of a registrant's executive and director compensation.[94]

The Commission views CHX's proposed exception as reasonable, as the Commission determined, when adopting the compensation consultant disclosure requirements in Item 407(e)(3)(iii), that the two excepted categories of advice do not raise conflict of interest concerns.[95] The Commission also made similar findings when it noted it was continuing such exceptions in the Rule 10C–1 Adopting Release, including excepting such roles from the new conflict of interest disclosure rule

[90] See Securities Exchange Act Release No. 49911 (June 24, 2004), 69 FR 39989 (July 1, 2004) (order approving File No. CHX–2003–19).

[91] *See* Rule 10C–1.

[92] 15 U.S.C. 78j–3.

[93] *See* proposed Rule 19(d)(4)(F), as amended by Amendment No. 3.

[94] *See* 17 CFR 229.407(e)(3)(iii).

[95] *See* Proxy Disclosure Enhancements, Securities Act Release No. 9089 (Dec. 19, 2009), 74 FR 68334 (Dec. 23, 2009), at 68348 (''We are persuaded by commenters who noted that surveys that provide general information regarding the form and amount of compensation typically paid to executive officers and directors within a particular industry generally do not raise the potential conflicts of interest that the amendments are intended to address.'').

required to implement Section 10C(c)(2). The Commission also believes that the exception should allay some of the concerns raised by the commenters to other filings regarding the scope of the independence assessment requirement.[96] Based on the above, the Commission believes these limited exceptions are consistent with the investor protection provisions of Section 6(b)(5) of the Act.

Regarding the independence assessment requirement, the Commission notes that, as already discussed, nothing in the proposed rule prevents a compensation committee from selecting any adviser that it prefers, including ones that are not independent, after considering the six factors. In this regard, in Amendment No. 3, CHX added specific rule language stating, among other things, that nothing in its rule requires a compensation adviser to be independent, only that the compensation committee must consider the six independence factors before selecting or receiving advice from a compensation adviser.[97]

Finally, one commenter on the New York Stock Exchange LLC's proposal requested guidance ''on how often the required independence assessment should occur.'' [98] This commenter observed that it ''will be extremely burdensome and disruptive if prior to each such [compensation committee] meeting, the committee had to conduct a new assessment.'' The Commission anticipates that compensation committees will conduct such an independence assessment at least annually.[99]

The changes to CHX's rules on compensation advisers should therefore benefit investors in CHX-listed companies and are consistent with the requirements in Section 6(b)(5) of the Act that rules of the exchange further investor protection and the public interest.

D. Application to Smaller Reporting Companies

The Commission believes that the requirement for Smaller Reporting Companies, like all other CHX-listed companies, to have a compensation committee, composed solely of independent directors or to otherwise have compensation determined by a majority of the independent directors, is reasonable and consistent with the protection of investors. The Commission notes that CHX's rules for Compensation Committees have not made a distinction for Smaller Reporting Companies in the past. However, consistent with the exemption of Smaller Reporting Companies from Rule 10C–1, the Exchange has decided not to require Smaller Reporting Companies to meet its proposed new independence requirements as to compensatory fees and affiliation as well as the requirements concerning compensation advisers.[100]

The Commission believes that these provisions are consistent with the Act and do not unfairly discriminate between issuers. The Commission believes that, for similar reasons to those for which Smaller Reporting Companies are exempted from the Rule 10C–1 requirements, it makes sense for CHX to provide some flexibility to Smaller Reporting Companies. Further, in view of the potential additional costs, it is reasonable not to require a Smaller Reporting Company to comply with these additional requirements.[101]

E. Opportunity To Cure Defects

Rule 10C–1 requires the rules of an exchange to provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for the exchange, under Rule 10C–1, to prohibit the issuer's listing. Rule 10C–1 also specifies that, with respect to the independence standards adopted in accordance with the requirements of the Rule, an exchange may provide a cure period until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

The Commission notes that the cure period that CHX proposes for companies that fail to comply with the enhanced independence requirements designed to comply with Rule 10C–1 is the same as the cure period suggested under Rule 10C–1. The Commission believes that providing this cure provision as an option for independent directors who cease to be independent for reasons outside their control is fair and reasonable and consistent with investor protection under Rule 6(b)(5). In addition, CHX's general rules include delisting procedures that provide issuers with notice, opportunity for a hearing, opportunity for appeals, and an opportunity to cure defects before an issuer's securities are delisted.

The Commission believes that these general procedures for companies out of compliance with listing requirements, in addition to the particular cure provisions for compensation committees failing to meet the new independence standards, adequately meet the mandate of Rule 10C–1 and also are consistent with investor protection and the public interest since they give a company a reasonable time period to cure non-compliance with these important requirements before they will be delisted.

F. Exemptions

The Commission believes that it is appropriate for CHX to exempt from the new requirements established by the proposed rule change the same categories of issuers that are exempt from its existing standards for oversight of executive compensation for listed companies. Although Rule 10C–1 does not explicitly exempt some of these categories of issuers from its requirements, it does grant discretion to exchanges to provide additional exemptions. CHX states that the reasons it adopted the existing exemptions apply equally to the new requirements, and the Commission believes that this assertion is reasonable.

CHX proposes to exempt limited partnerships, companies in bankruptcy, and open-end investment management companies registered under the Investment Company Act from all of the requirements of Rule 10C–1. The Commission believes such exemptions are reasonable, and notes that such entities, which were already generally exempt from CHX's existing compensation committee requirements, also are exempt from the compensation committee independence requirements specifically under Rule 10C–1. CHX also proposes to exempt closed-end management investment companies registered under the Investment Company Act from the requirements of Rule 10C–1. The Commission believes that this exemption is reasonable because the Investment Company Act already assigns important duties of investment company governance, such as approval of the investment advisory contract, to independent directors, and because such entities were already generally exempt from CHX's existing compensation committee requirements.

The Commission further believes that other proposed exemption provisions

[96] *See* NYSE Approval Order and Nasdaq Approval Order, *supra* note 6.

[97] *See supra* notes 56–58 and accompanying text.

[98] *See* Comment to NYSE Notice by Robert B. Lamm, Chair, Securities Law Committee, The Society of Corporate Secretaries & Governance Professionals, dated December 7, 2012.

[99] *See* NYSE Approval Order and Nasdaq Approval Order, *supra* note 6 for a discussion of comments.

[100] *See* Notice, *supra* note 4.

[101] As discussed supra notes 60–62 and accompanying text, under CHX's proposal, Smaller Reporting Companies are exempted from all of the compensation adviser requirements, including the requirement that specified independence factors be considered before selecting such advisers.

relating to controlled companies,[102] passive business organizations or derivative and special purpose entities, and issuers whose only listed equity stock is a preferred stock or debt security are reasonable, given the specific characteristics of these entities identified by CHX.[103]

The CHX proposal would continue to permit foreign private issuers to follow home country practice in lieu of the provisions of the new rules, but would now require further disclosure from such entities regarding the reason why they do not have an independent compensation committee. The Commission believes that granting exemptions to foreign private issuers in deference to their home country practices with respect to compensation committee practices is appropriate, and believes that the existing and proposed disclosure requirements will help investors determine whether they are satisfied with the alternative standard. The Commission also notes that CHX's proposal conforms its rules to Rule 10C–1, which exempts foreign private issuers from the compensation committee independence requirements of Rule 10C–1 to the extent such entities disclose in their annual reports the reasons they do not have independent compensation committees.

G. Transition to the New Rules for Companies Listed as of the Effective Date

The Commission believes that the deadlines for compliance with the proposal's various provisions, as amended, are reasonable and should afford listed companies adequate time to make the changes, if any, necessary to meet the new standards. The Commission believes that the July 1, 2013 deadline proposed is clear-cut and matches the deadline set forth by NYSE and The NASDAQ Stock Market, as revised.[104] Additionally, the amended deadline gives companies until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the enhanced independence standards for the members of compensation committees in Rule 19(p)(3)(B).[105]

H. Compliance Schedules: Companies Transferring From Other Markets

The Commission believes that it is reasonable for CHX to allow, with respect to companies listing in connection with an initial public offering and companies transferring from other markets, the same phase-in schedule for compliance with the new requirements as is permitted under its current compensation related rules.

The Commission also believes that the compliance schedule for companies that cease to be Smaller Reporting Companies, as revised in Amendment No. 2, is adequate time to come into compliance with the rules that apply to other companies.

IV. Accelerated Approval of Amendment No. 3 to the Proposed Rule Change

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[106] for approving the proposed rule change, as modified by Amendment Nos. 1, 2 and 3, prior to the 30th day after the date of publication of notice in the **Federal Register**.

The change made to the proposal by Amendment No. 3 to remove a proposed amendment to Rule 4 is not substantive, as Rule 4's listing standards will now not be changed. For the same reason, the removal of the proposed general exemption for clearing agencies clearing futures or options from the rule is not a substantive change.[107]

The additional language in Amendment No. 3 to exclude advisers that provide only certain types of services from the independence assessment is also appropriate. As discussed above, the Commission has already determined to exclude such advisers from the disclosure requirement regarding compensation advisers in Regulation S–K because these types of services do not raise conflict of interest concerns. Similarly, the addition of further guidance by Amendment No. 3 merely clarifies that the same exception applies for in-house legal counsel, and is not a substantive changes, as it was the intent of the rule as originally proposed.

Next, the addition of further guidance by Amendment No. 3 merely clarifies that nothing in the Exchange's rules require a compensation adviser to be independent, only that the compensation committee consider the independence factors before selecting or receiving advice from a compensation adviser, and that is not a substantive change, as it was also the intent of the rule as originally proposed.

Finally, the change made by Amendment No. 3 to require companies currently listed on CHX to comply with the majority of the new rules by July 1, 2013, rather than immediately, as originally proposed, reasonably affords companies more time to take the steps necessary for compliance. The change to require such companies to comply with the charter and compensation adviser consideration provisions by July 1, 2013, rather than, as originally proposed, the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, still allows ample time for companies to adjust to the new rules, and accords with the deadline set by NYSE and Nasdaq in their proposals to comply with Rule 10C–1. [108]

Similarly, the conforming insertion of the current rule language as a sunset provision merely makes clear what issuers will be required to comply with prior to the effectiveness of the new rule text.

For all the reasons discussed above, the Commission finds good cause to accelerate approval of the proposed changes made by Amendment No. 3.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

[102] The Commission notes that controlled companies are provided an automatic exemption from the application of the entirety of Rule 10C–1 by Rule 10C–1(b)(5).

[103] *See supra* notes 64–69 and accompanying text.

[104] *See* Securities Exchange Act Release Nos. 68011 (October 9, 2012), 77 FR 62541 (October 15, 2012) (Notice of File No. SR–NYSE–2012–49); 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (Notice of File No. SR–NASDAQ–2012–109); *see also* Amendment No. 1 to File No. SR–NASDAQ–2012–109.

[105] The proposal is, however, otherwise effective on July 1, 2013, and issuers will be required to comply with the new compensation committee charter (or board resolution) and adviser requirements as of that date. As noted above, certain existing issuers, such as Smaller Reporting Companies, are exempt from compliance with the new independence requirement with respect to compensation committee service.

[106] 15 U.S.C. 78s(b)(2).

[107] The Commission notes that the listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A(b)(7)(A) (15 U.S.C. 78q–1(b)(7)(A)) and the listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) are provided an automatic exemption from the application of the entirety of Rule 10C–1 by Rule 10C–1(b)(5).

[108] *See* Securities Exchange Act Release Nos. 68011 (October 9, 2012), 77 FR 62541 (October 15, 2012) (Notice of File No. SR–NYSE–2012–49); 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (Notice of File No. SR–NASDAQ–2012–109); *see also* Amendment No. 1 to File No. SR–NASDAQ–2012–109.

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–CHX–2012–13 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–CHX–2012–13. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2012–13, and should be submitted on or before February 13, 2013.

VI. Conclusion

In summary, and for the reasons discussed in more detail above, the Commission believes that the rules being adopted by CHX, taken as whole, should benefit investors by helping listed companies make informed decisions regarding the amount and form of executive compensation. CHX's new rules will help to meet Congress's intent that compensation committees that are responsible for setting compensation policy for executives of listed companies consist only of independent directors.

CHX's rules also, consistent with Rule 10C–1, require compensation committees of listed companies to assess the independence of compensation advisers, taking into consideration six specified factors. This should help to assure that compensation committees of CHX-listed companies are better informed about potential conflicts when selecting and receiving advice from advisers. Similarly, the provisions of CHX's standards that require compensation committees to be given the authority to engage and oversee compensation advisers, and require the listed company to provide for appropriate funding to compensate such advisers, should help to support the compensation committee's role to oversee executive compensation and help provide compensation committees with the resources necessary to make better informed compensation decisions.

For the foregoing reasons, the Commission finds that the proposed rule change, SR–CHX–2012–13, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Exchange Act.[109]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[110] that the proposed rule change, SR–CHX–2012–13, as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[111]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01220 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

[109] 15 U.S.C. 78f(b)(5).

[110] 15 U.S.C. 78s(b)(2).

[111] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68665; File No. SR–BYX–2013–001]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

January 16, 2013.

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 January 2, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 the 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 BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule effective January 2, 2013,

[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.

in order to amend the rebates that it provides for removing liquidity, amend the fees that it charges for adding liquidity and to modify certain routing fees, as described in further detail below.

Rebates To Remove Liquidity

The Exchange currently provides a rebate of $0.0002 per share for orders that remove liquidity from the Exchange. The Exchange proposes to introduce a tiered pricing structure for executions that remove liquidity. Under the proposed tiered pricing structure, a Member must add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive this rebate. As with its other current tiered pricing, the daily average in order to receive the liquidity removal rebate will be calculated based on a Member's activity in the month for which the rebates would apply. For Members that do not reach the tier to receive the liquidity removal rebate, the Exchange proposes to eliminate the rebate. The Exchange does not, however, propose to charge such Members, but rather, will provide such executions free of charge.

Consistent with the current fee structure, the fee structure for executions that remove liquidity from the Exchange described above will not apply to executions that remove liquidity in securities priced under $1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under $1.00 per share.

In connection with the proposed change to the Exchange's fees to remove liquidity, the Exchange proposes to modify a footnote on its fee schedule related to its Retail Price Improvement (''RPI'') program, which references the current standard liquidity removal rebate of $0.0002 per share. This footnote was intended to make clear that applicable removal fees, and not specific RPI pricing, would apply to certain executions (Type 2 Retail Orders) that remove displayed liquidity. The Exchange proposes to modify this footnote to simply reference the applicable standard rebate or fee to access liquidity in order to remove the necessity to update the footnote any time that pricing applicable to removing displayed liquidity changes. Under the proposed pricing structure, a Member that qualifies for the $0.0002 per share liquidity removal rebate would receive such rebate for any Type 2 Retail Order that removes displayed liquidity, and a Member that does not qualify for the liquidity removal rebate would not receive such rebate but would instead receive the execution of a Type 2 Retail Order that removes displayed liquidity free of charge.

Fees To Add Liquidity

The Exchange currently maintains a tiered pricing structure for adding displayed liquidity in securities priced $1.00 and above that allows Members to add liquidity at a reduced fee to the extent such liquidity sets the national best bid or offer (the ''NBBO Setter Program''). The NBBO Setter Program is applicable to a Member's orders so long as the Member submitting the order achieves the applicable average daily volume (''ADV'') requirement of at least 0.1% of the total consolidated volume (''TCV'') during the month. Members that qualify for the NBBO Setter Program are charged a fee of $0.0002 per share for executions resulting from orders that add liquidity to the BYX Exchange order book and set the NBBO. All other executions resulting from liquidity added by any Member are currently subject to a fee of $0.0003 per share.

The Exchange proposes to increase the ADV requirement for the NBBO Setter Program to a requirement that a Member maintain ADV on the Exchange of at least 0.5% of the total TCV during the month in order to receive the reduced fee of $0.0002 per share on orders that set the NBBO.

The Exchange also proposes to add tiered pricing for executions of orders that add liquidity but do not set a new NBBO. The Exchange proposes to use the same criteria, specifically, that a Member maintains ADV on the Exchange of at least 0.5% of the total TCV during the month, in order for a Member to receive a reduced fee on executions of orders that add liquidity but do not set the NBBO. The Exchange proposes to charge a reduced fee of $0.00025 per share to Members that qualify based on their ADV on the Exchange, which is a slight reduction from the current standard fee to add liquidity of $0.0003 per share.

Lastly, the Exchange proposes to charge Members that do not qualify for a reduced fee based on their volume on the Exchange a fee of $0.0005 per share for executions resulting from orders that add liquidity to the Exchange, which is an increase from the current standard fee to add liquidity of $0.0003 per share.

The Exchange does not propose to modify its existing definitions of ADV or TCV in connection with the changes described above. The Exchange notes that, in contrast to the tiered pricing structure for removing liquidity, described above, which only takes into account a Member's liquidity adding activity, the definition of ADV used for the NBBO Setter Program and the proposed tiered pricing structure for other executions that add liquidity includes both a Member's liquidity adding and removing activity.

Routing Fees

The Exchange proposes to modify the fee charged by the Exchange for its CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies from $0.0028 per share to $0.0029 per share. To be consistent with this change, the Exchange proposes to charge 0.29%, rather than 0.28%, of the total dollar value of the execution for any security priced under $1.00 per share that is routed away from the Exchange through these strategies.

Finally, the Exchange proposes to modify pricing for its SLIM[6] routing strategy, which is focused on seeking execution of orders while minimizing execution costs by setting a priority on routing, when possible, to low cost execution venues on the Exchange's routing table. The Exchange currently charges three different fees for executions through the SLIM routing strategy. Specifically, the Exchange charges the following fees for executions of orders routed through the SLIM routing strategy: (i) A fee of $0.0029 per share for executions at BATS Exchange, Inc. (''BZX''), (ii) a fee of $0.0024 per share for executions at the New York Stock Exchange LLC (''NYSE''), and (iii) a fee of $0.0026 per share for executions at any other venue. The Exchange proposes to increase the fee for executions resulting from the SLIM routing strategy at any other venue from $0.0026 per share to $0.0027 per share. The Exchange does not propose any other changes to SLIM routing fees.

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.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] 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

[6] As defined in BYX Rule 11.13(a)(3)(H).

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

[8] 15 U.S.C. 78f(b)(4).

which the Exchange operates or controls. 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.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also allowing the Exchange to continue to offer incentives to providing aggressively priced displayed liquidity. While many Members that remove liquidity from the Exchange, add liquidity to the Exchange and/or route orders through the Exchange's routing strategies will be paying higher fees or receiving lower rebates due to the proposal, the increased revenue received by the Exchange will be used to continue to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange.

With respect to the proposed tiered pricing structure for removing liquidity from the Exchange, the Exchange believes that its proposal is reasonable because it will allow Members that achieve a relatively low threshold of added liquidity, and thus who contribute to the depth of liquidity generally available on the Exchange, to continue to receive the current rebate. Although Members that do not achieve the volume threshold will no longer receive the rebate to remove liquidity, the Exchange believes that its proposal is reasonable because such Members will not be charged a fee to remove liquidity but will receive such executions free of charge. Volume-based tiers such as the liquidity removal tier proposed by the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

The Exchange believes that its proposal to modify the footnote related to the RPI program is reasonable, equitably allocated and not unfairly discriminatory because this change merely achieves the goal of the existing language by making clear that standard pricing to remove liquidity, whatever that pricing may be, will be applied to Type 2 Retail Orders that remove displayed liquidity, and that RPI program pricing does not apply.

With respect to the Exchange's proposal to increase the threshold necessary to participate in the NBBO Setter Program, the Exchange believes that its proposal is reasonable because the tier is intended to incentivize Members to maintain or increase their participation on the Exchange. As noted above, volume-based tiers such as the threshold necessary to qualify for the NBBO Setter Program and the reduced fee to add liquidity are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.

With respect to the fee tier for qualifying Members that add liquidity but do not set the NBBO and the higher fee for Members that do not qualify for such tier, the Exchange believes that the proposed fees are reasonable as both fees are still comparable to other market centers that charge to add displayed liquidity. The Exchange notes that at least one market center charges a higher fee to add displayed liquidity.[9] Although the proposed changes will result in increased fees charged to Members that do not qualify for the tier, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange. Further, the Exchange again notes that the tiered fee structure whereby Members meeting certain volume thresholds will receive reduced fees on their added liquidity executions is equitable and not unfairly discriminatory because it will be open to all Members on an equal basis the reduced fee is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes that its increase to the standard routing fee is reasonable in that it will align the Exchange's standard routing fee with that charged by the Exchange's affiliate, BZX, and is consistent with routing fees charged with others for routing services. The proposed increase is also equitable and non-discriminatory in that it will be increased equally for all Members. The Exchange also notes that it operates in a highly competitive market in which market participants can readily choose amongst market participants that provide routing services, and believes that market participants will simply not use the Exchange for routing services if they deem the fee levels set to be excessive.

Finally, the Exchange believes that the proposed changes to the Exchange's SLIM routing strategy is reasonable, equitable and non-discriminatory in that it is proposed in order to account for certain increased costs to the Exchange in providing routing services, the fee will be increased equally for all Members, and the SLIM routing strategy is a completely optional routing service that Members must affirmatively choose to use. The Exchange also notes that the increased fee is still lower than its standard routing fee, thus providing savings to Members that prefer to include access fee cost savings as a factor in their routing determinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the market for order execution is extremely competitive, Members may choose to preference other market centers ahead of the Exchange if they believe that they can receive better fees or rebates elsewhere. Similarly, because the market for order routing services is also competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. Because certain of the proposed changes are intended to provide incentives to Members that will result in increased activity on the Exchange, such changes are necessarily competitive. However, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange does not believe that any of the changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

[9] NASDAQ OMX BX charges up to $0.0018 per share, with the potential for a slightly lower fee to the extent a participant meets certain quoting criteria.

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 [10] and Rule 19b–4(f)(2) thereunder,[11] 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–BYX–2013–001 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–BYX–2013–001. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–001, and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68672; File No. SR–NASDAQ–2012–117]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change With Respect to INAV Pegged Orders for ETFs

January 16, 2013.

I. Introduction

On October 2, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASDAQ Rule 4751(f)(4) to adopt a new Intraday Net Asset Value (''INAV'') Pegged Order for Exchange-Traded Funds (''ETFs'') where the component stocks underlying the ETFs are U.S. Component Stocks (as defined by NASDAQ Rule 5705(a)(1)(C) and 5705(b)(1)(D)) [3] (''U.S. Component Stock ETFs''). The proposed rule change was published for comment in the **Federal Register** on October 18, 2012.[4] The Commission received one comment letter on the proposal.[5] On November 21, 2012, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] On January 15, 2013, the Commission received the Exchange's response to the comment letter.[8] This order institutes proceedings under Section 19(b)(2)(B) of the Act [9] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend NASDAQ Rule 4751(f)(4) to establish INAV Pegged Orders that would be available only for U.S. Component Stock ETFs. The INAV Pegged Order type would be available for all U.S. Component Stock ETFs where there is dynamic INAV data. The INAV Pegged Order would be priced relative to the INAV of the fund's underlying portfolio. According to the Exchange, the INAV is intended to approximate the fair value of the securities held in the portfolio by an ETF,[10] and the Exchange represents that the INAV should closely represent the value of the fund during the trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 5705 contains NASDAQ's listing standards for ETFs (which include Portfolio Depositary Receipts and Index Fund Shares).

[4] *See* Securities Exchange Act Release No. 68042 (October 12, 2012), 77 FR 64167 (''Notice'').

[5] *See* Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Commission, dated November 8, 2012 (''ICI Letter'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 68279 (November 21, 2012), 77 FR 70857 (November 27, 2012). *See also* Securities Exchange Act Release No. 68279A (December 4, 2012), 77 FR 73716 (December 11, 2012) (correcting certain typographical errors). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated January 16, 2013 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] *See* Letter from Stephen Matthews, Senior Associate General Counsel, NASDAQ OMX, to Elizabeth M. Murphy, Secretary, Commission, dated January 15, 2013 (''Response Letter'').

[9] 15 U.S.C. 78s(b)(2)(B).

[10] The Exchange states that investors should note that the INAV is only an estimation of a fund's value, and this might differ from the end of day net asset value, which is more definitive and disseminated on a daily basis at the end of the trading day. *See* Notice, *supra* note 4, at 64169.

day.[11] According to the Exchange, INAVs are typically calculated using the last sale prices of the fund's components.[12] The Exchange represents that, pursuant to NASDAQ listing rules, the INAV for NASDAQ-listed ETFs is disseminated widely to vendors and their subscribers via multiple data feeds, including UTP Level 1, NASDAQ Basic, NASDAQ Level 2, and NASDAQ TotalView, and that INAVs are typically disseminated at least once every 15 seconds during the regular market session.[13]

Generally, Pegged Orders are orders that, once entered, adjust in price automatically in response to changes in factors, such as the national best bid or offer, depending upon the type of Pegged Order. An INAV Pegged Order would specify that its price will equal (or, to the extent an offset is used, be offset from) the prevailing INAV for the relevant ETF. As the INAV changes, the INAV Pegged Orders would change therewith. In the event that the INAV data feed for a particular ETF were to be compromised or temporarily stopped being disseminated, the use of the INAV Pegged Order type for that ETF would be suspended (*i.e.,* no new INAV Pegged Orders would be accepted into the system) and orders utilizing the INAV Pegged Order functionality for that ETF already in the system would be cancelled. The suspension of new INAV Pegged Orders would remain in effect until such time as the Exchange was confident that the integrity of the INAV data feed had been restored.

A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, certain Pegged Orders (Primary Peg and Market Peg Orders) may establish their pricing relative to the appropriate bids or offers by selecting one or more offset amounts that will adjust the price of the order by the offset amount selected. The Exchange proposes to similarly introduce this functionality for the INAV Pegged Order type. Moreover, similar to other Pegged Orders (other than a Midpoint Peg Order), the Exchange proposes that an INAV Pegged Order may be either displayed or non-displayed. If a market participant utilizes the non-displayed order type, its order will be placed lower in the priority queue than displayed orders within each price point.

The Exchange provides the following examples to illustrate how the INAV Pegged Order type would operate (note that the price of the order updates in response to changes in the INAV):

Example 1

- The best bid is $20.00 and the best offer is $20.06 at 10:00:00 a.m. INAV is updated and published as $20.03 at 10:00:02.
- An INAV Peg Order to buy entered at 10:00:04 would be priced at $20.03.
- The best bid would update to $20.03 (at approximately 10:00:04).
- The best offer would remain at $20.06.

Example 2

- The best bid is $20.00 and the best offer is $20.06 at 10:00:00. INAV is updated and published as $19.98 at 10:00:02.
- An INAV Peg Order to sell entered at 10:00:04 would be priced at $19.98 and subsequently execute at $20.00 (at approximately 10:00:04).

Example 3

- The best bid is $20.00 and the best offer is $20.10 at 10:00:00 a.m. INAV is updated and published as $20.03 at 10:00:02.
- An INAV Peg Order to buy with a +.03 offset entered at 10:00:04 would be priced at $20.06 ($20.03 +.03) (at approximately 10:00:04).
- The best bid would update to $20.06 (approximately 10:00:04).
- The best offer would remain at $20.10.

III. Summary of Comment Letters and the Exchange's Response

The Commission received one comment letter on the proposed rule change.[14] The commenter raises a number of concerns and requests a number of clarifications relating to the proposal, each of which is described below. The commenter notes that while it does not necessarily object to the creation of a new order type pegged to INAV, it believes the Commission should request additional information from the Exchange to further explore the questions and concerns it raises, and consider the benefits and risks of the proposed INAV Pegged Order, before determining whether to approve it.[15]

A. Questions Regarding the Purpose and Benefits of the Proposal

First, the commenter states that its members have questioned the purpose and benefit to market participants of an order type pegged to INAV.[16] The commenter notes that in its filing the Exchange states that ''ETF Sponsors routinely deal with investors that have been subject to inferior executions,'' [17] and that the vast majority of these complaints result from people using market orders where the prevailing market price either does not correlate to the fund's value, or the quoted size does not meet the demand of the order (or both).[18] The commenter believes the use of limit orders generally addresses the concerns highlighted by the Exchange, and that investor confusion regarding order types likely explains the inopportune use of market orders.[19] The commenter further believes that educating investors on the proper use of existing order types may be preferable to the creation of another order type.[20] Moreover, the commenter states that the problems with execution typically occur in ETFs that would not be covered by the new order type, *i.e.,* those based on fixed income and non-US equity securities, and that most ETFs comprised of U.S. equities are very liquid and trade with fair price execution.[21]

In response to these comments, the Exchange states its belief that fair price executions are currently available for the highest volume, most liquid domestic equity products, but not necessarily for the majority of products which are less actively traded.[22] The Exchange states that the use of the INAV Pegged Order type would be entirely optional, and is meant to offer an additional tool to help investors achieve greater transparency and a fair execution price.[23] The Exchange further states its belief that for domestic equity products, the published INAV is the best proxy for fair value, as it represents

[11] *See* Notice, *supra* note 4, at 64168. According to the Exchange, the term ''INAV,'' as used by the Exchange in its proposal, would be synonymous with commonly used terms such as Intraday Indicative Value (IIV), Intraday Optimized Portfolio Value (IOPV) and Intraday Portfolio Value (IPV), among others. *Id.*

[12] The Exchange states that INAVs can vary from the fund's market price and/or can be valued outside of the fund's prevailing bid/ask spread as a result of, among other things, the supply and demand characteristics of the fund and/or liquidity present in the marketplace. *See* Notice, *supra* note 4, at 64168. In addition, the Exchange states that the INAV may remain unchanged for a certain period of time if the underlying values do not change, particularly in periods of low volatility, and that the INAV may become stale as a result of a compromised data feed or disruption to the calculation and/or dissemination agent or other technology related malfunction. *Id.*

[13] *See id.*

[14] *See* ICI Letter, *supra* note 5.

[15] *Id.* at 2.

[16] *Id.*

[17] *See* Notice, *supra* note 4, at 64169.

[18] *Id.*

[19] *See* ICI Letter, *supra* note 5, at 2.

[20] *Id.* The commenter notes that many ETF sponsors and others have undertaken educational efforts aimed at explaining order types for investors and cites to *www.understandETFs.org,* a collaborative effort by ETF providers to enhance investor understanding of ETFs, as one example. *Id.*

[21] *Id.*

[22] *See* Response Letter, *supra* note 8, at 2.

[23] *Id.*

the closest calculation of underlying value generally available.[24]

B. Concerns Regarding Investor Understanding of INAV

The commenter states that its members are concerned about the utility of INAV as a reference point for pricing an ETF order because market participants may misunderstand INAV.[25] This commenter states that INAV is not a ''fair value'' estimate of the securities underlying the ETF, as INAV is typically calculated using the last sales price of the fund's components.[26] The commenter states that, at times, particularly for securities that do not trade often, the last sale price may not be reflective of the security's value, and unlike a fund's end-of-day net asset value, INAV does not attempt to adjust for such variations.[27] Furthermore, the commenter states that INAV is not a fair value estimate of the ETF itself, as some U.S. Component Stock ETFs may trade at a consistent premium or discount, which is not taken into account in the INAV calculation.[28] The commenter states that where an ETF's shares frequently trade at a premium to INAV, an INAV Pegged Order to sell at INAV would likely disadvantage the seller.[29] The commenter further states that, although it recognizes that the proposed order type could be used with an offset to account for this premium, it is concerned that market participants may believe INAV represents the fair market value of the ETF, and therefore reflects such nuances.[30]

In response, the Exchange states its belief that for domestic equity products the INAV is a good representation of fair value and the only representation of fair value currently available for individual investors.[31] The Exchange disagrees with the commenter that an INAV Pegged Order to sell a U.S. Component Stock ETF that trades at a consistent premium would disadvantage the seller, noting that in a scenario where an INAV Pegged Order to sell was priced below the best bid, it would only execute at the best bid, which would be at a premium to the INAV to the benefit of the investor.[32] The Exchange further states that, more importantly, a buyer utilizing the INAV Pegged Order type would never execute at a premium to INAV.[33]

The commenter also is concerned that some market participants may not understand that INAV can be an inaccurate reflection of an ETF's market value because it can become stale over the course of 15 seconds.[34] The commenter believes that establishing an order price based on data that is nearly 15 seconds old could result in poor execution.[35]

In response, the Exchange states that the INAV Pegged Order type should lead to a greater level of transparency as it relates to the ETF's current value and, as a result, should increase investor confidence.[36] The Exchange states that the INAV is the most up-to-date data source that is publicly available, and ''is a clear improvement over the current state of non-existent data as it relates to real time fund valuation.'' [37] The Exchange states its belief that, although the INAV is only updated every 15 seconds, it is still of value and beneficial to investors as the execution will still be benchmarked against the prevailing published INAV.[38] The Exchange further states that if an investor is uncomfortable with the INAV Pegged Order functionality, they would not be required to use the order type.[39]

Further, the commenter also is concerned that investors do not understand that INAV calculations are based on the ETF's creation basket, which in some cases does not include all of the securities in a fund's portfolio.[40] The commenter notes that in such cases, ETF sponsors take great care to publish baskets that mimic the market characteristics of the full portfolio, but there may be instances in which the INAV, because it is based on the constituents of a sampled basket, deviates from the actual intra-day net asset value of the ETF.[41] The commenter is concerned that investors who do not understand how INAV is calculated for a particular ETF may be unaware that INAV does not always mirror the value of the full portfolio, and such investors might have chosen to submit a different type of order had they understood the limitations of INAV.[42]

C. Concerns Regarding INAV Error

The commenter also is concerned about the susceptibility of INAV to error.[43] The commenter states that many parties participate in the calculation, publication, and dissemination of the INAV (*e.g.,* ETF sponsors, calculation agents, exchanges, and/or third party pricing vendors), that such a process creates opportunities for errors,[44] and that such errors are not infrequent.[45] The commenter states that ETF sponsors attempt to monitor INAV and correct such errors as soon as practicable, but at times INAV Pegged Orders would likely execute before these errors are identified.[46] This commenter further argues that if calculation agents and pricing vendors could be held liable by investors using INAV Pegged Orders for inaccuracies in INAVs, it is possible that firms would cease providing such services, making it impossible to disseminate INAVs, or would charge significantly more for their services, resulting in increased expenses for ETF investors.[47]

In its Response Letter, the Exchange agrees with the commenter that an erroneous INAV could be disseminated by a calculation agent.[48] However, the Exchange states its belief that the risk of a poor execution is mitigated by existing general safeguards in the market place.[49] The Exchange further states that an execution pursuant to an INAV Pegged Order would only ever occur within the prevailing bid-offer spread, and that, in the absence of adequate depth of market, an aggrieved party could utilize the Exchange's existing clearly erroneous procedures.[50]

D. Clarifications About the Operation of the INAV Pegged Order

The commenter raises a number of questions and requests clarifications relating to how the INAV Pegged Order would operate. First, the commenter states that far more specificity is necessary to explain how the Exchange would suspend the use of and cancel existing INAV Pegged Orders for an ETF where the INAV data feed for such ETF stops being disseminated or is

[24] *Id.*
[25] *See* ICI Letter, *supra* note 5, at 3–4.
[26] *Id.* at 4.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *See* Response Letter, *supra* note 8, at 2.
[32] *Id.* at 3.
[33] *Id.*
[34] *See* ICI Letter, *supra* note 5, at 4.
[35] *Id.*
[36] *See* Response Letter, *supra* note 8, at 3.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *See* ICI Letter, *supra* note 5, at 4.
[41] *Id.* at 4–5.
[42] *Id.* at 5.
[43] *See* ICI Letter, *supra* note 5, at 3.
[44] The commenter provides as examples of such errors that an ETF may report a basket inaccurately, a calculation agent may receive faulty data from a pricing vendor, or an error may be made in the calculation process. *Id.* at 5.
[45] *Id.* at 5.
[46] *Id.*
[47] *Id.*
[48] *See* Response Letter, *supra* note 8, at 3.
[49] *Id.*
[50] *Id.*

compromised.[51] The commenter believes that, most importantly, the Exchange should clarify what constitutes a ''compromised'' INAV, and how the Exchange would identify a compromised INAV and determine whether to suspend new orders and cancel existing ones.[52] The commenter also raises questions about the proposed cancellation and suspension of INAV Pegged Orders (*e.g.,* how market participants would be notified that their orders have been cancelled due to a problem with INAV calculation), as well as about INAV Pegged Orders that may be executed based on a flawed INAV (*e.g.,* whether such orders would be cancellable). The commenter questions the benefit of allowing or encouraging the use of an order type that may be subject to cancellation due to an independent malfunction (such as an erroneous data feed) even when the rest of the market is performing normally.[53]

In response to these comments, the Exchange clarifies in its Response Letter that it would only suspend use of the INAV Pegged Order type if it were to detect a technological problem with the relevant INAV data feed.[54] The Exchange represents that it currently utilizes a number of systems and processes aimed at detecting dissemination or latency issues with data feeds, and that it has processes in place to communicate with market participants in the event of technology issues which impact its own systems or those systems of a third party.[55] The Exchange states that it intends to utilize its current processes in connection with market communications relating to issues with the INAV data feed.[56] The Exchange further states that it will process clearly erroneous executions in accordance with established policies.[57]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2012–117 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[58] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the significant legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[59] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[60] requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As discussed above, the Exchange's proposal would amend NASDAQ Rule 4751(f)(4) to adopt a new INAV Pegged Order type for U.S. Component Stock ETFs. Pursuant to the proposal, an INAV Pegged Order would specify that its price will equal (or, to the extent an offset is used, be offset from) the prevailing INAV for the relevant U.S. Component Stock ETF. Once entered, the INAV Pegged Order would adjust in price automatically in response to changes in the INAV. In the event that the INAV data feed for a particular ETF were to be compromised or temporarily stopped being disseminated, the use of the INAV Pegged Order type for that ETF would be suspended until such time as the Exchange was confident that the integrity of the INAV data feed had been restored (*i.e.,* no new INAV Pegged Orders would be accepted into the system and orders utilizing the INAV Pegged Order functionality for that ETF already in the system would be cancelled).

The Commission solicits comment on whether the proposal is consistent with the Act and whether the Exchange has met its burden in presenting a statutory analysis of how its proposal is consistent with the Act. In particular, the grounds for disapproval under consideration include whether the Exchange's proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[61] As discussed above, one commenter has articulated a number of questions and concerns relating to the proposal. Among other things, this commenter raises concerns about investor confusion relating to what the INAV represents and what it does not represent; how INAV is calculated; and the susceptibility of the INAV to calculation errors.[62] In addition, the commenter requests more specificity as to how the Exchange would suspend the use of and cancel existing INAV Pegged Orders for an ETF where the INAV data feed for such ETF stops being disseminated or is compromised.[63] Further, the commenter is concerned that some market participants may not understand that INAV can be an inaccurate reflection of an ETF's market value because it can become stale over the course of 15 seconds, and believes that establishing an order price based on data that is nearly 15 seconds old could result in poor execution.[64] As noted, the published INAV of an ETF generally is updated every 15 seconds, but the actual INAV of an ETF could change significantly during this same 15-second period. This fact pattern could potentially result in market participants' INAV Pegged Orders being executed at prices that do not reflect an up-to-date INAV for the ETF. Investors who may use the INAV Pegged Order type may not understand this operational aspect of the order type. Moreover, the 15-second period could create opportunities for participants with access to real time calculations of the INAV for an ETF to take advantage of participants using the INAV Pegged Order type that do not have the same information. The Commission also questions whether this proposed order type could inherently be negatively biased in that INAV Pegged Orders likely would be executed when the market is moving against the investor (for example, an investor's INAV Pegged Order to buy would be executed only when the market price of an ETF is falling).

In its Response Letter, NASDAQ argues that for U.S. Component Stock ETFs, the published INAV represents the closest and most up-to-date calculation of underlying value currently generally available, and is a

[51] *See* ICI Letter, *supra* note 5, at 3.

[52] *Id.*

[53] *Id.*

[54] *See* Response Letter, *supra* note 8, at 2.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] 15 U.S.C. 78s(b)(2)(B).

[59] 15 U.S.C. 78s(b)(2)(B).

[60] 15 U.S.C. 78f(b)(5).

[61] *Id.*

[62] *See supra* Section III.

[63] *See id.* The INAV is not a regulated measurement or calculation and is not audited by the Commission or any other regulatory or self-regulatory entity. Thus, it is unclear what party would be responsible for the integrity and accuracy of the INAV.

[64] *See id.*

good representation of fair value.[65] NASDAQ further argues that the INAV Pegged Order type will offer investors an execution tool which should lead to a greater level of transparency and result in increased investor confidence.[66] The Exchange argues that the commenter's concerns about poor executions resulting from erroneous or stale INAV data are mitigated because, among other things, the INAV Pegged Order type will be entirely optional, an execution would only ever occur within the prevailing bid-offer spread, and the Exchange's existing clearly erroneous procedures would be available to investors using the INAV Pegged Order type.[67]

After careful consideration, the Commission believes that the proposal continues to raise a number of questions, including those submitted by the commenter, as to whether the use of the proposed INAV Pegged Order type is consistent with the protection of investors and the public interest and whether it is designed to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices. The Commission continues to evaluate the issues presented by the proposal and the specific concerns articulated by the commenter, and the Exchange's response.[68] In light of these issues and concerns, the Commission believes that questions remain as to whether NASDAQ's proposal is consistent with the requirements of Section 6(b)(5) of the Act, including whether the proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)[69] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[70]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 13, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 27, 2013.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, including those contained in the Response Letter, and the statements of the commenter in response to the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. The commenter states that market participants may misunderstand INAV as being the ''fair value'' estimate of the securities underlying the ETF.[71] In its Response Letter, the Exchange states its belief that for domestic equity products, the INAV represents the best proxy for fair value and the only representation of fair value currently available for individual investors, and is the most up-to-date real time fund valuation data source that is publicly available.[72] What are commenters' views as to whether the INAV represents a proxy for fair value of the assets of an ETF? What are commenters' views as to whether market participants could be confused as to what INAV represents? Could investors be confused that the INAV is not the same as the end-of-day net asset value of the ETF? Do market participants currently utilize the published INAV? If so, for what purpose do commenters utilize the published INAV? If not, why not?

2. The commenter further states that the INAV calculations are based on the ETF's creation basket, which in some cases do not represent all of the securities in a fund's portfolio; rather, the INAV would reflect baskets that mimic the market characteristics of the full portfolio.[73] Do commenters agree that investors who do not understand how INAV is calculated for a particular ETF may not understand that INAV does not always mirror the value of the full portfolio of such ETF? If not, why not? Are there other aspects of the INAV that commenters believe could potentially cause confusion among investors and other market participants, particularly with respect to the operation of the proposed INAV Pegged Order? If so, what could they be?

3. The commenter states that market participants may not understand that the INAV can be an inaccurate reflection of an ETF's up-to-date market value. As noted, the published INAV of an ETF generally is updated every 15 seconds, but the actual INAV of an ETF could change significantly during this same 15-second period.[74] Further, the commenter states that the 15-second period could create opportunities for participants with access to real time calculations of the INAV for an ETF to take advantage of participants using the INAV Pegged Order type that do not have the same information.[75] As a result, the commenter asserts that establishing an order price based on data that is 15 seconds old could result in poor executions.[76]

In response, the Exchange states its belief that, although the INAV is only updated every 15 seconds, it is still of value and beneficial to investors as the execution will still be benchmarked against the prevailing published INAV.[77]

Do commenters agree with the concerns expressed by the commenter? If so, why? If not, why not? For instance, do commenters believe that the tying of the execution of an INAV Pegged Order to the published INAV, which is updated every 15 seconds, could potentially result in market participants' INAV Pegged Orders being executed at prices that do not reflect an up-to-date INAV for the ETF? Are commenters concerned that investors who may use the INAV Pegged Order type may not understand this operational aspect of the order type?

4. The Exchange states that the INAV Pegged Order type should lead to a greater level of transparency as it relates to the ETF's current value and, as a

[65] *See* Response Letter, *supra* note 8, at 2.

[66] *Id.* at 3.

[67] *Id.* at 2–3.

[68] *See supra* Section III.

[69] 15 U.S.C. 78f(b)(5).

[70] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[71] *See* ICI Letter, *supra* note 5, at 4.

[72] *See* Response Letter, *supra* note 8, at 2–3.

[73] *See* ICI Letter, *supra* note 5, at 5.

[74] *See* ICI Letter, *supra* note 5, at 4.

[75] *See id.*

[76] *See id.*

[77] *See* Response Letter, *supra* note 8, at 3. The Exchange states that the INAV is the most up-to-date data source that is publicly available, and ''is a clear improvement over the current state of non-existent data as it relates to real time fund valuation.'' *Id.*

result, should increase investor confidence.[78] Do commenters agree with these views? If so, why? If not, why not? For example, how would use of the proposed INAV Pegged Order type lead to greater transparency as it relates to the ETF's current value?

5. The commenter states that the calculation of INAV may be susceptible to errors, based on, for example, inaccurate reporting of ETF baskets, faulty data from pricing vendors, or errors in the calculation process.[79] Further, the commenter asserts that such errors are not infrequent.[80] Do commenters agree that INAV is susceptible to calculation errors? If not, why not? If so, how so? Do commenters believe that a potential for errors in the calculation of INAV could undermine the purpose, design, and operation of the proposed INAV Pegged Order type? If so, how? If not, why not?

In its Response Letter, the Exchange states its belief that the risk of a poor execution due to an erroneous INAV is mitigated by existing general safeguards in the marketplace.[81] Do commenters agree with the Exchange? If so, what safeguards exist that would mitigate such a risk? If not, why not?

The Commission notes that the INAV is not a regulated measurement or calculation and is not audited by the Commission or any other regulatory or self-regulatory entity. Thus, it is unclear what party would be responsible for the integrity and accuracy of the INAV. Do commenters believe that a lack of accountability with respect to those parties responsible for the calculation of INAV could undermine the purpose, design and operation of the INAV Pegged Order? If not, why not?

6. In addition, the Commission questions whether this proposed order type could inherently be negatively biased in that INAV Pegged Orders likely would be executed when the market is moving against the investor (for example, an investor's INAV Pegged Order to buy would be executed only when the market price of an ETF is falling). Do commenters agree that the INAV Pegged Order type could be inherently biased to the detriment of the investor? If not, why not? In its Response Letter, the Exchange states that an execution pursuant to an INAV Pegged Order would only ever occur within the prevailing bid-offer spread.[82] Do commenters believe that this mitigates concerns relating to whether the INAV Pegged Order type could be inherently biased to the detriment of investors? Are there other potential risks that the proposed INAV Pegged Order type could pose to investors and other market participants? If so, what could they be?

7. The commenter requests more specificity as to how the Exchange would suspend the use of and cancel existing INAV Pegged Orders for an ETF where the INAV data feed for such ETF stops being disseminated or is ''compromised.'' [83] The commenter also raises questions about the proposed cancellation and suspension of INAV Pegged Orders (*e.g.,* how market participants would be notified that their orders have been cancelled due to a problem with INAV calculation), as well as about INAV Pegged Orders that may be executed based on a flawed INAV (*e.g.,* whether such orders would be cancellable).[84] In its Response Letter, the Exchange clarifies that it would only suspend the use of the INAV Pegged Order type for a particular U.S. Component Stock ETF if it were to detect a technological problem with the relevant INAV data feed, and that it would utilize its current systems and processes to detect any such problems and to communicate to market participants issues relating to the INAV data feed.[85] Do commenters believe the Exchange has provided sufficient detail with respect to when and how an INAV Pegged Order would be suspended and cancelled by the Exchange?

8. The commenter questions the general purpose and benefit of an INAV Pegged Order to market participants.[86] In particular, the commenter states that the use of limit orders generally could address concerns relating to investors, the vast majority of whom utilize market orders and who, as a result, have been subject to inferior executions.[87] As such, the commenter inquires as to whether the benefits of the proposed INAV Pegged Order type would outweigh the potential risks.[88] The Exchange states the INAV Pegged Order type should help investors achieve greater transparency and a fair execution price.[89] Do commenters agree with the Exchange's assertion? If so, why? If not, why not? What other benefits, if any, do commenters believe would result from the proposed INAV Pegged Order type? What are commenters' views as to how potential benefits that they believe would result from use of the proposed INAV Pegged Order would compare to the potential risks, as noted above?

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–NASDAQ–2012–117 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2012–117. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–117 and should be submitted on or before February 13, 2013. Rebuttal comments should be submitted by February 27, 2013.

[78] *See id.*

[79] *See* ICI Letter, *supra* note 5, at 5.

[80] *See id.*

[81] *See* Response Letter, *supra* note 8, at 2.

[82] *See* Response Letter, *supra* note 8, at 3.

[83] *See* ICI Letter, *supra* note 5, at 3.

[84] *Id.*

[85] *See* Response Letter, *supra* note 8, at 2.

[86] *See* ICI Letter, *supra* note 5, at 2.

[87] *See id.*

[88] *See id.*

[89] *See* Response Letter, *supra* note 8, at 2.

[90] 17 CFR 200.30–3(a)(57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[90]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01225 Filed 1–22–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68667; File No. SR–NYSEArca-2012–109]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the U.S. Equity High Volatility Put Write Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

January 16, 2013.

I. Introduction

On September 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the U.S. Equity High Volatility Put Write Index Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published in the **Federal Register** on October 18, 2012.[3] The Commission received no comments on the proposal. On November 29, 2012, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Shares will be issued by the ALPS ETF Trust (''Trust'').[6] ALPS Advisors, Inc. will be the Fund's investment adviser (''Adviser''), and Rich Investment Solutions, LLC will be the Fund's investment sub-adviser (''Sub-Adviser''). The Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Bank of New York Mellon (''BNY'') will serve as custodian, fund accounting agent, and transfer agent for the Fund. ALPS Distributors, Inc. will be the Fund's distributor (''Distributor''). NYSE Arca will be the ''Index Provider'' for the Fund. NYSE Arca is not affiliated with the Trust, the Adviser, the Sub-Adviser, or the Distributor. NYSE Arca is affiliated with a broker-dealer and will implement a fire wall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

Description of the Fund

The Fund will seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of the NYSE Arca U.S. Equity High Volatility Put Write Index (''Index''). The Index measures the return of a hypothetical portfolio consisting of U.S. exchange traded put options which have been sold on each of 20 stocks and a cash position calculated as described below. The 20 stocks on which options are sold (''written'') are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the Index Provider. The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.

The Exchange submitted this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.'' [7] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) [8] sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described further below, the Index consists of U.S. exchange-traded put options. The Exchange has represented that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

Index Methodology and Construction

The Index consists of at least 20 exchange-listed put options (''Index Components''), selected in accordance with NYSE Arca's rules-based methodology for the Index. In selecting the stocks underlying the Index Components, the Index Provider begins with the universe of all U.S. exchange-listed stocks, and then screens for those stocks that meet the following criteria: (1) Minimum market capitalization of at least $5 billion; (2) minimum trading volume of at least 50 million shares during the preceding 6 months; (3) minimum average daily trading volume of one million shares during the preceding 6 months; (4) minimum average daily trading value of at least $10 million during the preceding 6 months; (5) share price of $10 or higher; (6) the availability of U.S. exchange-listed options. The Index is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68044 (October 12, 2012), 77 FR 64160 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 68319 (November 29, 2012), 77 FR 72429 (December 5, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated January 16, 2013 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On May 3, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (''Registration Statement'') under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28262 (May 1, 2008) (File No. 812–13430).

[7] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[8] Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in relevant part, that the components of an index of US Component Stocks, upon the initial listing of a series of Investment Company Units pursuant to Rule 19b–4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act. *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

reconstituted/rebalanced every two months (*i.e.,* six times a year).

Stocks meeting the above criteria are then sorted in descending order based upon the two month implied volatility as measured on Bloomberg using the field labeled 2M_PUT_IMP_VOL_50DELTA_DFLT, which is derived from at-the-money listed put options on each of such stocks.[9] The 20 stocks with the highest volatility are selected for inclusion. The industry sector of each stock is also noted, and the Index will not allow more than 10 of the 20 stocks to be from any one industry sector.

Each listed put option included in the Index will be an ''American-style'' option (*i.e.,* an option which can be exercised at the strike price at any time prior to its expiration) and have a 60-day term. The strike price (*i.e.,* the price at which a put option can be exercised) of each put option included in the Index must be as close as possible to 85% of the closing price of the option's underlying stock price as of the beginning of each 60-day period.[10] The listed put options included in the Index can be exercised at any time prior to their expiration, but the Index will reflect the value of each such option throughout the 60-day period as if the option is not exercised until its expiration. Each such option will automatically be deemed exercised on its expiration date if its underlying stock price is below its strike price. If the stock underlying the put option closes below the option's strike price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock is deemed to be made, and the Index value is correspondingly reduced. If the underlying stock does not close below its strike price, then the option expires worthless and the entire amount of the premium payment is retained within the Index.[11]

The Exchange has provided the following example. Suppose a stock ''ABC'' trades at $50 per share at the start of the 60-day period, and a listed put option with a term of 60 days was sold with a strike price of $42.50 per share for a premium of $2 per share:

- *Settlement at or above the strike price:* If at the end of 60 days the ABC stock closed at or above the strike price of $42.50, then the option would expire worthless, and the Index's value would reflect the retention of the $2 per share premium. The Index's value thus would be increased by $2 per share on the ABC option position.
- *Settlement below the strike price:* If at the end of 60 days ABC closed at $35, then the option would automatically be deemed exercised on its expiration date. The Index's value would change as if the Index had put (*i.e.,* would buy) ABC at the strike price of $42.50 and would sell ABC immediately at the closing price of $35. As a result, the Index's value would be reduced by $7.50 per share. However, the Index's value would also reflect the retention of the $2 per share premium, so the net loss to the Index's value would be $5.50 per share on the ABC option position.

The Index's value is equal to the value of the options positions comprising the Index, plus a cash position. The options positions are equally weighted in the Index and the Fund's portfolio, meaning that 1/20th of the net asset value (''NAV'') of Shares of the Fund will be invested in each option position at the beginning of the applicable 60-day period. The cash position starts at a base of 1,000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month Treasury-bill (''T-Bill'') rate. The cash position is decreased by cash settlement on options which finish in-the-money (*i.e.,* where the closing price of the underlying stock at the end of the 60-day period is below the strike price). The cash position is also decreased by a deemed cash distribution paid following each 60-day period, currently targeted at the rate of 1.5% of the value of the Index. However, if the option premiums generated during the period are less than 1.5%, the deemed distribution will be reduced by the amount of the shortfall.

Primary Investments

The Fund under normal circumstances[12] will invest at least 80% of its total assets in component securities that comprise the Index (*i.e.,* the Fund's option positions) and in T-Bills. The Fund will seek to track the performance of the Index by selling listed 60-day put options in proportion to their weightings in the Index. By selling an option, the Fund will receive premiums from the buyer of the option, which will increase the Fund's return if the option is not exercised and thus expires worthless. However, if the option's underlying stock declines below the strike price, the option will finish in-the-money, and the Fund will be required to buy the underlying stock at the strike price, effectively paying the buyer the difference between the strike price and the closing price. Therefore, by writing a put option, the Fund will be exposed to the amount by which the price of the underlying stock is less than the strike price. As the seller of a listed put option, the Fund will incur an obligation to buy the underlying instrument from the purchaser of the option at the option's strike price, upon exercise by the option purchaser. If a listed put option sold by the Fund is exercised prior to the end of a 60-day period, the Fund will buy the underlying stock at the time of exercise and at the strike price, and will hold the stock until the end of the 60-day period.

Each put option sold by the Fund will be covered through investments in three month T-Bills at least equal to the Fund's maximum liability under the option (*i.e.,* the strike price).

Every 60 days, the options included within the Index are exercised or expire and new option positions are established, and the Fund will enter into new option positions accordingly and sell any underlying stocks it owns as a result of the Fund's prior option positions having been exercised. This 60-day cycle likely will cause the Fund to have frequent and substantial portfolio turnover.[13]

Secondary Investment Strategies

The Fund may invest its remaining assets in money market instruments,[14]

[9] The Adviser represents that Bloomberg defines implied volatility as Delta Ivol, which is volatility as expressed in delta. Delta values range from 0 to 100, with 50 delta as the theoretical at-the-money strike. A delta of less than 50 is considered out-of-the-money, while a delta of greater than 50 is considered in-the-money.

[10] The Adviser represents that a specific percentage cannot be indicated because options are listed by an exchange in pre-defined increments (*i.e.,* 1, 1.5, or 2 increments) around the market price of the stock, rounded to the nearest dollar.

[11] The Adviser anticipates that it may take approximately three business days (*i.e.,* each day the New York Stock Exchange (''NYSE'') is open) for additions and deletions to the Index to be reflected in the portfolio composition of the Fund.

[12] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equities or options markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[13] If the Fund receives additional inflows (and issues more Shares accordingly in large numbers known as ''Creation Units'') during a 60-day period, the Fund will sell additional listed put options which will be exercised or expire at the end of such 60-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 60-day period, the Fund will terminate the appropriate portion of the options it has sold accordingly.

[14] The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''), fixed time

including repurchase agreements [15] or other funds which invest exclusively in money market instruments, convertible securities, and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index). Furthermore, the Fund may invest in one or more financial instruments, including but not limited to futures contracts, swap agreements,[16] forward contracts, and options on securities (other than options in which the Fund principally will invest), indices, and futures contracts.[17] Swaps, options (other than options in which the Fund principally will invest), and futures contracts [18] may be used by the Fund in seeking performance that corresponds to the Index and in managing cash flows.[19]

The Fund may invest up to 20% of its net assets in investments not included in its Index, but which the Adviser believes will help the Fund track the Index. For example, there may be instances in which the Adviser may choose to purchase (or sell) securities not in the Index which the Adviser believes are appropriate to substitute for one or more Index Components in seeking to replicate, before fees and expenses, the performance of the Index.

The Fund may borrow money from a bank up to a limit of 10% of the value of its assets, but only for temporary or emergency purposes. The Fund may not invest 25% of its total assets in the securities of issuers conducting their principal business activities in the same industry or group of industries (excluding the U.S. government or any of its agencies or instrumentalities). Nonetheless, to the extent the Fund's Index is concentrated in a particular industry or group of industries, the Fund's investments will exceed this 25% limitation to the extent that it is necessary to gain exposure to Index Components to track its Index.

The Fund may invest in the securities of other investment companies (including money market funds). Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[20]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the applicable requirements of NYSE Arca Equities

deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; and (iv) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions. The Fund will not invest in money market instruments as part of a temporary defensive strategy to protect against potential stock market declines.

[15] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund also may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

[16] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap agreements will usually be done on a net basis, the Fund receiving or paying only the net amount of the two payments. The net amount of the excess, if any, of the Fund's obligations over its entitlements with respect to each swap will be accrued on a daily basis and an amount of cash or highly liquid securities having an aggregate value at least equal to the accrued excess will be maintained in an account at the Trust's custodian bank.

[17] As an example of the use of such financial instruments, the Fund may use total return swaps on one or more Index Components in order to achieve exposures that are similar to those of the Index.

[18] The Fund may utilize U.S. listed exchange-traded futures. In connection with its management of the Trust, the Adviser has claimed an exclusion from registration as a commodity pool operator under the Commodity Exchange Act (''CEA''). Therefore, it is not subject to the registration and regulatory requirements of the CEA, and there are no limitations on the extent to which the Fund may engage in non-hedging transactions involving futures and options thereon, except as set forth in the Registration Statement.

[19] Swaps, options (other than options in which the Fund principally will invest), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills, as described above.

[20] *See* Notice and Registration Statement, *supra* notes 3 and 6.

[21] 15 U.S.C. 78f.

[22] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and for the put options held by the Fund, will be available from the U.S. options exchanges on which they are listed and traded. The Index value will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time). Pricing information for the Index Components is available from the U.S. options exchanges on which such components are listed and traded, and a list of the Index Components, with percentage weightings, will be available on the Exchange's Web site. In addition, an Intraday Indicative Value (''IIV'') for the Shares will be calculated [25] and widely disseminated at least every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[26] The Fund's portfolio holdings, including information regarding its options positions, will be disclosed each day on the Fund's Web site, which Web site information will be publicly available at no charge.[27] The Fund's NAV per Share will be determined once daily as of the close of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for trading. BNY, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on NYSE Arca (currently 9:30 a.m. Eastern Time), the amount of cash to be deposited in exchange for a Creation Unit [28] and the amount of cash that will be paid by the Fund in respect of redemption requests. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and will be made available to all market participants at the same time.[29] If the IIV, the Index value, or the value of the Index Components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs. If the interruption to the dissemination of the applicable IIV, Index value, or value of the Index Components persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[30] In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Index Provider is affiliated with a broker-dealer and will implement a firewall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. The Exchange further states that the Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.[31] The Commission notes that the Exchange would be able to obtain information with respect to the options comprising the Index and which will be held by the Fund because such options will be listed and traded on U.S. options markets that are members of the Intermarket Surveillance Group (''ISG'').

The Commission notes that, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin.[32] Specifically, the Exchange

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] The Exchange will calculate the IIV by dividing the ''Estimated Fund Value'' (as defined below) as of the time of the calculation by the total number of outstanding Shares. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund, and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site.

[26] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(b)(2) and .01(c). According to the Exchange, several major market data vendors widely disseminate IIVs taken from the CTA or other data feeds. *See* Notice, *supra* note 3, at 64164.

[27] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio.

[28] Creation Units (100,000 Shares) of the Fund generally will be sold for cash only, calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, plus a transaction fee.

[29] *See* NYSE Arca Equities Rule 5.2(j)(3)(A)(v).

[30] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[31] The Commission also notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[32] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the

will remind ETP Holders that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

As described above, the Fund will seek to track the performance of the Index by selling listed 60-day put options in proportion to their weightings in the Index. If the option's underlying stock declines below the strike price, the option will finish in-the-money and the Fund will be required to buy the underlying stock at the strike price, effectively paying the buyer the difference between the strike price and the closing price. Therefore, by writing a put option, the Fund is exposed to the amount by which the price of the underlying stock is less than the strike price. FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[33] While the Fund will not invest in reverse convertibles, the Fund's options strategies may raise issues similar to those raised in the FINRA Regulatory Notice. Therefore, the Exchange has represented that the Information Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

As disclosed in the Registration Statement, the Fund is designed for investors who seek to obtain income through selling put options on select equity securities which the Index Provider determines to have the highest volatility. Because of the high volatility of the stocks underlying the put options sold by the Fund, it is possible that the value of such stocks will decline in sufficient magnitude to trigger the exercise of the put options and cause a loss which may outweigh the income from selling such put options. Accordingly, the Exchange has stated that the Fund should be considered as a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange has represented that the Information Bulletin regarding the Fund will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of U.S. exchange-listed options.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Investment Company Units, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. All Index Components are listed and traded on U.S. options exchanges, which are members of ISG.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. The Information Bulletin will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares, and will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

(5) The Index will consist of at least 20 equally-weighted exchange-listed put options, selected in accordance with NYSE Arca's rules-based methodology, and the Fund, under normal circumstances, will invest at least 80% of its total assets in the Index Components and in T-Bills.

(6) The stocks underlying the Index Components must be U.S. exchange listed and must meet the following additional criteria: (1) Minimum market capitalization of at least $5 billion; (2) minimum trading volume of at least 50 million shares during the preceding 6 months; (3) minimum average daily trading volume of one million shares during the preceding 6 months; (4) minimum average daily trading value of at least $10 million during the preceding 6 months; (5) share price of $10 or higher; and (6) the availability of U.S. exchange-listed options.

(7) The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities. In addition, the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

(9) Swaps, options (other than options in which the Fund principally will invest), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills.

(10) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

[33] NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

(11) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[34] as provided by NYSE Arca Equities Rule 5.3.

The Commission further notes that the Fund and the Shares must comply with all other requirements as set forth in Exchange rules applicable to Investment Company Units and prior Commission releases relating to, and orders approving, the listing rules (and amendments thereto) applicable to the listing and trading of Investment Company Units. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [35] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSEArca–2012–109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

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[34] 17 CFR 240.10A–3.

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68666; File No. SR–NYSEArca-2013–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of the Newfleet Multi-Sector Income ETF Under NYSE Arca Equities Rule 8.600

January 16, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Newfleet Multi-Sector Income ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares (''Shares'') of the Newfleet Multi-Sector Income ETF (the ''Fund'') [4] under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[5] The Shares will be offered by AdvisorSharesTrust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6]

The investment manager to the Fund will be AdvisorShares Investments LLC (the ''Adviser''). Newfleet Asset Management, LLC will serve as sub-adviser to the Fund (''Sub-Adviser''). Foreside Fund Services, LLC will serve as the distributor for the Fund (''Distributor''). The Bank of New York Mellon will serve as the custodian and transfer agent for the Fund (''Custodian'', ''Transfer Agent'' or ''Administrator'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser will erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition,

[4] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012) 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving Exchange listing and trading of PIMCO Total Return ETF); 66670 (March 28, 2012) 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving Exchange listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On June 25, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and the Sub-Adviser, and their related personnel, are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Adviser is not affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

Principal Investments

The Fund will, under normal market conditions,[8] invest at least eighty percent (80%) in investment-grade fixed income securities, which are fixed income securities with credit ratings within the four highest rating categories of a nationally recognized statistical rating organization. The Fund may invest in unrated securities to a limited extent if such security is determined by the Sub-Adviser to be of comparable quality.[9] The average duration of the Fund's fixed income investments will range from one to three years.

According to the Registration Statement, the Fund's investment objective is to provide a competitive level of current income, consistent with preservation of capital, while limiting fluctuations in net asset value (''NAV'') due to changes in interest rates. The Fund seeks to apply extensive credit research and a time tested approach to capitalize on opportunities across undervalued areas of the bond markets.

The Sub-Adviser will seek to provide diversification by allocating the Fund's investments among various sectors of the fixed income markets including investment grade debt securities issued primarily by U.S. issuers and secondarily by non-U.S. issuers, as follows:

- Securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, authorities or instrumentalities, including collateralized mortgage obligations (''CMOs''), real estate mortgage investment conduits (''REMICs'') and other pass-through securities;
- Non-agency[10] commercial mortgage-backed securities (''CMBS''), agency and ''non-agency'' residential mortgage-backed securities (''RMBS'')[11] and other asset backed securities;
- U.S. and non-U.S. corporate bonds;[12]
- Yankee bonds;[13]
- Taxable municipal bonds, tax-exempt municipal bonds; and
- Debt securities issued by foreign governments and their political subdivisions.

The Fund represents that the portfolio will include a minimum of 13 non-affiliated issuers of fixed income securities. The Fund will only purchase performing securities, not distressed debt. Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

In seeking to achieve the Fund's investment objective, the Sub-Adviser will employ active sector rotation and disciplined risk management in the construction of the Fund's portfolio. The Fund's investable assets will be allocated among various sectors of the fixed income market using a ''top-down''[14] relative value approach that looks at factors such as yield and spreads, supply and demand, investment environment, and sector fundamentals. The Sub-Adviser will select particular investments using a bottom-up, fundamental research driven analysis that includes assessment of credit risk, company management, issuer capital structure, technical market conditions, and valuations. The Sub-Adviser will select securities it believes offer the best potential to achieve the Fund's investment objective of providing a high level of total return, including a competitive level of current income, while preserving capital.

Other Investments

As disclosed in the Registration Statement, while the Fund will invest at least eighty percent (80%) in investment-grade fixed income securities, the Fund may invest 100% of its total assets, without limitation, in short term high-quality debt securities and money market instruments either directly or through exchange traded funds (''ETFs'')[15] in the absence of normal market conditions. The Fund may be invested in this manner for

investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] In determining whether a security is of ''comparable quality'', the Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis and sector or industry analysis.

[10] ''Non-agency'' securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Federal Home Loan Banks, or the Government National Mortgage Association (''Ginnie Mae'').

[11] Although the Fund has not established a fixed limit to the amount of non-agency securities in which it will invest, at least 80% of the Fund's net assets will be, under normal market conditions (*see* note 8, *supra*), invested in U.S. dollar denominated investment grade fixed income securities. The liquidity of any such security will be a factor in the selection of any such security.

[12] The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its assets in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries.

[13] Yankee bonds are denominated in U.S. dollars, registered in accordance with the Securities Act of 1933 and publicly issued in the U.S. by foreign banks and corporations.

[14] A ''top-down'' portfolio management style utilizes a tactical and globally diversified allocation strategy in an attempt to reduce risk and increase overall performance. This management style begins with a look at the overall economic picture and current market conditions and then narrows its focus down to sectors, industries or countries and ultimately to individual companies. The final step is a fundamental analysis of each individual security and to a lesser extent technical analysis.

[15] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. Such ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (*e.g.,* 2X or 3X).

extended periods depending on the Sub-Adviser's assessment of market conditions. These short-term debt instruments and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. government securities, repurchase and reverse repurchase agreements [16] and bonds that are rated BBB or higher.

The Fund may invest up to 20% of its total assets in fixed-income securities that are rated below investment grade at the time of purchase. Such securities include corporate high yield debt securities, emerging market high yield debt securities, and bank loans. In addition, such securities may include non-investment grade CMBS, RMBS, or other asset-backed securities, or debt securities issued by foreign issuers. If certain of the Fund's holdings experience a decline in their credit quality and fall below investment grade, the Fund may continue to hold the securities and they will not count toward the Fund's 20% investment limit; however, the Fund will make reasonable investment decisions relating to the Fund's holdings aligned with its investment objective with respect to such securities. Generally, the Fund will limit its investments in corporate high yield debt securities to 10% of its assets and will limit its investments in non-U.S. issuers to 30% of its assets. The Sub-Adviser will regularly review the Fund's portfolio construction, endeavoring to minimize risk exposure by closely monitoring portfolio characteristics such as sector concentration and portfolio duration and by investing no more than 5% of the Fund's total assets in securities of any single issuer (excluding the U.S. government, its agencies, authorities or instrumentalities).

The Fund may invest in equity securities. Equity securities represent ownership interests in a company or partnership and consist not only of common stocks, which are one of the Fund's primary types of investments, but also preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships. The Fund will purchase such equity securities traded in the U.S. on registered exchanges. Additionally, the Fund may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging countries.[17] With respect to its equity securities investments, the Fund will invest only in equity securities (including Equity Financial Instruments) that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.[18]

The Fund may invest in exchange-traded notes (''ETNs'').[19]

The Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,[20] other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies,[21] including other ETFs; provided that the Fund, immediately after such purchase or acquisition, does not own in the aggregate: (i) More than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the Fund; or (iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the Fund) having an aggregate value in excess of 10% of the value of the total assets of the Fund.

According to the Registration Statement, the Fund also may invest in the securities of other investment companies if the Fund is part of a ''master-feeder'' structure or operates as a fund of funds in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.[22] Section 12(d)(1) prohibits another investment company from selling its shares to the Fund if, after the sale: (i) The Fund owns more than 3% of the other investment company's voting stock or (ii) the Fund and other investment companies, and companies controlled by them, own more than 10% of the voting stock of such other investment company. The Trust has entered into agreements with several unaffiliated ETFs that permit, pursuant to a Commission order, the Fund to purchase shares of those ETFs beyond the Section 12(d)(1) limits described above. The Fund will only make such investments in conformity with the requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (the ''Code''). According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Code.[23]

The Fund may invest in the exchange traded securities of pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act. Such pooled vehicles would be required to comply with the provisions of other federal securities laws, such as the Securities Act of 1933. These pooled vehicles typically hold commodities, such as

[16] The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

[17] As disclosed in the Registration Statement, the Fund may invest in issuers located outside the United States directly, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include American Depository Receipts (''ADRs''), ''ordinary shares,'' and ''New York shares'' (each of which is issued and traded in the U.S.); and Global Depository Receipts (''GDRs''), European Depository Receipts (''EDRs'') and International Depository Receipts (''IDRs''), which are traded on foreign exchanges (all of the foregoing financial instruments collectively defined as ''Equity Financial Instruments''). ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are designed for use in domestic securities markets. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars, which protects the Fund from foreign settlement risks.

[18] *See* note 35, *infra.*

[19] ETNs, also called index-linked securities as would be listed, for example, under NYSE Arca Equities Rule 5.2(j)(6), are senior, unsecured unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees.

[20] 15 U.S.C. 80a–12(d)(1).

[21] As disclosed in the Registration Statement, investment companies may include index-based investments, such as ETFs that hold substantially all of their assets in securities representing a specific index.

[22] 15 U.S.C. 80a–12(d)(1)(E),(F) and (G).

[23] 26 U.S.C. 851.

gold or oil, currency, or other property that is itself not a security.

The Fund may invest in shares of exchange-traded real estate investment trusts (''REITs'').

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests (*e.g.* bank loans). *The* Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[24]

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[25]

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.[26]

The Fund will not invest in options contracts, futures contracts or swap agreements.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [27] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio [28] will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of the Fund will be ''created'' at their NAV [29] by authorized participants only in block-size aggregations of at least 50,000 Shares (''Creation Units''). The consideration for purchase of a Creation Unit of the Fund will generally consist of an in-kind deposit of a designated portfolio of securities (''Deposit Securities'') per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash (the ''Cash Component''). Together, the Deposit Securities and the Cash Component will constitute the ''Fund Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

The Administrator, through the National Securities Clearing Corporation (''NSCC'') will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required amount of Deposit Securities to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.[30] Such Fund Deposit will be applicable, subject to any adjustments as described above, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units. Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of ''Fund Securities''—

[24] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[25] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5).

[26] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[27] 17 CFR 240.10A–3.

[28] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[29] The Fund will calculate NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders. NAV will be calculated once each business day as of the regularly scheduled close of trading on the New York Stock Exchange, LLC (''NYSE'') (normally, 4:00 p.m., Eastern time). For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

[30] According to the Registration statement, the identity and amount of Deposit Securities required for a Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Adviser with a view to the investment objective of the Fund. In addition, the Trust will reserve the right to permit or require the substitution of an amount of cash—*i.e.,* a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer, or which may not be eligible for trading. In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, the Administrator, through the NSCC, will also make available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an authorized participant by the redeeming shareholder.

The Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time) on each business day, the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

Availability of Information

The Trust's Web site (*www.Advisorshares.com*), which will be publicly available, will include a form of the prospectus for the Fund that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[31] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the ''Core Trading Session'' (9:30 a.m. Eastern time to 4:00 p.m. Eastern time) on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[32]

On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge. In addition, price information for the debt and other securities and investments held by the Fund will be available through major market data vendors or on the exchanges on which they are traded.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[33] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[34] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal

[31] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[32] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[33] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

[34] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35]

As stated earlier, the Fund will invest only in equity securities and Equity Financial Instruments that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[36] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Fund will, under normal market conditions, principally invest in investment-grade securities, which are securities with credit ratings within the four highest rating categories of a nationally recognized statistical rating organization or, if unrated, those securities that the Sub-Adviser determines to be of comparable quality.[37] The Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Adviser is not affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. Price information for the debt and other securities and investments held by the Fund will be available through major market data vendors or on the exchanges on which they are traded. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund may invest up to 20% of its total assets in fixed-income securities that are rated below investment grade at the time of purchase. Generally, the Fund will limit its investments in corporate high yield debt securities to 10% of its assets and will limit its investments in non-U.S. issuers to 30% of its assets. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests (e.g. bank loans). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. With respect to its equity securities investments, the Fund will invest only in equity securities (including Equity Financial Instruments) that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest in options contracts, futures contracts or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the

[35] For a list of the current members of ISG, see *http://www.isgportal.org*. The Exchange notes that not all components of the Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[36] 15 U.S.C. 78f(b)(5).

[37] *See* note 9, *supra*.

Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–NYSEArca–2013–01 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.

All submissions should refer to File Number SR–NYSEArca–2013–01. 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 provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–01 and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01222 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13445 and #13446]

Puerto Rico Disaster #PR–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Puerto Rico dated 01/10/2013.

Incident: Tropical Storm Sandy.

Incident Period: 10/25/2012 through 10/26/2012.

Effective Date: 01/10/2013.

Physical Loan Application Deadline Date: 03/11/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 10/10/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

[38] 17 CFR 200.30–3(a)(12).

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 Municipalities: Guayanilla.
Contiguous Municipalities:
Puerto Rico: Adjuntas; Penuelas; Yauco.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
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 13445 8 and for economic injury is 13446 0.

The Commonwealth which received an EIDL Declaration # is Puerto Rico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 10, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–01212 Filed 1–22–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13387 and #13388]

Rhode Island Disaster #RI–00010

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4089–DR), dated 11/14/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 10/31/2012.

Effective Date: 01/14/2013.

Physical Loan Application Deadline Date: 02/13/2013.

EIDL Loan Application Deadline Date: 08/14/2013.

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: The notice of the President's major disaster declaration for the State of Rhode Island, dated 11/14/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/13/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–01214 Filed 1–22–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13443 and #13444]

Alabama Disaster #AL–00046

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ALABAMA dated 01/10/2013.

Incident: Severe Storms and Flooding.

Incident Period: 12/25/2012 through 12/26/2012.

Effective Date: 01/10/2013.

Physical Loan Application Deadline Date: 03/11/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 10/10/2013.

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: Mobile; Pike.
Contiguous Counties:
Alabama: Baldwin; Barbour; Bullock; Coffee; Crenshaw; Dale; Montgomery; Washington.
Mississippi: George; Greene; Jackson.

The Interest Rates are:

	Permit
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.500
Homeowners Without Credit Available Elsewhere	1.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 13443 B and for economic injury is 13444 0.

The States which received an EIDL Declaration # are Alabama; Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 10, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–01210 Filed 1–22–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13463 and #13464]

Pennsylvania Disaster #PA–00057

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 Pennsylvania (FEMA–4099–DR), dated 01/10/2013.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/08/2012.

Effective Date: 01/10/2013.

Physical Loan Application Deadline Date: 03/11/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 10/10/2013.

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 01/10/2013, 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: Bedford; Bucks; Cameron; Dauphin; Forest; Franklin; Fulton; Huntingdon; Juniata; Monroe; Northampton; Pike; Potter; Somerset; Sullivan; Wyoming.

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 13463B and for economic injury is 13464B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–01208 Filed 1–22–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974, Computer Matching Program—U.S. Small Business Administration and U.S. Department of Homeland Security, Federal Emergency Management Agency

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of computer matching program: U.S. Small Business Administration and U.S. Department of Homeland Security, Federal Emergency Management Agency.

SUMMARY: The U.S. Small Business Administration plans to participate in a computer matching program with the U.S. Department of Homeland Security, Federal Emergency Management Agency. The purpose of this agreement is to set forth the terms under which a computer matching program will be conducted. The matching program will ensure that applicants for SBA Disaster loans and DHS/FEMA Other Needs Assistance have not received a duplication of benefits for the same disaster.

DATES: This Agreement will take effect 40 days from the date copies of this signed Agreement are sent to both Houses of Congress or 30 days from the date the Computer Matching Notice is published in the **Federal Register**, whichever is later, depending on whether comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number [SBA–2013–001] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* James Rivera, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., 6th floor, Washington, DC 20416.
- *Hand Delivery/Courier:* James Rivera, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., 6th floor, Washington, DC 20416.

All comments will be posted on *www.Regulations.gov*. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of James Rivera, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., 7th Floor, Washington, DC 20416. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will be published or not.

FOR FURTHER INFORMATION CONTACT: Roger Garland, (202) 205–6734, *roger.garland@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Small Business Administration (SBA) and the Department of Homeland Security, Federal Emergency Management Agency (DHS/FEMA) have entered into this Computer Matching Agreement (Agreement) pursuant to section (o) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and as amended by the Computer Matching Privacy Protection Act Amendments of 1990 (Pub. L. 101–508, 5 U.S.C. 552a (p) (1990)). For purposes of this Agreement, both SBA and DHS/FEMA are the recipient agency and the source agency as defined in 5 U.S.C. 552a (a)(9), (11). For this reason, the financial and administrative responsibilities will be evenly distributed between SBA and DHS/FEMA unless otherwise called out in this agreement.

II. Purpose and Legal Authority

A. Purpose of the Matching Program

The purpose of this Agreement is to ensure that applicants for SBA Disaster Loans and DHS/FEMA Other Needs Assistance (ONA) have not received a duplication of benefits for the same disaster. This will be accomplished by matching specific DHS/FEMA disaster applicant data with SBA disaster loan application and decision data for a declared disaster, as set forth in this Agreement.

B. Legal Authority

SBA's legal authority for undertaking its disaster loan program without duplicating benefits is contained in section 7(b)(1) of the Small Business Act (15 U.S.C. 636(b)(1). DHS/FEMA's legal authority for ensuring non duplication of benefits is contained in § 312(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155). SBA is allowed to share information with DHS/FEMA pursuant to routine uses (f) and (g) of SBA–020 Disaster Loan Case Files system of records, 74 FR 14911 (April 1, 2009). DHS/FEMA is allowed to share information with SBA pursuant to routine uses H.1. and R. of DHS/FEMA 008–Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009). The Computer Matching and Privacy Protection Act of

1988 (Pub. L. 100–503), as amended, (5 U.S.C. 552a(o)–(u)) establishes procedural requirements for agencies to follow when engaging in computer-matching activities.

III. Justification and Expected Results

A. Justification

It is the policy of both SBA and DHS/FEMA that the agencies will not provide disaster assistance or loan funds to individuals or businesses that have already received benefits from another source for the same disaster. One way to accomplish this objective is to conduct a computer-matching program between the agencies and compare the data of individuals, businesses, or other entities that may have received duplicative aid for a specific disaster from SBA and DHS/FEMA.

It is also recognized that the programs covered by this Agreement are part of a Government-wide initiative, Executive Order: 13411 Improving Assistance for Disaster Victims (August 29, 2006). This order mandates DHS/FEMA to identify and prevent duplication of benefits received by individuals, businesses, or other entities for the same disaster. That initiative and this matching program are consistent with Office of Management and Budget (OMB) guidance on interpreting the provisions of the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records about Individuals.''

B. Expected Results

The matching program is to ensure that recipients of SBA disaster loans have not received duplicative benefits for the same disaster from DHS/FEMA. Because both DHS/FEMA and SBA collect the FEMA Disaster ID number, SBA and FEMA are able to identify possible scenarios of duplicate benefits being issued. In processing applications for assistance for both DHS/FEMA and SBA, there are several scenarios where partial or full duplicate applications are received. For example, a husband and wife may both apply for assistance, not knowing the other had done so; a person may apply to both DHS/FEMA and SBA; or system failures may abort a registration while in progress and generate a duplicate registration when the person returns to apply again, to name a few.

Based on historical data, DHS/FEMA and SBA anticipate that the computer match will reveal instances where such duplication results in excessive or duplicate assistance payments. For example, DHS/FEMA received 2,160,284 registrations in response to hurricanes Katrina and Rita, and referred 67,023 of those registrations to SBA as potential duplicates. Excluding the Katrina and Rita disasters, DHS/FEMA received 7,070,068 registrations from 1998–2009, and referred 13,809 potential duplicates to SBA. The data illustrates that the number of possible duplicates while typically a low percentage of total registrations, could rise or fall based on a change in the volume of referrals. The data suggests that the expected results of the match are difficult to quantify precisely due to the unpredictable nature of disasters.

IV. Records Description

A. Systems of Records and Estimated Number of Records Involved

DHS/FEMA accesses records from its DHS/FEMA 008 Disaster Recovery Assistance Files, 74 FR 48763 (September 24, 2009), system of records through its National Emergency Management Information System (NEMIS), and matches them to the records that SBA provides from its SBA–020 Disaster Loan Case Files, 74 FR 14911 (April 1, 2009) system of records. SBA uses its Disaster Credit Management System (DCMS) to access records from its SBA–020 Disaster Loan Case Files system of records, 74 FR 14911 (April 1, 2009), and match them to the records that DHS/FEMA provides from its DHS/FEMA–008 Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009). Under this agreement, DHS/FEMA and SBA exchange data for: (1) Initial registrations, (2) to update the SBA loan status, and (3) to check for a duplication of benefits.

1. For the initial registration match, SBA is the recipient of data from DHS/FEMA. DHS/FEMA will extract and provide to SBA the following information: Registration data, including applicant (personal) information; damaged property information; insurance policy data; property occupants' data; registered vehicles data; National Flood Insurance Reform Act of 1994 policy, claims, and payment data; and flood zone map data.

2. For the Duplication of Benefits Match, SBA is the recipient of data from DHS/FEMA. DHS/FEMA will extract and provide to SBA the following information for the Automated Duplication of Benefits Interface: Applicant and damaged property information; home application assistance data; ''other needs assistance'' data; and inspection data and verification of ownership and occupancy.

3. For the Status Update match, DHS/FEMA is the recipient of data from SBA. SBA will extract and provide to DHS/FEMA personal information about SBA applicants; application data; loss to personal property data; loss mitigation data; SBA loan data; and SBA event data.

4. Estimated Number of Records

A definitive answer cannot be given as to how many records will be matched as it will depend on the number of individuals, businesses or other entities that suffer damage from a declared disaster and that ultimately apply for Federal disaster assistance.

B. Description of the Match

1. DHS/FEMA—SBA Automated Import/Export Process for Initial Registrations

SBA is the recipient (i.e. matching) agency. SBA will match records from its SBA–020 Disaster Loan Case Files system of records (April 1, 2009, 74 FR 14911) and non-disaster related applications accessed via the Disaster Credit Management System (DCMS), to the records extracted and provided by DHS/FEMA from its DHS/FEMA–008 Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009). DHS/FEMA will provide to SBA the following information: Registration information, including: applicant information and FEMA registration ID; damaged property data; insurance policy data; property occupant data; vehicle registration data; National Flood Insurance Program data; and Flood Zone data. SBA will conduct the match using the FEMA Disaster ID Number, FEMA Registration ID Number, Product (Home/Business) and Registration Occupant Social Security Number (SSN) to create a New Pre-Application. The records SBA receives are deemed to be DHS/FEMA applicants who are referred to SBA for disaster loan assistance. Controls on the DHS/FEMA export of data should ensure that SBA only receives unique and valid referral records.

When SBA matches its records to those provided by DHS/FEMA, two types of matches are possible: a full match and a partial match. A full match exists when an SBA record matches a DHS/FEMA record on each of the following data fields: FEMA Disaster ID Number, FEMA Registration ID Number, Product (Home/Business), and Registration Occupant (SSN). A partial match exists when an SBA record matches a DHS/FEMA record on one or

more, but not all, of the data fields listed above. If either a full or partial match is found during this process, the record is placed in a separate queue for manual examination, investigation, and resolution. Non-matched records, those for which no SBA registration is found for a given DHS/FEMA registration, are placed into the regular SBA Pre-Application Queue.

2. DHS/FEMA–SBA Duplication of Benefits Automated Match Process

Both DHS/FEMA and SBA will act as the recipient (i.e. matching) agency. SBA will extract and provide to DHS/FEMA data from its SBA–020 Disaster Loan Case File system of records, 74 FR 14911 (April 1, 2009), accessed via the DCMS. DHS/FEMA will match the data SBA provides to records in its DHS/FEMA–008 Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009), accessed via NEMIS, via the FEMA Registration ID Number. SBA will issue a data call to FEMA requesting that FEMA return any records in NEMIS for which a match was found. For each match found, FEMA sends all of its applicant information to SBA so that SBA may match these records with its registrant data in the DCMS. SBA's DCMS manual process triggers an automated interface to query NEMIS using the FEMA Registration ID Number as the unique identifier. DHS/FEMA will return the fields described below for the matching DHS/FEMA record, if any, and no result when the FEMA Registration ID Number is not matched. DHS/FEMA will provide the FEMA Disaster Number; FEMA Registration Identifier; Applicant and if applicable, Co-applicant name; damaged dwelling address, Phone Number, SSN, Damaged Property data, contact address (if different from damaged dwelling address), National Flood Insurance Reform Act data, Flood Zone data, FEMA Housing Assistance and other Assistance data, Program, Award Level, Eligibility, and Approval or Rejection data. SBA will then proceed with its duplication of benefits determination.

3. DHS/FEMA–SBA Status Update Automated Match Process

DHS/FEMA will act as the recipient (i.e. matching) agency. DHS/FEMA will match records from its DHS/FEMA–008 Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009), to the records extracted and provided by SBA from its SBA–020 Disaster Loan Case File system of records, 74 FR 14911 (April 1, 2009). The purpose of this process is to update DHS/FEMA applicant information with the status of SBA loan determinations for said registrants. The records provided by SBA will be automatically imported into NEMIS to update the status of existing applicant records. The records DHS/FEMA receives from SBA are deemed to be DHS/FEMA applicants who were referred to SBA for disaster loan assistance. Controls on the SBA export of data should ensure that DHS/FEMA only receives unique and valid referral records.

SBA will provide to DHS/FEMA the following information: Personal information about SBA applicants; application data; loss to personal property data; loss mitigation data; SBA loan data; and SBA event data. DHS/FEMA will conduct the match using FEMA Disaster Number, and FEMA Registration ID Number. Loan data for matched records will be recorded and displayed in NEMIS. Loan data will also be run through NEMIS business rules; potentially duplicative categories of assistance are sent to the National Processing Service Centers Program Review process for manual evaluation of any duplication of benefits.

C. Projected Starting and Completion Dates

This Agreement will take effect 40 days from the date copies of this signed Agreement are sent to both Houses of Congress or 30 days from the date the Computer Matching Notice is published in the **Federal Register**, whichever is later, depending on whether comments are received which would result in a contrary determination (Commencement Date). SBA is the agency that will:

1. Transmit this Agreement to Congress.
2. Notify OMB.
3. Publish the Computer Matching Notice in the **Federal Register**.
4. Address public comments that may result from publication in the **Federal Register**.

Matches under this program will be conducted for every Presidential disaster declaration.

V. Notice Procedures

A. DHS/FEMA Recipients

FEMA Form 009–0–1 ''Application/Registration for Disaster Assistance'', Form 009–0–3 ''Declaration and Release'' (Both included in OMB ICR No. 1660–0002), and various other forms used for financial assistance benefits immediately following a declared disaster, use a Privacy Act statement, see 5 U.S.C. § 552a(e)(3), to provide notice to applicants regarding the use of their information. The Privacy Act statements provide notice of computer matching or the sharing of their records consistent with this Agreement. The Privacy Act statement is read to call center applicants and is displayed and agreed to by Internet applicants. Also, FEMA Form 009–0–3 requires the applicant's signature in order to receive financial assistance. Additionally, FEMA/DHS gives public notice via its Disaster Assistance Improvement Program Privacy Impact Assessment and in DHS/FEMA–008 Disaster Recovery Assistance Files System of Records, 74 FR 48763 (September 24, 2009).

B. SBA Recipients

SBA Forms 5 ''Disaster Business Loan Application'', 5C ''Disaster Home Loan Application'' and the Electronic Loan Application (ELA) will include notice to all applicants that in the event of duplication of benefits from DHS/FEMA or any other source, the Agency may verify eligibility through a computer matching program with another federal or state agency and reduce the amount of the applicant's loan. All applicants will be required to acknowledge that they have received this notification. Additionally, SBA/DCMS gives public notice via its Privacy Impact Assessment and SBA–020 Disaster Loan Case File system of records, 74 FR 14911 (April 1, 2009).

VI. Verification Procedure

A. DHS/FEMA–SBA Automated Import/Export Process for Initial Registrations

The matching program for the initial contact information for individuals and businesses will be accomplished by mapping applicant data for DHS/FEMA fields described earlier to the DCMS application data fields. During the automated import process, a computer match is performed against existing DCMS applications as described in the Section. IV, 1. FEMA's system of records for the data is DHS/FEMA–008 Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009).

If the registrant's data does not match an existing pre-application or application in the SBA's DCMS, then the registrant's data will be inserted into the DCMS to create a new pre-Application. An SBA application for disaster assistance may be mailed to the registrant. If the registrant's data does match an existing pre-application or application in SBA's DCMS, it indicates that there may be an existing pre-application/application for the applicant in the DCMS. The system will insert the record within the SBA's DCMS but will identify it as a potential

duplicate. This will be further reviewed by SBA employees to determine whether the data reported by the DHS/FEMA applicant is a duplicate of previously submitted registration information. Duplicate pre-applications or applications will not be processed.

B. DHS/FEMA–SBA Duplication of Benefits Automated Match Process

The matching program is to ensure that recipients of SBA disaster loans have not received duplicative benefits for the same disaster from DHS/FEMA. This will be accomplished by matching the DHS/FEMA Registration ID Number. If the data matches, specific to the application or approved loan, the dollar values for the benefits issued by DHS/FEMA may reduce the eligible amount of the disaster loan or may cause SBA loan proceeds to be used to repay the grant program in the amount of the duplicated assistance.

DHS/FEMA and SBA are responsible for verifying the submissions of data used during each respective benefit process and for resolving any discrepancies or inconsistencies on an individual basis. Authorized users of both the DCMS and NEMIS will not make a final decision to reduce benefits of any financial assistance to an applicant or take other adverse action against such applicant as the result of information produced by this matching program until an employee of the agency taking such action has independently verified such information.

The matching program for duplication of benefits will be executed as part of loan processing and prior to each disbursement on an approved SBA disaster loan. Any match indicating that there is a possible duplicated benefit will be further reviewed by an SBA employee to determine whether the FEMA grant monies reported by the applicant or borrower are correct and matches the data reported by DHS/FEMA. If there is a duplication of benefits, the amount of the SBA disaster loan will be reduced accordingly after providing applicant with written notice of the changes, by processing a loan modification to reduce the loan amount or, where appropriate, by using the SBA loan proceeds to repay the FEMA grant program.

VII. Disposition of Matched Items

After a computer match has been performed, records of applicants that are not identified as being a recipient of both DHS/FEMA and SBA benefits will be eliminated from DCMS and destroyed. Other identifiable records that may be created by SBA or DHS/FEMA during the course of the matching program will be destroyed as soon as they have served the matching program's purpose, and under any legal retention requirements established in conjunction with the National Archives and Records Administration or other authority. Destruction will be by shredding, burning or electronic erasure, as appropriate.

Neither SBA nor DHS/FEMA will create a separate permanent file consisting of information resulting from the specific matching programs covered by this Agreement except as necessary to monitor the results of the matching program. Information generated through the matches will be destroyed as soon as follow-up processing from the matches has been completed unless the information is required to be preserved by the evidentiary process.

VIII. Security Procedures

SBA and DHS/FEMA agree to the following information security procedures:

A. Administrative. The privacy of the subject individuals will be protected by strict adherence to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). SBA and DHS/FEMA agree that data exchange and any records created during the course of this matching program will be maintained and safeguarded by each agency in such a manner as to restrict access to only those individuals, including contractors, who have a legitimate need to see them in order to accomplish the matching program's purpose. Persons with authorized access to the information will be made aware of their responsibilities pursuant to this Agreement.

B. Technical. DHS/FEMA will transmit the data (specified in this Agreement) to SBA via the following process:

1. SBA will pull application data from FEMA Disaster Assistance Center (DAC) via a web services based Simple Object Access Protocol, Extensible Markup Language/Hypertext Transfer Protocol Secure request. The data will be used to create applications inside the Disaster Credit Management System. For each record, a NEIM-compliant response will be sent back to FEMA DAC indicating success or failure for the transfer of data.

The SBA/DCMS to DHS/FEMA DAC export of referral data (specified in this Agreement) will occur via a webServices based Simple Object Access Protocol, Extensible Markup Language/Hypertext Transfer Protocol Secure request.

The DHS/FEMA Duplication of Benefits Interface will be initiated from the DCMS to the DHS/FEMA NEMIS through a secured Virtual Private Network tunnel, open only to SBA domain Internet Protocol addresses. The results of the query are returned to the DCMS in real-time and populated in the DCMS for delegated SBA staff to use in the determination of duplication of benefits.

C. Physical. SBA and DHS/FEMA agree to maintain all automated matching records in a secured computer environment that includes the use of authorized access codes (passwords) to restrict access. Those records will be maintained under conditions that restrict access to persons who need them in connection with official duties related to the matching process.

D. On-Site Inspections. SBA and DHS/FEMA may make on-site inspections of the other agency's recordkeeping and security practices, or make provisions beyond those in this Agreement to ensure adequate safeguarding of records exchanged.

IX. Records Usage, Duplication and Redisclosure Restrictions

SBA and DHS/FEMA agree to the following restrictions on use, duplication, and disclosure of information furnished by the other agency.

A. Records obtained for this matching program or created by the match will not be disclosed outside the agency except as may be essential to conduct the matching program, or as may be required by law. Each agency will obtain the written permission of the other agency before making such disclosure. See routine uses in DHS/FEMA–008 Disaster Recovery Assistance Files system of records, 74 FR 48763 (September 24, 2009) and SBA–020 Disaster Loan Case File system of records, 74 FR 14911 (April 1, 2009).

B. Records obtained for this matching program or created by the match will not be disseminated within the agency except on a need-to-know basis, nor will they be used for any purpose other than that expressly described in this Agreement. Information concerning ''non-matching'' individuals, businesses or other entities will not be used or disclosed by either agency for any purpose.

C. Data or information exchanged will not be duplicated unless essential to the conduct of the matching program. All stipulations in this Agreement will apply to any duplication.

D. If required to disclose these records to a state or local agency or to a government contractor in order to accomplish the matching program's purpose, each agency will obtain the

written agreement of that entity to abide by the terms of this Agreement.

E. Each agency will keep an accounting of disclosure of an individual's record as required by 5 U.S.C. 552a(c) of the Privacy Act and will make the accounting available upon request by the individual or other agency.

X. Records Accuracy Assessments

DHS/FEMA and SBA attest that the quality of the specific records to be used in this matching program is assessed to be at least 99% accurate. The possibility of any erroneous match is extremely small.

In order to apply for assistance online via the DAC portal, an applicant's name, address, SSN, and date of birth are sent to a commercial database provider to perform identity verification. The identity verification ensures that a person exists with the provided credentials. In the rare instances where the applicant's identity is not verified online or the applicant chooses, the applicants must call one of the DHS/FEMA call centers to complete the registrations. The identity verification process is performed again. Depending on rare circumstances, an applicant is allowed to register using an artificial SSN. Applicants must update their SSN and pass the identity verification to obtain assistance.

XI. Comptroller General Access

The parties authorize the Comptroller General of the United States, upon request, to have access to all SBA and DHS/FEMA records necessary to monitor or verify compliance with this matching agreement. This matching agreement also authorizes the Comptroller General to inspect any records used in the matching process that are covered by this matching agreement pursuant to 31 U.S.C. 717 and 5 U.S.C. 552a(b)(10).

XII. Duration of Agreement

The Agreement may be renewed, terminated or modified as follows:

A. Renewal or Termination. This Agreement will become effective in accordance with the terms set forth in paragraph IV.C and will remain in effect for 18 months from the commencement date. At the end of this period, this Agreement may be renewed for a period of up to one additional year if the Data Integrity Board of each agency determines within three months before the expiration date of this Agreement that the program has been conducted in accordance with this Agreement and will continue to be conducted without change. Either agency not wishing to renew this Agreement should notify the other in writing of its intention not to renew at least three months before the expiration date of this Agreement. Either agency wishing to terminate this Agreement before its expiration date should notify the other in writing of its wish to terminate and the desired date of termination.

B. Modification of the Agreement. This Agreement may be modified at any time in writing if the written modification conforms to the requirements of the Privacy Act and receives approval by the participant agency Data Integrity Boards.

XIII. Reimbursement of Matching Costs

SBA and DHS/FEMA will bear their own costs for this program.

XIV. Data Integrity Board Review/Approval

SBA and DHS/FEMA's Data Integrity Boards will review and approve this Agreement prior to the implementation of this matching program. Disapproval by either Data Integrity Board may be appealed in accordance with the provisions of the Computer Matching and Privacy Protection Act of 1988, as amended. Further, the Data Integrity Boards will perform an annual review of this matching program. SBA and DHS/FEMA agree to notify the Chairs of each Data Integrity Board of any changes to or termination of this Agreement.

XV. Points of Contacts and Approvals

For general information please contact: Eric M. Leckey (202–212–5100), Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security; and Ja'Nelle DeVore (202–205–7103), Chief Information Security Officer, Office of the Chief Information Officer, Small Business Administration.

Eric Won,

Chief Information Officer.

[FR Doc. 2013–01219 Filed 1–22–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8158]

Culturally Significant Objects Imported for Exhibition Determinations: ''Chagall: Beyond Color''

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 ''Chagall: Beyond Color,'' 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 Dallas Museum of Art, Dallas, Texas, from on or about February 17, 2013, until on or about May 26, 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: January 14, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–01297 Filed 1–22–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8159]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nicolai Fechin''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On April 4, 2012, notice was published on page 20476 of the **Federal Register** (volume 77, number 65) of determinations made by the Department of State pertaining to the exhibition ''Nicolai Fechin.'' The referenced notice is corrected here to include additional objects as part of the exhibition. 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 additional objects to be included in the exhibition ''Nicolai Fechin,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional exhibit objects at the Frye Art Museum, Seattle, Washington, from on or about February 9, 2013, until on or about May 16, 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 additional 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: January 16, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–01298 Filed 1–22–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Department of Transportation (DOT), Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice of Funding Availability.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for: (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges; or (5) chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the South Atlantic Region.

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC2013–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement.

Award Ceiling: $145,000.

Award Floor: $125,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) and (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before February 19, 2013 5:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before March 12, 2013.

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Patricia Martin, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56–462, Washington, DC 20590. Telephone: 1–800–532–1169 or email *patricia.martin@dot.gov.*

SUPPLEMENTARY INFORMATION:

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1. Introduction

1.1 Background

The Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the South Atlantic Region, from herein referred to as ''region'', in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service all states listed in the entire region, not just the SBTRC's state or local geographical area. The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation

South Atlantic Regions	North Carolina Virginia Kentucky West Virginia

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

South Atlantic Region	Ceiling: $145,000 per year Floor: $125,000 per year

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one-year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) and (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related

non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501 C(3) or 501 C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management and Technical Training and Assistance

1. Utilize OSDBU's Monthly Reporting Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBUs in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as the State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

8. Participate in monthly teleconference call with the Regional Assistance Division Program Manager and OSDBU staff.

(F) Short Term Lending Program (STLP)

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 7 approved STLP applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components: (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity. Furnish all labor, facilities and equipment to perform the services described in this announcement.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to Executive Order 13506, and 49 U.S.C. 332(b)(4) and (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per state for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.*

The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than February 19, 2013, 5:00 p.m., EST. If you have any problems submitting your proposal, please email *patricia.martin@dot.gov* or telephone (202) 366–5337.

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability/Site visit (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(A) *Approach and Strategy* (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy.

OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) *Linkages* (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) *Organizational Capability* (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal financial, payment and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(D) *Staff Capability and Experience* (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) *Cost Proposal (10 Points*)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non–responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

APPENDIX A

FORMAT FOR PROPOSALS FOR THE DEPARTMENT OF TRANSPORTATION OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION'S SMALL BUSINESS TRANSPORTATION RESOURCE CENTER (SBTRC) PROGRAM

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. TABLE OF CONTENTS

Identify all parts, sections and attachments of the application.

2. APPLICATION SUMMARY

Provide a summary overview of the following:

• The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.

• The applicant's relevant organizational experience and capabilities.

3. UNDERSTANDING OF THE WORK

Provide a narrative which contains specific project information as follows:

• The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.

• The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. APPROACH AND STRATEGY

• Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.

• Describe the specific services or activities to be performed and how these services/activities will be implemented.

• Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.

• Estimated direct costs, other than labor, to execute the proposed strategy.

5. LINKAGES

• Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.

• Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.

• Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. ORGANIZATIONAL CAPABILITY

• Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.

• Describe internal technical, financial management, and administrative resources.

• Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. STAFF CAPABILITY AND EXPERIENCE

• List proposed key personnel, their salaries and proposed fringe benefit factors.

• Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.

• Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. COST PROPOSAL

• Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.

• Provide a brief narrative linking the cost proposal to the proposed strategy.

9. PROOF OF TAX EXEMPT STATUS

10. ASSURANCES SIGNATURE FORM

Complete the attached Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS.

11. CERTIFICATION SIGNATURE FORMS

Complete form DOTF2307–1 Drug-Free Workplace Act Certification, and Form DOTF2308–1 Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.

SIGNED CONFLICT OF INTEREST STATEMENTS

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

12. STANDARD FORM 424

Complete Standard Form 424 Application for Federal Assistance. **Note:** All forms can be downloaded from U.S. Department of Transportation Web site at *http://www.dot.gov/gsearch/424%2Bform.*

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC, on January 11, 2013.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2013–01290 Filed 1–22–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2013–0002–N–2]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 25, 2013.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35,

Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the two currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Track Safety Standards.

OMB Control Number: 2130–0010.

Abstract: Qualified persons inspect track and take action to allow safe passage of trains and ensure compliance with prescribed Track Safety Standards. In August 2009, FRA amended the Track Safety Standards to promote the safety of railroad operations over continuous welded rail (CWR). In particular, FRA promulgated specific requirements for the qualification of persons designated to inspect CWR track, or supervise the installation, adjustment, or maintenance of CWR track. FRA also clarified the procedure associated with the submission of CWR plans to FRA by track owners. The final specified that these plans should add focus on inspecting CWR for pull-apart prone conditions, and on CWR joint installation and maintenance procedures. The final rule also made other changes to the requirements governing CWR.

Form Number(s): FRA F 6180.124.

Affected Public: Businesses.

Respondent Universe: 728 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.14—Excepted Track—Identification	200 railroads	20 orders	15 minutes	5
—Notification to FRA—Removal of Track Segment From Excepted Statutes.	200 railroads	15 notices	10 minutes	3
213.5—Responsibility of Track Owners—Assignment to Another Person—Notice to FRA.	728 railroads	19 notices	8 hours	80
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track.	728 railroads	1,500 names	10 minutes	250
—Individuals Designated under paragraphs (a) or (b) of this section who inspect CWR and have completed CWR Training Course.	728 railroads	80,000 trained employees.	90 minutes	120,000
—Employees authorized by Track Owner to prescribe CWR Remedial Actions.	31 railroads	80,000 auth. + 80,000 exams.	70 minutes	93,333
—Designations (Partially Qualified under Paragraph c)	31 railroads	250 names	10 minutes	42
213.17—Waiver Petitions	728 railroads	6 petitions	24 hours	144
213.57—Curves; Elevations & Speed Limits—Requests for higher curving speeds.	728 railroads	2 requests	40 hours	80
—Implementation Notification to FRA	728 railroads	2 notifications	45 minutes	2
—Requests For FRA Approval—Test Plans	1 railroad	2 test plans	16 hours	32
213.110—Gage Restraint Meas. Systems—Implementing GRMS—Notice to FRA and Technical Report.	728 railroads	5 notices + 1 tech. report.	45 minutes + 4 hours.	8
—GRMS Output Reports	728 railroads	50 reports	5 minutes	4
—GRMS Exception Reports	728 railroads	50 reports	5 minutes	4
—Procedures for Maintaining GRMS Data	728 railroads	4 procedures	2 hours	8
—GRMS Training to Qualified Employees	728 railroads	2 tr. programs + 5 sessions.	16 hours	112
—GRMS Inspections—Two Most Recent Records	728 railroads	50 records	2 hours	100
213.118—Continuous Weld Rail (CWR)—Track Owner Plans to FRA.	728 railroads	728 revised plans	4 hours	2,912
—Notice to FRA & to Affected Employees of Plan's Effective Date.	728 railroads	728 notices + 80,000 notices.	15 minutes + 2 minutes.	2,849
—FRA Required Revisions to CWR Plans	728 railroads	20 revisions	2 hours	40
—Further FRA Amendments to CWR Plans—Annual Retraining of CWR Employees.	728 railroads	20 plans	1 hour	20
213.119—Continuous Weld Rail (CWR)—Fracture Reports	239 railroads	12,000 reports	10 minutes	2,000
—Petition to FRA to Conduct Technical Conference on Fracture Report Data.	1 RR Association	1 petition	15 minutes	.25

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Comprehensive CWR Training Program for Employees Needing Annual Retraining.	239 railroads	240 amended programs.	60 minutes	240
—Annual Retraining of CWR Employees	31 railroads	80,000 workers	30 minutes	40,000
—Records of CWR Installations and CWR Maintenance	239 railroads	2,000 records	10 minutes	333
—Records of Rail Joint Inspections	239 railroads	360,000 rcds	2 minutes	12,000
—Records of CWR Periodic Inspections	239 railroads	480,000 rcds	1 minute	8,000
—CWR Procedures Manual	728 railroads	239 Manuals	10 minutes	40
213.233—Track Inspections by Person/Vehicle—Records	728 railroads	12,500 notations	1 minute	208
213.241—Track and Rail Inspection Records	728 railroads	1,542,089 records	Varies with Inspection Type.	1,723,941
213.303—Responsibility for Compliance—High Speed Track: Notice to FRA of Assignment of Responsibility.	2 railroads	1 notice	8 hours	8
213.305—Designation of Fully Qualified Individuals	2 railroads	150 designations	10 minutes	25
—Designation of Partially Qualified Individuals	2 railroads	15 designations	10 minutes	3
213.317—Waiver Petitions	2 railroads	1 petition	80 hours	80
213.329—Curves, Elevation, and Higher Speed Limits—Notification to FRA of Passenger/Commuter Equipment Operating at Higher Curving Speeds.	2 railroads	3 notifications	40 hours	120
—Notification to FRA of Service Over More than One Track by Passenger or Commuter Service Operator.	2 railroads	3 notifications	45 minutes	2
213.333—Automated Vehicle Inspection Systems: Track Geometry Measurement System Output Reports.	3 railroads	18 reports	20 hours	360
—Exception Printouts	2 railroads	13 printouts	20 hours	260
213.341—Initial Inspection—New Rail and Welds: Mill Inspection—Report.	2 railroads	2 reports	16 hours	32
—Welding Plant Inspection—Report	2 railroads	2 reports	16 hours	32
—Inspection of Field Welds—Records	2 railroads	125 records	20 minutes	42
213.343—Continuous Weld Rail—History—Records	2 railroads	150 records	10 minutes	253
213.345—Vehicle Qualification Testing—Results/Records	1 railroad	2 reports	560 hours	1,120
213.347—Automotive or RR Crossing at Grade—Protection Plans.	1 railroad	2 plans	8 hours	16
213.369—Inspection Records	2 railroads	500 records	1 minute	8
—Inspection Records of Defects and Remedial Actions	2 railroads	50 records	5 minutes	4

Total Responses: 2,813,581.

Total Estimated Total Annual Burden: 1,957,927 hours.

Type of Request: Extension of a Currently Approved Collection.

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Abstract: The collection of information is due to the passenger train emergency regulations set forth in 49 CFR parts 223 and 239 which require railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting operations of rail passenger service. The regulations require luminescent or lighted emergency markings so that passengers and emergency responders can readily determine where the closest and most accessible exit routes are located and how the emergency exit mechanisms are operated. Windows and doors intended for emergency access by responders for extrication of passengers must be marked with retro-reflective material so that emergency responders, particularly in conditions of poor visibility, can easily distinguish them from the less accessible doors and windows. Records of the inspection, maintenance, and repair of emergency windows and door exits, as well as records of operational efficiency tests, will be used to ensure compliance with the regulations.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 25 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
239.13—Waiver Petitions	25 railroads	1 petition	20 hours	20
239.107—Marking of Emergency Window and Door Exits on New Passenger Cars.	25 railroads	6,525 labels	10 minutes	706
—Replacement Markings/Decals on Emergency Window and Door Exits.	25 railroads	6,320 decals/1,300 decals	5 minutes/10 minutes	744
—Records of Inspections	25 railroads	1,800 window tests/records + 1,200 door test records.	20 minutes	1,000
239.101/201/203—Filing of Emergency Preparedness Plan (EPP).	3 railroads	1 EPP	158 hours	158
—Amendments to Emergency Preparedness Plan.	15 railroads	5 amendments	8 hours	40

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
239.101(a)(1)(ii)—Maintenance of Current Emergency Telephone Numbers.	2 railroads	2 current lists	1 hour	2
239.101(a)(3)—Joint Operations by Railroads —Joint Emergency Preparedness Plan (EPP).	5 railroad pairs	1 joint plan	16 hours	16
239.101(a)(5)—Liaison with Emergency Responders—Updated Plans Containing Emergency Responder Liaison Information.	25 railroads	25 updated plans	40 hours	1,000
239.101(a)(7)(ii)—Passenger Safety Information—Plans and Posting of Safety Awareness Messages.	3 new railroads/3 commuter railroads.	1,300 cards/3 plans/3 safety messages/3 plans/3 safety messages.	5 minutes/16 hours/48 hours/8 hours/24 hours.	396
239.105—Debriefing and Critique After Each Passenger Train Emergency Situation or Full Scale Simulation.	25 railroads	44 debriefing/critique sessions	27 hours	1,188
239.301—Operational (Efficiency) Tests of On-board and Control Center Employees and Records of Tests.	25 railroads	25,000 tests/records	15 minutes	6,250

Total Responses: 43,536.

Total Estimated Annual Burden: 11,520 hours.

Type of Request: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 15, 2013.

Rebecca Pennington,

Chief Financial Officer, Federal Railroad Administration.

[FR Doc. 2013–01198 Filed 1–22–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35709]

Pacific Imperial Railroad, Inc.—Change in Operator Exemption—Rail Line of San Diego and Arizona Eastern Railway Company

Pacific Imperial Railroad, Inc. (PIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators from San Diego & Imperial Valley Railroad Company, Inc. (SDIY) [1] to PIR over a 70.01-mile rail line between milepost 59.60 in Division, Cal., and milepost 129.61 in Plaster City, Cal. (Desert Line). The Desert Line is owned by San Diego and Arizona Eastern Railway Company (SD&AE). The change in operators for the line is being accomplished through SDIY's assignment of its authority to operate the Desert Line to PIR, with the consent of SD&AE and its parent, San Diego Metropolitan Transit Development Board. This change in operators is exempt under 49 CFR 1150.31(a)(3).[2]

PIR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. However, because its projected annual revenues will exceed $5 million, PIR certified to the Board that, pursuant to the notice requirements of 49 CFR 1150.32(e), it has provided notice to employees on the affected line and that notice was not served on the national offices of any rail labor union because no employees on the affected line belonged to a rail labor union. Under 49 CFR 1150.32(e), this exemption cannot become effective until March 3, 2013, 60 days after the latest certification that PIR provided the required notice to employees.[3]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 22, 2013 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35709, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 17, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–01306 Filed 1–22–13; 8:45 am]

BILLING CODE 4915–01–P

[1] SDIY was authorized to operate the Desert Line in *San Diego & Imperial Valley Railroad—Exemption from 49 U.S.C. 10901 & 11301,* FD 30457 (ICC served Aug. 17, 1984).

[2] To qualify for a change of operators exemption, an applicant must give notice to shippers on the line. *See* 49 CFR 1150.32(b). In a letter filed January 2, 2013, PIR certified to the Board that, at present, there are no shippers on the Desert Line; therefore, no service of this notice is required on shippers.

[3] PIR supplemented the certification in its verified notice by letters filed on December 27, 2012 and January 2, 2013. On January 9, 2013, PIR clarified that the employees of SDIY are not members of a union; thus, union notification was not required.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 17, 2013.

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 February 22, 2013 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 8140, Washington, DC 20220, or email at *PRA@treasury.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 may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0192.

Type of Review: Extension without change of a currently approved collection.

Title: Tax on Accumulation Distribution of Trusts.

Form: 4970.

Abstract: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 42,900.

OMB Number: 1545–0935.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Income Tax Return of a Foreign Sales Corporations; Schedule P, Transfer Price or Commission.

Form: 1120–FSC; Sch. P (1120–FSC).

Abstract: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,088,250.

OMB Number: 1545–0940.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8086—Election for $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR–185–84 Final).

Abstract: The regulation liberalizes the procedure by which the state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1,000.

OMB Number: 1545–1016.

Type of Review: Extension without change of a currently approved collection.

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

Form: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 17,820.

OMB Number: 1545–1816.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9054—Disclosure of Returns and Return Information to Designee of Taxpayer (REG–103320–00 Final).

Abstract: Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Code. Section 6103(c), as amended in 1996 by section 1207 of the Taxpayer Bill of Rights II, Public Law 104–168 (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 800.

OMB Number: 1545–1060.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

Form: 8288–B.

Abstract: Form 8288–B is used to apply for a withholding certification from IRS to reduce or eliminate the withholding required by section 1445.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 29,256.

OMB Number: 1545–1190.

Type of Review: Revision of a currently approved collection.

Title: Like-Kind Exchanges.

Form: 8824.

Abstract: Form 8824 is used by individuals, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal government.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 1,995,807.

OMB Number: 1545–1444.

Type of Review: Extension without change of a currently approved collection.

Title: Empowerment Zone and Renewal Opportunity Employment Credit.

Form: 8844.

Abstract: The empowerment zone employment (EZE) credit is part of the general business credit under section 38. However, unlike the other components of the general business credit, taxpayers are allowed to offset 25 percent of their alternative minimum tax with the EZE credit.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 237,600.

OMB Number: 1545–2233.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2012–48—Tribal Economic Development Bonds.

Abstract: This Notice solicits applications for the reallocation of available amounts of national bond issuance authority limitation for tribal economic development bonds (''Tribal Economic Development Bonds'') that were previously allocated to eligible issuers by the Internal Revenue Service (''IRS'') and that have not been used. This Notice also provides related guidance on: (1) the application requirements and forms for requests for volume cap allocations, and (2) the method that the IRS and the Department of the Treasury will use to allocate the volume cap.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1,001.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–01273 Filed 1–22–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Proposed Information Collection; Women Veterans Healthcare Barriers Survey Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice to conduct an independent comprehensive study of the barriers to the provision of comprehensive health care for women Veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 25, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW, Women Veterans Healthcare Barriers Survey'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Women Veterans Healthcare Barriers Survey .

OMB Control Number: 2900–New (Women Veterans Healthcare Barriers Survey).

Type of Review: New data collection.

Abstract: Women Veterans comprise one of the fastest growing subpopulations of Veterans. Today, there are more than 1.8 million living women Veterans, more than 500,000 of whom have enrolled in the VA Health Care System. Over the last decade, the number of women Veterans using VA health care has nearly doubled. VA is responding by improving access and services for women. The study will help us better understand barriers women Veterans face accessing VA care, the comprehensiveness of care, and improve our understanding of the long-term consequences of military deployment. The data collected will allow VA to plan and provide better health care for women Veterans and to support reports to Congress about the status of women Veterans' health care.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,600 hours.

Estimated Average Burden Per Respondent: 40 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 8,400.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs .

[FR Doc. 2013–01232 Filed 1–22–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Transportation

National Highway Traffic Safety Administration

23 CFR Parts 1200, 1205, 1206 et al.

Uniform Procedures for State Highway Safety Grant Programs; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Parts 1200, 1205, 1206, 1250, 1251, 1252, 1313, 1335, 1345, and 1350

[Docket No. NHTSA–2013–0001]

RIN 2127–AL30; RIN 2127–AL29

Uniform Procedures for State Highway Safety Grant Programs

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

ACTION: Interim final rule; request for comments.

SUMMARY: This action establishes new uniform procedures governing the implementation of State highway safety grant programs as amended by the Moving Ahead for Progress in the 21st Century Act (MAP–21). It also reorganizes and amends existing requirements to implement the provisions of MAP–21.

This document is being issued as an interim final rule to provide timely guidance about the application procedures for national priority safety program grants in fiscal year 2013 and all Chapter 4 highway safety grants beginning in fiscal year 2014. The agency requests comments on the rule. The agency will publish a notice responding to any comments received and, if appropriate, will amend provisions of the regulation.

DATES: This interim final rule becomes effective on January 23, 2013. Comments on this interim final rule are due April 23, 2013. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Comments relating to new information collection requirements are due March 25, 2013 to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section.

ADDRESSES: Written comments to NHTSA may be submitted using any one of the following methods:

- *Mail:* Send comments to: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the US Government regulations Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Whichever way you submit your comments, please remember to identify the docket number of this document within your correspondence. You may contact the docket by telephone at (202) 366–9324. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Comments regarding the proposed information collection should be submitted to NHTSA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Privacy Act: Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: All documents in the dockets are listed in the *http://www.regulations.gov* index. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC. The Docket Management Facility is open between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Dr. Mary D. Gunnels, Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, Telephone number: (202) 366–2121; Email: *Maggi.Gunnels@dot.gov*.

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, Telephone number: (202) 366–1834; Email: *Jin.Kim@dot.gov*.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

On July 6, 2012, the President signed into law the ''Moving Ahead for Progress in the 21st Century Act'' (MAP–21), Public Law 112–141, which restructured and made various substantive changes to the highway safety grant programs administered by the National Highway Traffic Safety Administration (NHTSA). Specifically, MAP–21 modified the existing formula grant program codified at 23 U.S.C. 402 (Section 402) by requiring States to develop and implement the State highway safety program using performance measures. MAP–21 also rescinded a number of separate incentive grant programs that existed under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, and replaced them with the ''National Priority Safety Programs,'' codified in a single section of the United States Code (23 U.S.C. 405 (Section 405)). The National Priority Safety Programs include Occupant Protection, State Traffic Safety Information Systems, Impaired Driving Countermeasures, Motorcyclist Safety, and two new grant programs—Distracted Driving and State Graduated Driver Licensing. MAP–21 specifies a single application deadline for all highway safety grants and directs NHTSA to establish a consolidated application process, using the Highway Safety Plan that States have traditionally submitted for the Section 402 program. *See* Sections 31101(f) and 31102, MAP–21.

MAP–21 provides additional linkages between NHTSA-administered programs and the programs of other DOT agencies coordinated through the State strategic highway safety plan administered by the Federal Highway Administration (FHWA), as defined in 23 U.S.C. 148(a). The Department will harmonize performance measures that are common across programs of DOT agencies (e.g., fatalities and serious injuries) to ensure that the highway safety community is provided uniform measures of progress.

Section 402, as amended by MAP–21, continues to require each State to have an approved highway safety program designed to reduce traffic crashes and the resulting deaths, injuries, and property damage. Section 402 sets forth minimum requirements with which each State's highway safety program must comply. Under existing procedures, States must submit a Highway Safety Plan (HSP) each year to NHTSA for approval, describing their highway safety program and the

activities they plan to undertake. The HSP is a critical element that illustrates the linkage between highway safety program planning and program performance. NHTSA has worked collaboratively with the Governors Highway Safety Association (GHSA) on improvements to the HSPs and the planning process for many years, and expects that continuous improvement efforts will demonstrate measurable progress in traffic safety. Going forward, HSP coordination with the State strategic highway safety plan as defined in 23 U.S.C. 148(a) will continue that improvement. NHTSA intends to collaborate with other DOT agencies to ensure there are not multiple measures and targets for the performance measures common across the various Federal safety programs.

DOT will continue to analyze the linkage between specific safety investments made by the States and States' safety outcomes to learn more about the associations between the application of resources and safety outcomes. DOT will perform this analysis using data provided by States to build and improve the foundation of evidence to inform future reauthorization proposals. DOT's analysis could inform additional requirements for safety programs and potentially additional data from States.

MAP–21 amended Section 402 to require, among other things, States to submit for fiscal year 2014 and thereafter an HSP with performance measures and targets as a condition of approval of the State's highway safety program. (23 U.S.C. 402(k)(3)) MAP–21 specifies in more detail the contents of the HSP that States must submit, including strategies for programming funds, data supporting those strategies, and a report on the degree of success in meeting the performance measure targets. *Id.* MAP–21 also directs States to include in the HSP their application for all other grants under 23 U.S.C. Chapter 4, and to submit their HSP by July 1 of the fiscal year preceding the fiscal year of the grant. (23 U.S.C. 402(k)(2) and 402(k)(3))

The National Priority Safety Programs created by MAP–21 continue many aspects of previous grants, but also include changes. (23 U.S.C. 405) Specifically, MAP–21 consolidated several previously separate occupant protection grants into a single occupant protection grant under new Section 405(b), updated the requirements for a State traffic safety information system improvements grant under new Section 405(c), revised the impaired driving countermeasures grant under new Section 405(d), including a new grant for State ignition interlock laws, created a new distracted driving grant under new Section 405(e), extended the motorcyclist safety grant largely unchanged under new Section 405(f), and created a new graduated driver licensing grant under new Section 405(g). None of these grant programs under MAP–21 is identical to a grant program that existed under SAFETEA–LU, but many continue various requirements of the prior grant programs. For each of these grants, MAP–21 specifies the criteria for a grant award (some of which are prescriptive), the mechanism for allocation of grant funds, and the eligible uses of grant funds.

MAP–21 requires NHTSA to award highway safety grants pursuant to rulemaking and separately requires NHTSA to establish minimum requirements for the graduated driver licensing (GDL) grant in accordance with the notice and comment provisions of the Administrative Procedure Act. (Section 31101(d), MAP–21; 23 U.S.C. 405(g)(3)(A)) In order to provide States with as much advance time as practicable to prepare grant applications and to ensure the timely award of all grants in fiscal years 2013 and 2014, the agency is proceeding with an expedited rulemaking. Accordingly, NHTSA is publishing this rulemaking as an interim final rule (IFR), with immediate effectiveness, to implement the application and administrative requirements of the highway safety grant programs. Responding to the notice and comment requirement for the GDL grant program, NHTSA published a notice of proposed rulemaking (NPRM) for that program on October 5, 2012. (77 FR 60956) The comment period for the GDL NPRM closed on October 25, 2012. Today's IFR addresses the comments received and incorporates requirements for the GDL program. *See* Section III.G. below.

This IFR sets forth the application, approval, and administrative requirements for all MAP–21 grant programs. It updates the Uniform Procedures for State Highway Safety Programs to incorporate the new performance measures process and the single application requirement. It adds requirements for the new Section 405 incentive grant programs. Finally, it updates and consolidates into one rule a number of old regulations (State Highway Safety Agency, Political Subdivision Participation in State Highway Safety Programs, State Matching of Planning and Administration Costs, Rules of Procedure for Invoking Sanctions under the Highway Safety Act of 1966) that remain applicable to the highway safety grants. While many procedures and requirements continue unchanged by today's action, organization and section numbers have changed.

For ease of reference, the preamble identifies in parentheses within each subheading and at appropriate places in the explanatory paragraphs the new CFR citation for the corresponding regulatory text.

II. Section 402 Grant Program

A. General

The Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*) established a formula grant program to improve highway safety in the United States. As a condition of the grant, States must meet certain requirements contained in 23 U.S.C. 402. While MAP–21 reorganized a number of provisions within Section 402, it retained much of the existing requirements of the formula grant program. Section 402(a) continues to require each State to have a highway safety program, approved by the Secretary of Transportation, which is designed to reduce traffic crashes and the resulting deaths, injuries, and property damage from those crashes. Section 402(a) also continues to require State highway safety programs to comply with uniform guidelines promulgated by the Secretary.

MAP–21 amended Section 402(b), which sets forth the minimum requirements with which each State highway safety program must comply, to require the Highway Safety Plan (HSP) to provide for a data-driven traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. As is evident with other amendments to Section 402 discussed below, MAP–21 highlights the importance of strategies supported by data to reduce crashes. While data-driven program development has long been a practice of jurisdictions in the highway safety grant program, requiring States to have a data-driven traffic safety enforcement program and targeted enforcement based on data will promote improved safety outcomes. MAP–21 also amended Section 402(b) to require each State to coordinate its HSP, data collection, and information systems with the State strategic highway safety plan as defined in 23 U.S.C. 148(a). Such a requirement to coordinate these elements into a unified State approach to highway safety promotes comprehensive transportation and safety planning and program efficiency in the States. Coordinating the HSP planning process with the programs of

other DOT agencies where possible will ensure alignment of State performance targets where common measurements exist, such as fatalities and serious injuries. States are encouraged to use data to identify performance measures beyond these consensus performance measures (e.g., distracted driving, bicycles). NHTSA will collaborate with other DOT agencies to promote alignment among performance measures.

MAP–21 also amends the uses of Section 402 grant funds. Section 402(b) prohibits the use of automated traffic enforcement systems. Such systems include red light and speed cameras, but do not include hand held radar or devices that law enforcement officers use to take an enforcement action at the time of a violation. Section 402(c) provides that States may use grant funds in cooperation with neighboring States for highway safety purposes that benefit all participating States. For States that share a common media market, enforcement corridors and program needs, such interstate initiatives recognize the mutual benefits that may be gained by multiple jurisdictions through the sharing of resources. Finally, Section 402(g) provides an exception to the general prohibition against using Section 402 grant funds for activities carried out under 23 U.S.C. 403. States may now use Section 402 funds to supplement demonstration projects carried out under Section 403.

B. Highway Safety Plan Contents

The most significant changes in the Section 402 grant program are the new performance-based requirements for the HSP and the reporting requirements. Under the old regulation, State HSPs were required to contain a performance plan with (1) a list of objective and measurable highway safety goals, (2) performance measures for each of the safety goals, and (3) a description of the processes used by the State to identify highway safety problems, define highway safety performance measures, and develop projects to address problems and achieve the State's goals. In addition, States were to include descriptions of program strategies they planned to implement to reach highway safety targets. Many of these requirements remain unchanged by today's action. However, based on the new requirements in MAP–21, States will need to provide additional information in the HSP to meet the performance-based, evidence-based requirements of MAP–21. (23 CFR 1200.11)

Under the old regulation, States were required to describe the highway safety planning process in the HSP. This continues to be required by today's action. However, the agency made some changes to reflect the terms used in MAP–21 (e.g., performance measures and targets, data-based, evidence-based). The IFR also includes a new requirement that the State include a description of the efforts and the outcomes of the effort the State has made to coordinate the highway safety plan, data collection, and information systems with the State strategic highway safety plan, as required by MAP–21. (23 CFR 1200.11(a))

While the most significant change in MAP–21 is the performance-based requirements for the HSP, States have been moving in that direction over the past several years based on a cooperative effort with GHSA and DOT to establish voluntary performance measures for highway safety grant programs. Over the years, NHTSA and GHSA have developed numerous tools and resource documents to enhance the effectiveness of the HSPs and promote linkage to measurable traffic safety improvements that will support requirements under MAP–21. State HSPs must now provide for performance measures and targets that are evidence-based, and this is consistent with the report, ''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025), that States have been using to develop performance measures since 2010. The agency will regularly review with the States the performance measures and coordinate with other DOT agencies to ensure consistent application. As directed by MAP–21, NHTSA must ''coordinate with [GHSA] in making revisions to the set of required performance measures.'' (23 U.S.C. 402(k)(4)) The Department will harmonize performance measures that are common across programs of DOT agencies (e.g., fatalities and serious injuries) to ensure that the highway safety community is provided uniform measures of progress.

The State process for setting targets in the HSP must be based on an analysis of data trends and a resource allocation assessment. For purposes of the current rulemaking, evidence-based analysis should include States' programming of resources compared to the specific measures in ''Traffic Safety Performance Measures for States and Federal Agencies.'' As required by MAP–21, the HSP must provide documentation of the current safety levels for each performance measure, quantifiable annual performance targets for each performance measure, and a justification for each performance target, including an explanation of why each target is appropriate and evidence based. Consistent with the Highway Safety Plan for continuous safety improvement, selected targets, should whenever reasonable, represent an improvement from the current status rather than a simple maintenance of the current rate. Targets for each program area should be consistent, compatible and provide sufficient coverage of State geographic areas and road users. When aggregated, strategies should lead logically to overall statewide performance and be linked to the anticipated success of the countermeasures or strategies selected and funded in the HSP. (23 CFR 1200.11(b))

The agency will collaborate regularly with FHWA, Federal Motor Carrier Safety Administration (FMCSA) and other DOT agencies along with the Governor's Highway Safety Association (GHSA) and the State Highway Safety Agencies to ensure the integration of highway safety planning with the broader aspects of Statewide transportation. This broad-based collaboration will assist NHTSA and GHSA to revise, update and improve highway safety program performance measures as necessary, while ensuring a consistent Departmental approach to surface transportation safety.

MAP–21 specifies that for the HSP submitted for fiscal year 2014 grants, the required performance measures are limited to those developed by NHTSA and GHSA in the Traffic Safety Performance Measures report. (23 U.S.C. 402(k)(4)) NHTSA and GHSA agreed on a minimum set of performance measures to be used by States and federal agencies in the development and implementation of behavioral highway safety plans and programs. An expert panel from NHTSA, FHWA, FMCSA, State highway safety offices, academic and research organizations, and other key groups assisted in developing these measures. Fourteen measures—10 core outcome

measures [1], one core behavior measure [2], and three activity measures [3]—were established covering the major areas common to State HSPs and using existing data systems. The minimum set of performance measures developed by NHTSA and GHSA addresses most of the national priority safety program areas, but do not address all the possible highway safety problems in a State or all of the National Priority Safety Programs specified in Section 405. For highway safety problems identified by the State, but where performance measures have not been jointly developed (e.g., distracted driving and bicycles), a State must develop its own evidence-based performance measures.

NHTSA will continue to work with States to ensure that annual HSPs identify priority traffic safety problems. For HSPs for subsequent fiscal years, NHTSA will also coordinate with GHSA on an annual basis and with other DOT agencies to identify emerging traffic safety issues and incorporate new national performance measures where feasible. NHTSA will continue to provide ongoing technical assistance to States on emerging priority traffic safety issues and encourage States to use data to identify measures beyond the required consensus performance measures. As the Department promulgates new regulations for programs to improve highway safety, common definitions of performance measures and targets will be adopted.

Under the old regulation, States were required to describe at least one year of strategies and activities the State planned to implement. As provided in the IFR, Highway Safety Plans must continue to include a description of the countermeasure program area strategies the State plans to implement to reach the performance targets identified by the State in the HSP. In addition, the HSP must also include a description of the projects that make up each program area that will implement the program area strategies. For performance targets that are common across DOT agencies, the projects that will be deployed to achieve those targets may be a combination of those projects contained in the HSP and other State and local plans. As required by MAP–21, the identified program area strategies must also identify funds from other sources, including Federal, State, local and private sector funds, used to carry out the program area strategies. (23 CFR 1200.11(c))

MAP–21 also requires the State to describe its strategy in developing its countermeasure programs and selecting the projects to allow it to meet the highway safety performance targets. In selecting the strategies and projects, States should be guided by the data and data analysis supporting the effectiveness of the proposed countermeasures and, if applicable, the emphasis areas in the State strategic highway safety plan. NHTSA does not intend to discourage innovative countermeasures, especially where few established countermeasures exist, such as in distracted driving. Innovative countermeasures that may not be scientifically proven to work but that contain promise based on limited practical applications are encouraged when a clear data-driven safety need has been identified. As evidence of potential success, justification of new countermeasures can also be based on the prior success of specific elements from other effective countermeasures.

MAP–21 requires that a State must provide assurances that the State will implement activities in support of national high-visibility law enforcement mobilizations coordinated by the Secretary of Transportation. In addition to providing such assurances, the State must also describe in its HSP the State's planned high visibility enforcement strategies to support national mobilizations for the upcoming grant year. (23 CFR 1200.11(c); Appendix A)

As required under MAP–21, the State must also include a description of its evidence-based traffic safety enforcement program to prevent traffic violations, crashes, crash fatalities, and injuries in areas most at risk for crashes. The IFR sets forth the minimum requirements for the traffic safety enforcement program. (23 CFR 1200.11(c))

MAP–21 also specifies that the HSP must include a report on the State's success in meeting its performance targets from the previous fiscal year's HSP. Unlike the comprehensive, annual performance report required under the old regulation, which is retained by today's action, this performance report is a status report on the core performance measures. (23 CFR 1200.11(d))

Under the old regulation, States submitted as part of their HSP a program cost summary (HS Form 217). This requirement continues under the IFR. States will continue to provide the proposed allocation of funds (including carry-forward funds) by program area. However, under today's action, States must also provide an accompanying list of the projects and an estimated amount of Federal funds for each such project that the State proposes to conduct in the upcoming fiscal year to meet the performance targets identified in the HSP. Prior to and as a condition of reimbursement, the project list must be updated to include identifying project numbers for each project on the list. Several States currently provide this level of information on the HS Form 217, and would not need to provide a separate list. However, States that do not provide this level of detail on the HS Form 217 must either begin doing so or provide a separate list in addition to the HS Form 217. For example, a number of States have grants tracking systems that can generate reports with this information, and such reports would be acceptable even if other information is included. No specific format is required so long as the list includes the projects, project identifier and estimated Federal funding for each project. (23 CFR 1200.11(e); Appendix B)

As under the old regulations, States will continue to submit certifications and assurances, signed by the Governor's Representative for Highway Safety, certifying the HSP application contents and providing assurances that they will comply with applicable laws and regulations, financial and programmatic requirements and any special funding conditions. Only the Governor's Representative for Highway Safety may sign the certifications and assurances required under this IFR. The certifications and assurances will now be included as Appendix A to this part.

MAP–21 provides for a new Teen Traffic Safety Program for statewide efforts to improve traffic safety for teen drivers. States may elect to incorporate such a statewide program as an HSP

[1] States set goals and report progress on the following outcome measures:

1. Number of traffic fatalities (FARS);
2. Number of serious injuries in traffic crashes (State crash data files);
3. Fatalities/VMT (FARS, FHWA);
4. Number of unrestrained passenger vehicle occupant fatalities, all seat positions (FARS);
5. Number of fatalities in crashes involving a driver or motorcycle operator with a BAC of .08 and above (FARS);
6. Number of speeding-related fatalities (FARS);
7. Number of motorcyclist fatalities (FARS);
8. Number of unhelmeted motorcyclist fatalities (FARS);
9. Number of drivers age 20 or younger involved in fatal crashes (FARS);
10. Number of pedestrian fatalities (FARS).

[2] States set goals and report progress on one behavior core measure—observed seat belt use for passenger vehicles, front seat outboard occupants (survey).

[3] States report on the following activity core measures:

1. Number of seat belt citations issued during grant-funded enforcement activities (grant activity reporting);
2. Number of impaired driving arrests made during grant-funded enforcement activities (grant activity reporting);
3. Number of speeding citations issued during grant-funded enforcement activities (grant activity reporting).

program area. If a State chooses to do so, it must include a description of the projects it intends to conduct in the HSP and provide assurances that the program meets certain statutory requirements. The assurances for the Teen Traffic Safety Program are included as an appendix to this part. (23 CFR 1200.11(g); Appendix C)

Finally, as noted above, MAP–21 requires that applications for all grants under 23 U.S.C. Chapter 4 (including any of the six new grants under Section 405) be part of the HSP submitted on July 1 of the fiscal year preceding the fiscal year of the grant. The IFR provides for this new deadline. (23 CFR 1200.12) Beginning with fiscal year 2014 grants, each State must include its application for the Section 405 grants as part of its HSP. (23 CFR 1200.11(h)) Details about the application contents and qualification requirements of Section 405 grants are provided in Section III below.

C. Review and Approval Procedures

MAP–21 specifies that NHTSA must approve or disapprove the HSP within 60 days after receipt. As has been past practice, NHTSA may request additional information from a State regarding the contents of the HSP to determine whether the HSP meets statutory, regulatory and programmatic requirements. To ensure that HSPs are approved or disapproved within 60 days, States must respond promptly to NHTSA's request for additional information. Failure to respond promptly may delay approval and funding of the State's Section 402 grant. (23 CFR 1200.14(a))

Within 60 days, the Approving Official will approve or disapprove the HSP, and specify any conditions to the approval. If the HSP is disapproved, the Approving Official will specify the reasons for disapproval. The State must resubmit the HSP with the necessary modifications to the Approving Official. The Approving Official will notify the State within 30 days of receipt of the revised HSP whether the HSP is approved or disapproved. (23 CFR 1200.14(b)(1))

NHTSA expects to notify States of Section 405 grant qualification before the start of the fiscal year of the grant, and to notify States of grant award amounts early in the fiscal year. However, because the calculation of Section 405 grant awards depends on the number of States meeting the qualification requirements, States must respond promptly to NHTSA's request for additional information or be disqualified from consideration of a Section 405 grant. The agency does not intend to delay grant awards to States that comply with grant submission procedures due to the inability of other States to meet submission deadlines.

D. Apportionment and Obligation of Grant Funds

The requirements of the old regulation regarding the apportionment and obligation of Section 402 funds remain largely unchanged. However, these requirements now apply both to Section 402 and 405 grant funds. For Section 405 grants, each State must also provide an update to the HSP in addition to the updated HS Form 217 for approval to address the grant funds awarded for that fiscal year for each of the Section 405 grant programs for which it is applying. The IFR contains new language clarifying that grant funds are available for expenditure for three years after the last day of the fiscal year of apportionment or allocation. (23 CFR 1200.15) *See* Section IV below for further discussion of this important clarification.

III. Section 405 Grant Program

A. General (§ 1200.20)

Under this heading, we describe the requirements set forth in today's action for each of the six new MAP–21 grant programs under 23 U.S.C. 405 (Occupant Protection, State Traffic Safety Information System Improvements, Impaired Driving Countermeasures, Distracted Driving, Motorcyclist Safety and State Graduated Driver Licensing). The subheadings and explanatory paragraphs contain references to the relevant sections of the IFR where a procedure or requirement is implemented, as appropriate.

MAP–21 contains some provisions that apply in common to most or all of the grants authorized under Section 405, such as definitions. In addition, in some cases the agency has determined that it is appropriate to impose certain requirements consistently across all of these grants. For example, ''passenger motor vehicle'' is defined in accordance with the agency's statutory jurisdiction to regulate motor vehicles with a gross vehicle weight rating of less than 10,000 pounds. These include passenger cars, minivans, vans, SUVs and pickup trucks. Also, for all but the motorcyclist safety grant program, eligibility under Section 405 is controlled by the definition of ''State'' under 23 U.S.C. 401, which includes the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands. (As noted in § 1200.25, the 50 States, the District of Columbia and Puerto Rico are eligible to apply for motorcyclist safety grants.)

1. Qualification for a Grant Based on State Statutes

For most of the grants authorized under 23 U.S.C. 405, States may qualify for a grant based on the existence of a conforming State statute. In order to qualify for a grant on this basis, the State statute must be enacted by the application due date and be in effect and enforced, without interruption, by the beginning of and throughout the fiscal year of the grant award. (23 CFR 1200.20(d))

Historically, NHTSA has interpreted the term ''enforce'' in other highway safety programs from previous authorizations (e.g., SAFETEA–LU, Section 2005, Pub. L. 109–59) to mean that the enacted law must be in effect, allowing citations and fines to be issued. NHTSA will continue to interpret ''enforce'' as it has in the past for these Section 405 grant programs. Therefore, a statute that has a future effective date or that includes a provision limiting enforcement (e.g., by imposing written warnings) during a ''grace period'' after the statute goes into effect would not be deemed in effect or being enforced until the effective date is reached or the grace period ends. A State whose law is either not in effect, contains a ''grace period,'' ''warning period'' or sunset provision during the grant year will not qualify for a grant for that fiscal year.

2. Award Determination and Transfer of Funds

MAP–21 specifies that for three of the Section 405 grant programs (Occupant Protection, State Traffic Safety Information System Improvements and Impaired Driving Countermeasures) grant awards will be allocated in proportion to the State's apportionment under 23 U.S.C. 402 for fiscal year 2009. For two of the grant programs (Distracted Driving and Motorcyclist Safety), MAP–21 does not specify how the grant awards will be allocated. For consistency with the other three Section 405 grant programs, and in accordance with past practice in a number of highway safety grant programs, NHTSA will allocate Distracted Driving and Motorcyclist Safety grant awards in proportion to the State's apportionment under 23 U.S.C. 402 for fiscal year 2009. For Graduated Driver Licensing grants, MAP–21 specifies that grant awards will be allocated in proportion to the State's apportionment under 23 U.S.C. 402 for that fiscal year. In determining the grant award, NHTSA will apply the apportionment formula under 23 U.S.C.

402(c) for fiscal year 2009 or the applicable fiscal year to all qualifying States, in proportion to the amount each such State receives under 23 U.S.C. 402(c), so that all available amounts are distributed to qualifying States to the maximum extent practicable. (23 CFR 1200.20(e)(1)) However, the IFR provides that the amount of an award for each grant program may not exceed 10 percent of the total amount made available for that grant program, except for the motorcyclist safety grant program, which has a different limit imposed by statute. This limitation on grant amounts is necessary to prevent unintended large distributions to a small number of States in the event only a few States qualify for a grant award. (23 CFR 1200.20(e)(2))

In the event that all grant funds authorized for Section 405 grants are not distributed, MAP–21 authorizes NHTSA to reallocate the remaining amounts before the end of the fiscal year for expenditure under the Section 402 program or in any Section 405 program area. (23 U.S.C. 405(a)(1)(G)) In accordance with this provision, NHTSA intends to transfer these remaining grant funds among other programs to ensure that to the maximum extent practicable each State receives the maximum funding for which it qualifies. (23 CFR 1200.20(e)(3))

3. *Matching.* Section 31105 of MAP–21 specifies a Federal share of 80 percent for three of the grant programs (Occupant Protection, State Traffic Safety Information System Improvements and Impaired Driving Countermeasures) in Section 405. For the other three grant programs (Distracted Driving, Motorcyclist Safety and State Graduated Driver Licensing), MAP–21 does not specify Federal share. However, because 23 U.S.C. 120 specifies a Federal share of 80 percent for any project or activity carried out under Title 23, unless otherwise specified, the federal share for all of these other grant programs, which are programs in Title 23, is 80 percent. (23 CFR 1200.20(f))

B. Occupant Protection Grants (§ 1200.21)

The purpose of this program is to encourage States to adopt and implement occupant protection laws and programs to reduce highway deaths and injuries from individuals riding unrestrained in motor vehicles. NHTSA has administered a State occupant protection incentive grant program since 1998, starting with a program authorized under the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178. That program was reauthorized largely unchanged in 2005 under SAFETEA–LU (formerly codified at 23 U.S.C. 405), along with two additional occupant protection grant programs—Safety Belt Performance Grants (formerly codified at 23 U.S.C. 406) and Child Safety and Child Booster Seat Incentive Grants (Section 2011 of SAFETEA–LU).

MAP–21 consolidated these previously separate occupant protection grants into a single occupant protection grant under new Section 405(b). Under this program, an eligible State can qualify for grant funds as either a high seat belt use rate State or lower seat belt use rate State. A high seat belt use rate State is a State that has an observed seat belt use rate of 90 percent or higher; a lower seat belt use rate State is a State that has an observed seat belt use rate of lower than 90 percent. MAP–21 provides that a high seat belt use rate State may qualify for funds by submitting an occupant protection plan and meeting three programmatic criteria (*Click or Ticket It,* child restraint inspection stations, and child passenger safety technicians). MAP–21 provides that a lower seat belt use rate State must meet these same requirements, and additionally qualify for three of the following six legal or programmatic criteria: primary seat belt use law, occupant protection laws, high risk population countermeasure programs, seat belt enforcement, comprehensive occupant protection program and occupant protection assessment.

1. *Definitions.* MAP–21 defines ''child restraint'' and ''seat belt.'' The IFR adopts these definitions without substantive change. In today's action, the agency also includes definitions for ''high seat belt use rate State'' and ''lower seat belt use rate State'' to clarify how the agency will determine the seat belt use rates for States. The agency is also including a definition for ''problem identification'' to clarify a specific strategy used in developing State occupant protection plans and programs. (*See* ''Eligibility Determinations, below, for more information about these two categories.) (23 CFR 1200.21(b))

2. Eligibility Determination

Under this program, a State is eligible for occupant protection incentive grant funds as either a high seat belt use rate State or a lower seat belt use rate State. The State's seat belt use rate determines whether a State qualifies for a grant under this section as a high seat belt use rate State or a lower seat belt use rate State. States must follow the procedures set forth in the IFR for submitting seat belt use rates and documentation to the agency. (23 CFR 1200.21(d))

States conduct annual seat belt use observational surveys each calendar year based on survey designs approved under 23 CFR part 1340, Uniform Criteria for State Observational Surveys of Seat Belt Use. Under the existing procedures, States submit the results of the seat belt use survey March 1 each year. Based on the information submitted by the States, NHTSA will determine which States are eligible for a grant as high seat belt use rate States and which States are eligible as lower seat belt use rate States.

The definition of the terms ''high seat belt use rate State'' and ''lower seat belt use rate State'' clarify how these determinations will be made. Specifically, a State's status will be based on the actual seat belt use rate without rounding and without taking into account the standard deviation. Thus, for example, neither a State with a seat belt use rate of 89.95 nor a State with a rate of 89.95 +/− a 2.5 percent standard error will be considered a high seat belt use rate State. Consistent with current practice, the agency will review the State submitted seat belt use rate derived from the approved statewide seat belt use survey and provide confirmation of the rate or request additional information within 30 days. For fiscal year 2013 grants, the agency will determine eligibility based on the seat belt use rates from the calendar year 2011 statewide seat belt use surveys.

The IFR sets forth how a State may qualify for a grant as a high seat belt use rate State (23 CFR 1200.21(d)) or a lower seat belt use rate State (23 CFR 1200.21(e))

3. *Qualification Requirements for All States.* To qualify for an occupant protection grant under this section, States must meet the following requirements:

i. Occupant Protection Plan

For the first fiscal year of the grant program, States must submit an occupant protection plan that describes programs the State will implement for achieving reductions in traffic crashes, fatalities and injuries on public roads. (23 CFR 1200.21(d)(1)) In subsequent fiscal years, States must update the occupant protection plan if there are changes to the programs. States have long included occupant protection plan material in the HSP they submit under Section 402. The agency intends that States continue to be guided by the elements prescribed under Uniform Guidelines for the State Highway Safety No. 20 Occupant Protection Programs, promulgated under 23 U.S.C. 402, in

developing their occupant protection plan.

ii. Click It or Ticket

MAP–21 specifically requires States to participate in the *Click It or Ticket* national mobilization in order to qualify for an occupant protection grant. *Click It or Ticket* is an annual nationwide high visibility enforcement campaign to reduce highway fatalities and injuries by cracking down on seat belt nonuse. To satisfy this criterion, the IFR requires that a State must provide a description of the State's planned participation and an assurance signed by the Governor's Representative for Highway Safety that it will participate in the *Click It or Ticket* national mobilization in the fiscal year of the grant. (23 CFR 1200.21(d)(2))

iii. Child Restraint Inspection Stations

MAP–21 requires States to have ''an active network of child restraint inspection stations.'' Although MAP–21 does not define ''active network,'' the IFR specifies that an ''active network'' is one where inspection stations are located in areas that service the majority of the State's population and show evidence of outreach to underserved areas. The agency used a version of this population-based approach in the Motorcyclist Safety grant program authorized by SAFETEA–LU. The agency will use population data from the most recent national census (currently 2010) to validate that the stations are representative of a majority of the population.

In addition, today's action specifies that these stations must be staffed with nationally certified CPS technicians during posted working hours. It is permissible for the State to have one technician responsible for more than one inspection station. (23 CFR 1200.21(d)(3))

iv. Child Passenger Safety Technicians

MAP–21 also requires that States must have a plan to recruit, train and maintain a sufficient number of child passenger safety technicians. The IFR specifies that a ''sufficient number'' means at least one nationally certified CPS technician responsible for coverage of each inspection station and inspection event throughout the State. As noted above, it is permissible for the State to plan to have one technician responsible for more than one inspection station. (23 CFR 1200.21(d)(4))

v. Requirement for Maintenance of Effort

MAP–21 requires the State to maintain its aggregate expenditures from all State and local sources for occupant protection programs at or above the average level of such expenditures in fiscal years 2010 and 2011. The agency has the authority to waive or modify this requirement for not more than one fiscal year. The agency expects that waivers will only be granted under exceptional or uncontrollable circumstances. As a condition of the grant, States will be required to provide assurances that the State will maintain its aggregate expenditures in accordance with this provision. (23 CFR 1200.21(c)(2); Appendix D)

4. *Additional Requirements for Lower Seat Belt Use Rate States.* In addition to meeting the above requirements, States with a seat belt use rate below 90 percent must meet at least three of six legal or programmatic criteria to qualify for grant funds. The legal criteria options are a primary seat belt use law and an occupant protection law. (23 CFR 1200.21(e)(1)–(e)(2)) The programmatic criteria options are a seat belt enforcement plan, high risk population countermeasure programs, a comprehensive occupant protection program and completion of an occupant protection program assessment. (23 CFR 1200.21(e)(3)–(e)(6))

i. Primary Seat Belt Use Law

MAP–21 specifies that a State must enact and enforce a primary enforcement seat belt use law. To qualify for this criterion, the IFR requires that a State have primary enforcement of all seating positions covered under the State's seat belt use law and child restraint law. (23 CFR 1200.21(e)(1)) Thus, for example, if a State seat belt use law requires all front seat passengers to be secured in a seat belt and its child restraint law requires all children under 16 years of age to be secured in a child restraint or seat belt, the State must provide for primary enforcement for all violations of those requirements in order to qualify for this criterion.

ii. Occupant Protection Laws

MAP–21 requires a lower seat belt use rate State to have occupant protection laws requiring front and rear occupant protection use by all occupants in an ''age-appropriate restraint.'' Because MAP–21 requires coverage in an age-appropriate restraint, the agency is continuing the requirements set forth in the predecessor child and booster seat grant program (Section 2011 of SAFETEA–LU) that were tied to the agency's child restraint performance standards (FMVSS 213). Thus, under today's IFR, to meet this criterion, a State must require each occupant who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height to be secured in an age-appropriate child restraint. (23 CFR 1200.21(e)(2)(i)) All occupants riding in passenger motor vehicles other than those identified above must be secured in a seat belt or appropriate child restraint. (23 CFR 1200.21(e)(2)(ii)) These provisions require that there be no gaps in coverage in the State occupant protection laws. (23 CFR 1200.21(e)(2)(ii))

The IFR also continues the minimum fine requirements of the predecessor Section 405 program for a violation of the occupant program law. To qualify under this criterion, the State must provide for the imposition of a minimum fine of not less than $25 per unrestrained occupant. This provision ensures that the State is enforcing the law in a meaningful manner that can deter violations.

MAP–21 does not specify any permissible exemptions for this criterion. Most, if not all, States have some exemptions in their occupant protection laws. The agency recognizes that the goals of higher seat belt use would not be served by denying grants to States regardless of the nature of the exemption. However, some exemptions would severely undermine the safety considerations underlying the statute. Based on NHTSA's review of seat belt laws under previous authorizations and given the maturity of occupant protection programs, the IFR permits some exemptions, or variations of exemptions, that the agency has accepted by long-standing application in seat belt programs, such as Section 405, 406 and 2011 grant programs under previous authorizations. (23 CFR 1200.21(e)(2)(iv)) The permitted exemptions include the following:

(A) Drivers, but not passengers, of postal, utility, and commercial vehicles that make frequent stops in the course of their business;

(B) Persons who are unable to wear a seat belt or child restraint because of a medical condition, provided there is written documentation from a physician;

(C) Persons who are unable wear a seat belt or child restraint because all other seating positions are occupied by persons properly restrained in seat belts or child restraints;

(D) Emergency vehicle operators and passengers in emergency vehicles during an emergency;

(E) Persons riding in seating positions or vehicles not required by Federal law to be equipped with seat belts;

(F) Passengers in public and livery conveyances;

Many States include exemptions for commercial drivers, such as postal workers and utility workers, who make frequent stops in the course of their business. However, in the IFR the agency limits this exemption to the drivers themselves, and only during the course of their route.

In predecessor grant programs, the agency permitted an exemption for passengers who are unable to wear a seat belt or child restraint because of a medical condition, provided the person has written documentation of the condition from a physician. The agency is aware of several variations of this exemption under State laws. The IFR specifically limits the exemption to a ''medical condition'' that is ''documented'' by a ''physician.'' Provisions that exempt passengers for size, weight or unfitness, for example, are not permissible. Exemptions that do not require ''written'' documentation and that such documentation be from a ''physician,'' meaning a licensed medical professional, are similarly not permissible. The agency has not found compelling evidence of medical conditions that impair a passenger's ability to wear a seat belt or child restraint, and for this reason, this medical exemption will be interpreted narrowly.

By long-standing practice under predecessor grant programs, the agency has permitted an exemption when all seating positions are occupied by other belted or restrained passengers, or when vehicles are not required to be equipped with seat belts, and the IFR continues to permit these exemptions. However, exemptions of the first kind are not permitted unless all other seating positions in the vehicle are occupied with properly belted or restrained passengers. Exemptions for persons riding in seating positions not required by Federal law to be equipped with seat belts recognize that some older vehicles that are still on the road were originally manufactured without seat belts.

States also include exemptions for emergency situations. The agency understands that passengers and operators of emergency vehicles during an emergency may not be belted or in child restraints due to the circumstances. While it is unlikely that law enforcement personnel would ticket persons in these situations, even with the exemption, the IFR permits an exemption for emergency vehicles in emergency situations. This exemption is specific to ''emergency vehicles.'' Exemptions for persons transporting passengers in an emergency situation or attending to the emergency needs of a passenger are impermissibly over broad, because they are subjective in nature, and the IFR does not allow them.

The IFR allows exemptions for passengers in public and livery conveyances, such as taxi cabs. The agency recognizes that many States find it impractical to impose liability in these situations.

Under the predecessor grant program for child safety seats and booster seats, an exemption for children when no combination lap and shoulder belt is available for any seating position was permitted. The IFR continues this exemption, but applies it narrowly. The exemption is permissible only with respect to the use of a booster seat, because booster seats cannot be safely used with a two-point belt. The exemption may not leave the child without a child restraint requirement.

The market for child restraints and booster seats has changed significantly during the last decade. Many child safety seats can be secured with a lap belt only, and many child safety seats are available for children weighing up to 80 pounds. The agency finds no continuing reason why a child should be exempted from all child restraint requirements (leaving the child to be restrained only by a two-point belt) because a combination lap and shoulder belt is not available to accommodate a booster seat. Accordingly, the agency will no longer permit an exemption from a booster seat requirement when no combination lap and shoulder belt is available, unless it requires the use of other age-appropriate child restraints.

Consistent with past practice, NHTSA will review State laws to determine whether all ''passenger motor vehicles'' are covered by the State occupant protection law. Some State laws omit coverage for vehicles that fall within the definition of passenger motor vehicle. For example, some State laws exempt commercial vehicles or school buses, but define these terms expansively to include passenger cars, SUVs, or minivans used for those purposes. In those circumstances, such laws do not meet the vehicle coverage requirements specified in this IFR. On the other hand, exemptions to occupant protection laws that apply only to vehicles with a GVWR of more than 10,000 pounds do not render the State ineligible for this criterion.

iii. Seat Belt Enforcement

Under MAP–21, this criterion requires a lower seat belt use rate State to ''conduct sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year.'' To satisfy this criterion, the IFR specifies that the State must submit a seat belt enforcement plan that documents how law enforcement agencies will participate in the sustained seat belt enforcement to cover at least 70 percent of the State's population as shown by the latest available Federal census or how law enforcement agencies covering geographic areas in which at least 70 percent of the State's unrestrained passenger vehicle occupant fatalities occurred (reported in the HSP) will be responsible for seat belt enforcement. (23 CFR 1200.21(e)(3))

iv. High Risk Population Countermeasure Programs

MAP–21 requires a lower seat belt use rate State to implement ''countermeasure programs for high-risk populations, such as drivers on rural roadways, unrestrained nighttime drivers, or teenage drivers.'' To qualify under this criterion, the IFR directs the State to provide documentation of its countermeasure programs for at least two of the high-risk populations identified in MAP–21 or other high-risk populations identified by the State in its occupant protection plan. The countermeasure programs must identify strategies for increasing seat belt and child restraint use in these population classes. (23 CFR 1200.21(e)(4))

v. Comprehensive Occupant Protection Program

Under MAP–21, a lower seat belt use rate State must implement a comprehensive occupant protection program in which the State has conducted a NHTSA-facilitated program assessment, developed a statewide strategic plan, designated an occupant protection coordinator, and established a statewide occupant protection task force. Under this criterion, in addition to submitting the occupant protection plan required of all States, a lower seat belt use rate State must demonstrate that it has a comprehensive program under which it has developed a multi-year strategic plan based on input from statewide stakeholders. (23 CFR 1200.21(e)(5)(ii–iii)) In prescribing the required elements of the multi-year strategic plan, the agency was guided by the NHTSA's Uniform Guidelines for State Highway Safety Programs No. 20—Occupant Protection, promulgated

under 23 U.S.C. 402. The multi-year strategic plan must include a program management strategy, a program evaluation strategy, a communication and education program strategy and an enforcement strategy. MAP–21 also requires under this criterion that the State has designated an occupant protection coordinator and established a statewide occupant protection task force. The comprehensive occupant protection program must also include evidence that the State has conducted a NHTSA-facilitated program assessment that evaluates the program for elements designed to increase seat belt use in the State. (23 CFR 1200.21(e)(5)(i))

vi. Occupant Protection Program Assessment

A separate criterion in MAP–21 requires a lower seat belt use rate State to demonstrate that it has completed an assessment of its occupant protection program during the three-year period preceding the grant year or will conduct such an assessment during the first year of the grant. A lower seat belt use rate State must provide evidence that it has conducted a comprehensive NHTSA-facilitated assessment of all elements of its occupant protection program within the three years prior to the application due date. If the State has not conducted such an assessment, it may meet the criterion by providing assurances that it will conduct a NHTSA-facilitated assessment by September 1 of the grant year. (23 CFR 1200.21(e)(6)) If the State fails to conduct a NHTSA-facilitated assessment by September 1, the agency will seek the return of Section 405(b) grant funds that the State qualified for on the basis of the State's assurance that it would conduct such an assessment by the deadline, and the agency will redistribute the grant funds in accordance with § 1200.20(e) to other qualifying States under this section. Seeking the return of grant funds and redistributing the funds to other qualifying States is the most equitable resolution since the State did not meet the conditions of the grant, and those grant funds should properly be awarded to other qualifying States. Further, the failure of a State to conduct this assessment will disqualify the State from the next fiscal year's grant.

5. *Use of Grant Funds.* MAP–21 identifies with particularity how States may use grant funds awarded under this program, but permits high seat belt use rate States to use up to 75 percent for any project or activity eligible for funding under 23 U.S.C. 402. The IFR adopts this language without change in 23 CFR 1200.21(f).

C. State Traffic Safety Information System Improvements Grants (§ 1200.22)

MAP–21 continues, with some changes, the traffic safety information system improvements grant program authorized under SAFETEA–LU (formerly codified at 23 U.S.C. 408). The purpose of the new grant program, as under SAFETEA–LU, is to support State efforts to improve the data systems needed to help identify priorities for Federal, State and local highway and traffic safety programs, to link intra-State data systems, and to improve the compatibility and interoperability of these data systems with national data systems and the data systems of other States for highway safety purposes, such as enhancing the ability to analyze national trends in crash occurrences, rates, outcomes and circumstances. (23 CFR 1200.22(a))

1. Traffic Records Coordinating Committee (TRCC) Requirement

The role and function of a TRCC in the State Traffic Safety Information System Improvements grant program is very similar to that of the TRCC in the predecessor data program. Consistent with those requirements (pursuant to which many States already have established the necessary organizational structure for their TRCC), a State's TRCC under this section must have a multidisciplinary membership that includes, among others, owners, operators, collectors and users of traffic records and public health and injury control data systems, highway safety, highway infrastructure, law enforcement and adjudication officials, and public health, emergency medical services (EMS), injury control, driver licensing and motor carrier agencies and organizations. (23 CFR 1200.22(b)(1))

Building on guidance issued under the predecessor data program, this IFR requires that a TRCC have specific review and approval authority with respect to State highway safety data and traffic records systems, technologies used to keep such systems current, TRCC membership, the TRCC coordinator, changes to the State's multi-year Strategic Plan, and performance measures used to demonstrate quantitative progress. It also charges a TRCC with considering, coordinating and representing to outside organizations the views of the State organizations involved in the administration, collection and use of highway safety data and traffic records. (23 CFR 1200.22(b)(2))

2. Strategic Plan Requirement

This IFR, as under the predecessor program, requires a State to have a traffic records strategic plan that has been approved by the TRCC and describes specific quantifiable and measurable anticipated improvements in the State's core safety databases. The data collection and information systems sections of the traffic records strategic plan should be coordinated with the State strategic highway safety plan. Identified performance measures, using the formats set forth in the Model Performance Measures for State Traffic Records Systems (DOT HS 811 441, February 2011), collaboratively developed by NHTSA and GHSA, continue to be critical components of a State's strategic plan, as do recommendations resulting from its most recent highway safety data and traffic records system assessment. (23 CFR 1200.22(c))

3. Quantifiable and Measurable Progress Requirement

Continuing the emphasis on performance measures and measurable progress, this IFR emphasizes that a valid and unequivocal method of demonstrating quantitative improvement in the data attributes of accuracy, completeness, timeliness, uniformity, accessibility, and integration in a core database is by showing an improved consistency within the State's record system or achievement of a higher level of compliance with a national model inventory of data elements, such as the Model Minimum Uniform Crash Criteria (MMUCC), the Model Impaired Driving Records Information System (MIDRIS), the Model Inventory of Roadway Elements (MIRE) or the National Emergency Medical Services Information System (NEMSIS). These model data elements include the measure of *Crash* uniformity (C–U–1, the number of MMUCC-compliant data elements entered into the crash database); the measure of *Roadway* uniformity (R–U–1, the number of MIRE-compliant data elements entered into the roadway database); one of the measures of *Citation/Adjudication* uniformity (C/A–U–1, the number of MIDRIS-compliant data elements entered into the citation database); and both of the measures of *EMS/Injury Surveillance* uniformity (I–U–1 and I–U–2, the percentage and number of records on the State EMS data file that are NEMSIS-compliant). (23 CFR 1200.22(d))

Performance measures must be in the formats set forth in the Model

Performance Measures for State Traffic Records Systems (DOT HS 811 441, February 2011) collaboratively developed by NHTSA and GHSA. To satisfy this progress requirement, the supporting data must demonstrate that the progress was achieved, at least in part, within the preceding 12 months.

Under the predecessor data program, a State had to certify that it had adopted and was using the model data elements or that the grant funds it received under the program would be used toward adopting and using the maximum number of model data elements as soon as practicable. To qualify for a grant under this IFR, States do *not* need to make this same certification. However, the MMUCC, MIRE, MIDRIS and NEMSIS model data sets continue to be central to States' efforts to improve their highway safety data and traffic records systems. For this reason, in order to demonstrate measurable progress, this IFR strongly encourages a State to achieve a higher level of compliance with a national model inventory.

States are strongly encouraged to submit one or more voluntary interim progress reports documenting performance measures and supportive data that demonstrate quantitative progress in relation to one or more of the six significant data program attributes. NHTSA recommends submission of the interim progress reports prior to the application due date to provide time for NHTSA to interact with the State to obtain any additional information that NHTSA may need to verify the State's quantifiable, measurable progress.

4. Requirement To Conduct or Update a Traffic Records System Assessment

This IFR requires that a State certification be based on an assessment that complies with the procedures and methodologies outlined in NHTSA's Traffic Records Highway Safety Program Advisory (DOT HS 811 644). As in the past, NHTSA will continue to conduct State assessments that meet the requirements of this section without charge, subject to the availability of funding. (23 CFR 1200.22(e))

A State that satisfies this certification requirement on the basis of having updated an assessment of its highway safety data and traffic records system during the preceding five years must submit with its application an assessment update report including (1) the date on which the most recent assessment was completed, (2) a listing of all recommendations to the State contained in the assessment report, (3) an explanation of how the State has addressed each recommendation since the date the assessment was completed, and (4) the date on which the assessment update report was prepared.

5. Requirement for Maintenance of Effort

MAP–21 requires the State to maintain its aggregate expenditures from all State and local sources for State traffic safety information system programs at or above the average level of such expenditures in fiscal years 2010 and 2011. The agency has the authority to waive or modify this requirement for not more than one fiscal year. The agency expects that waivers will be granted only under exceptional circumstances. As a condition of the grant, each State will be required to provide assurances that the State will maintain its aggregate expenditures in accordance with this provision. (23 CFR 1200.22(f); Appendix D)

6. *Use of Grant Funds.* States may use grant funds awarded under this subsection for making data program improvements to core highway safety databases related to quantifiable, measurable progress in any of the significant data program attributes of accuracy, completeness, timeliness, uniformity, accessibility or integration of a core highway safety database.

D. Impaired Driving Countermeasures Grants (§ 1200.23)

The impaired driving countermeasures grant program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under this program. Since the inception of the Section 410 program, it has been amended several times to change the grant criteria and grant award amounts. The most recent amendments prior to those leading to today's action arose out of the program authorized under SAFETEA–LU. These amendments modified the grant criteria and the award amounts and made a number of structural changes to streamline the program.

Under SAFETEA–LU, States could meet the grant program requirements by qualifying either on the basis of a low alcohol-related fatality rate, based on the agency's Fatality Analysis Reporting System (FARS) data, or by meeting a number of specified programmatic criteria each year of the grant (three in the first fiscal year, four in the following fiscal year, and five in the remaining fiscal years of the program). Specifically, the programmatic requirements included the following criteria: high visibility impaired driving enforcement program; prosecution and adjudication outreach program; BAC testing program; high risk drivers program; alcohol rehabilitation or DWI court program; underage drinking prevention program; administrative license suspension and revocation program; and self-sustaining impaired driving prevention program. In addition, a separate grant program provided funds to the 10 States with the highest alcohol-related fatality rates.

MAP–21 modified the grant award criteria and the award amounts and included a number of structural changes to the impaired driving countermeasures grant program.

1. Impaired Driving Countermeasures Program Under MAP–21

As directed in MAP–21, States qualify for a grant based on a determination of the State's average impaired driving fatality rate using the most recently available final data from NHTSA's FARS. States are then classified as either low-range, mid-range, or high-range States and are required to meet certain statutory requirements associated with each classification. In addition, under MAP–21, a new grant is created to separately reward States that have mandatory ignition interlock laws applicable to all DUI offenders (''alcohol-ignition interlock State'' grants). There are no longer formal programmatic requirements under MAP–21. (23 CFR 1200.23(c))

The average impaired driving fatality rate, the basis for most grant awards under this section, is based on the number of fatalities in motor vehicle crashes in a State that involve a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled (VMT). Rate determinations based on FARS data from the most recently reported three calendar years for a State are then averaged to determine the rate. These determinations will be used to identify States as either low-, mid- or high-range States in accordance with MAP–21 requirements. (23 CFR 1200.23(d)–(f)) Consistent with the predecessor grant program requirements, the agency expects to make rate information available to the States by June 1. This date will allow the agency to use the most recently available final FARS data in its calculations. If there is any delay in the availability of FARS data in a given year, the agency will use the rate calculations from the preceding year. This approach will ensure that any delay in data availability will not affect the awarding of grants under this section.

MAP–21 specifies that low-range States are those with an average impaired driving fatality rate of 0.30 or lower; mid-range States are those with an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60; and high-range States are those that have an average impaired driving fatality rate of 0.60 or higher. The agency will not round any rates for the purposes of determining how a State should be classified among these ranges.

MAP–21 provides for separate grants to be made to ''alcohol-ignition interlock States,'' as further described below. Each State with a law that requires every individual convicted of driving under the influence or driving while intoxicated to be subject to the use of an alcohol-ignition interlock for a minimum of 30 days is eligible for a separate grant. MAP–21 provides that up to 15 percent of the amount available to carry out the impaired driving countermeasures program shall be available for grants to States meeting this criterion. (23 CFR 1200.23(g))

2. Low-Range States

Under MAP–21, States that have an average impaired driving fatality rate of 0.30 or lower are considered low-range States. Prior to the start of the application period (on or about June 1 of each fiscal year), the agency will inform each State that qualifies for a grant as a low-range State. These States are not required to provide any additional information in order to receive grant funds. However, these States will be required to submit information that identifies how the grant funds will be used in accordance with the requirements of MAP–21 (see qualifying uses below). (23 CFR 1200.23(d)(1))

In addition, MAP–21 requires the State to maintain its aggregate expenditures from all State and local sources for impaired driving programs at or above the average level of such expenditure in fiscal years 2010 and 2011. (23 CFR 1200.23(d)(2)) As a condition of the grant, each State will be required to provide assurances that the State will maintain its aggregate expenditures in accordance with this provision. (Appendix D) The agency has the authority to waive or modify this requirement for not more than one fiscal year. The agency expects that waivers will only be granted under exceptional circumstances.

The above requirements that apply to low-range States are minimum requirements that apply to all States that receive a grant under Section 405(d).

3. Mid-Range States

Under MAP–21, States that have an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60 are considered mid-range States. In accordance with the statutory requirements, States qualifying as mid-range States are required to submit a statewide impaired driving plan that addresses the problem of impaired driving. The plan must have been developed by a statewide impaired driving task force within the three years prior to the application due date. If the State has not developed and submitted a plan that meets the statutory criteria at the time of the application deadline, then it must provide an assurance that one will be developed and submitted to NHTSA by September 1 of the grant year. (23 CFR 1200.23(e)) If the State fails to submit the plan by September 1, the agency will seek the return of Section 405(d) grant funds that the State qualified for based on its assurance that it would submit the plan by the deadline, and will redistribute the grant funds in accordance with § 1200.20(e) to other qualifying States under this section, consistent with the treatment of similarly situated States under Section III.B.4.iv, above.

The purpose of a statewide impaired driving plan is to provide a comprehensive strategy for preventing and reducing impaired driving behavior. The agency is requiring the plan to be organized in accordance with the general areas stated in NHTSA's Uniform Guidelines for State Highway Safety Programs No. 8—Impaired Driving. These general areas provide the basis for a comprehensive approach to addressing problems of impaired driving. States also should consider including sections on data-driven problem identification, strategies for addressing identified problems and target groups, plans for measuring progress and outcomes, and steps to achieve stakeholder input and participation in the plan. (23 CFR 1200.23(e)(1))

In accordance with MAP–21, all qualifying plans must be developed by a statewide impaired driving task force. The IFR requires that the task force include key stakeholders in the State from the State Highway Safety Office and the areas of law enforcement and criminal justice system (e.g., prosecution, adjudication, probation). The IFR also requires that the task force include, as appropriate, stakeholders from the areas of driver licensing, treatment and rehabilitation, ignition interlock programs, data and traffic records, public health, and communication. The State should include a variety of individuals from different functions or disciplines that bring different perspectives and experiences to the task force. Such an approach ensures that the plan developed by the task force will be a comprehensive treatment of the issues of impaired driving in a State. (23 CFR 1200.23(e)(2)(iii)) States may consider reviewing NHTSA's report entitled, ''A Guide for State-wide Impaired Driving Task Forces'' in developing a statewide impaired driving task force.

In addition to a list of the members of the task force, the State must provide information that supports the basis for the operation of the task force, including any charter or establishing documents that describe its purpose and operations. The State also must provide the meeting schedule for the task force for the 12 months that preceded the application deadline and include any reports or documents that the task force produced during that period. This information shall be included in the State's application for a grant. (23 CFR 1200.23(e)(2)(i)–(ii))

4. High-Range States

Under MAP–21, States that have an average impaired driving fatality rate that is 0.60 or higher are considered high-range States. A State qualifying as a high-range State is required to have conducted a NHTSA-facilitated assessment of the State's impaired driving program within the three years prior to the application due date or provide an assurance that it will conduct an assessment during the first year of the grant year. (23 CFR 1200.23(f)(1)) NHTSA's involvement will ensure a comprehensive treatment of impaired driving issues in the State and consistency in the administration of the assessments. This approach is also consistent with NHTSA's longstanding involvement in conducting assessments of State traffic safety activities and programs.

During the first year of the grant, the State is also required to convene a statewide impaired driving task force to develop a statewide impaired driving plan (both the task force and plan requirements are described in the preceding section under mid-range States). In addition to meeting the requirements associated with developing a statewide impaired driving plan, the plan also must address any recommendations from the required assessment. The plan also must include a detailed strategy for spending grant funds and include a description of how such spending supports the statewide impaired driving programs and will

contribute to the State meeting its impaired driving program performance targets. (23 CFR 1200.23(f)(2)(i))

MAP–21 requires the plan to be submitted to NHTSA during the first year of the grant for review and approval. The IFR requires that such a plan be submitted to NHTSA by September 1 of the grant year. After the first year, MAP–21 requires high-range States to update the plan in each subsequent year of the grant and then submit each updated statewide plan for NHTSA's review. (23 CFR 1200.23(f)(2)(ii))

5. Alcohol-Ignition Interlock States

MAP–21 provides a separate grant to those States that adopt and enforce mandatory alcohol-ignition interlock laws. In order to qualify, the IFR requires that a State must have enacted a law by the application deadline that requires that all individuals convicted of a DUI offense to be limited to driving motor vehicles equipped with an ignition interlock. The IFR further requires the restriction to apply for a mandatory minimum period of 30 days. This length of time is consistent with the relatively short timeframe that a State might use for first-time DUI offenders. A State wishing to receive a grant is required to submit the assurances in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citation to the State statute demonstrating a compliant law. (23 CFR 1200.23(g))

Up to 15 percent of the total amount available under this section may be used to fund alcohol-ignition interlock grants. The agency believes, however, that in the first years of the program few States may qualify for this grant. To avoid the situation where a small number of States might receive inordinately large grant awards, the agency may adjust the funding made available for these grants. This is consistent with the statute, which specifies that up to ''15 percent'' may be made available for the grants. (23 CFR 1200.23(h))

6. Use of Grant Funds

With the exceptions discussed below, grant funds may be distributed among any of the uses identified in MAP–21. In the IFR, the agency has included definitions for some of the uses. The definitions are generally consistent with those provided for in MAP–21 or with those developed under the prior regulation for this grant program. (23 CFR 1200.23(b) and (i))

For low-range States and States receiving grants as alcohol-ignition interlock States, funds may be used for any of the uses identified. Mid-range States may use grants funds for any of the uses identified except programs designed to reduce impaired driving based on problem identification. In accordance with the statute, mid-range States may use funds for these programs only after review and approval by NHTSA.

High-range States may use grants funds for any uses only after submission and NHTSA approval of the statewide impaired driving plan. A high-range State will not be allowed to voucher against these funds until it has submitted its plan and received approval. States receiving alcohol-ignition interlock grants may use grants funds for any of the uses identified and for any eligible activities described under 23 U.S.C. 402.

E. Distracted Driving Grants (§ 1200.24)

MAP–21 created a new distracted driving grant program, authorizing incentive grants to States that enact and enforce laws prohibiting distracted driving. Specifically, States must have statutes that prohibit drivers from texting while driving and youths from using cell phones while driving. In order to give States an opportunity to submit applications for the newly authorized distracted driving grants as soon as possible in fiscal year 2013, NHTSA published a notice of funding availability (NOFA) on August 24, 2012 (77 FR 51610). Due to the unavailability of funds for that program under the current interim appropriations, whose enactment post-dated the NOFA, NHTSA published an updated notice on October 5, 2012, extending the due date for application submissions. (77 FR 61048) NHTSA will award distracted driving grants for fiscal year 2013 as provided in the NOFA. For fiscal year 2014 and future years, NHTSA will award distracted driving grants in accordance with the implementing regulations published in this IFR.

1. *Qualification Criteria.* The basis for an award under this grant program is a State statute that complies with the criteria set forth in in MAP–21. Specifically, a State must have a conforming statute that prohibits texting while driving and youth cell phone use while driving.

i. Texting Prohibition

MAP–21 provides that the State statute must prohibit drivers from texting through a personal wireless communications device while driving. (23 CFR 1200.24(c)(1)) MAP–21 defines ''personal wireless communications device,'' ''texting'' and ''driving''. (23 CFR 1200.20; 23 CFR 1200.24(b)) The State statute prohibiting texting must be consistent with these definitions. For example, MAP–21 defines texting to include ''reading'' from personal wireless communications devices. A State statute that does not prohibit reading texts or similar forms of electronic data communications would not enable the State to qualify for a distracted driving grant. Similarly, MAP–21 defines ''driving'' to include being temporarily stopped because of traffic or at a traffic light. If the State statute does not prohibit texting under these circumstances (e.g., a statute prohibiting texting while the vehicle is in motion), it would not enable the State to qualify for a distracted driving grant.

ii. Youth Cell Phone Use Prohibition

MAP–21 requires the State statute to prohibit a driver who is younger than 18 years of age from using a personal wireless communications device while driving. (23 CFR 1200.24(c)(2)) As noted above, MAP–21 defines ''personal wireless communications device'' and ''driving,'' and a State statute prohibiting youth cell phone use while driving must be consistent with these definitions.

iii. Enforcement

MAP–21 requires that the State statute make a violation of both the texting prohibition and the youth cell phone use prohibition a primary offense. (23 CFR 1200.24(c)(1)(ii) and 1200.24(c)(2)(ii)). As defined by MAP–21, a primary offense is ''an offense for which a law enforcement officer may stop a vehicle solely for the purpose of issuing a citation in the absence of evidence of another offense.'' (23 CFR 1200.20(b))

iv. Fines

MAP–21 requires that the State statute provide for a minimum fine for a first violation and increased fines for repeat violations. In order to meet the minimum fine requirement, the IFR specifies a minimum fine of $25 for a first violation of the texting and youth cell phone use law. (23 CFR 1200.24(c)(1)(iii)(A) and 1200.24(c)(2)(iv)(A)) This minimum fine amount is consistent with past practice in other highway safety grant programs from previous authorizations. State laws that provide for fines ''up to,'' ''not more than,'' ''not to exceed'' or similar terms would not satisfy the minimum fine requirement in MAP–21. Such language does not mandate a minimum fine for a violation.

In order to meet the increased fines for repeat violations requirement, the State statute must provide for a fine

greater than the minimum fine for the first violation. (23 CFR 1200.24(c)(1)(iii)(B) and 1200.24(c)(2)(iv)(B)) For State statutes that provide a range of fine amounts for a first violation, the State statute must provide a fine for a repeat violation greater than the maximum fine assessed for a first violation. For example, if the State statute provides that a fine for a first violation is not less than $25, but not more than $50, the statute must provide for a fine of more than $50 for a repeat violation. Further, the IFR requires that violations within five years of the previous violation must be treated as repeat violations. (23 CFR 1200.24(c)(1)(iii)(B) and 1200.24(c)(2)(iv)(B)) This is consistent with past practice in other highway safety grant programs from previous authorizations.

MAP–21 does not require that fines increase with each subsequent offense. In order to qualify for a distracted driving grant, the State statute need not provide for increasing fine amounts for third and subsequent offenses, beyond the increased fine for a second (or repeat) offense.

v. Testing Distracted Driving Issues

MAP–21 provides that the State statute must require distracted driving issues to be tested as part of the State driver's license examination. In order to meet this requirement, the State statute must specifically require distracted driving issues to be tested as part of the State's driver's license examination. To satisfy this requirement, it is not sufficient that a State may, as a matter of current practice, be testing for distracted driving issues—the State statute must require it in statute. (23 CFR 1200.24(c)(2)(iii))

vi. Allowable Exceptions

MAP–21 specifies that a State statute may provide for the following exceptions and still meet the qualification requirements for a distracted driving grant: a driver who uses a personal wireless communications device to contact emergency services; emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; and an individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to section 31136 of title 49. No other exceptions are permitted under MAP–21. Accordingly, the IFR does not permit any other exceptions. (23 CFR 1200.24(c)(3))

2. *Use of Grant Funds.* MAP–21 provides that each State that receives a Section 405(e) grant must use at least 50 percent of the grant funds for specific distracted driving related activities and up to 50 percent for any eligible project or activity under 23 U.S.C. 402. The IFR adopts this language without change. (23 CFR 1200.24(d))

F. Motorcyclist Safety Grants (§ 1200.25)

Unlike the other Section 405 grant programs authorized by MAP–21, only the 50 States, the District of Columbia and Puerto Rico are eligible to apply for a motorcyclist safety grant. The territories are not eligible. The qualification criteria for these grants remain largely unchanged from those required for Motorcyclist Safety grants under section 2010 of SAFETEA–LU. Under MAP–21 States qualify for a grant by meeting two of six grant criteria: Motorcycle Rider Training Courses; Motorcyclists Awareness Program; Reduction of Fatalities and Crashes Involving Motorcycles; Impaired Driving Program; Reduction of Fatalities and Accidents Involving Impaired Motorcyclists; and Use of Fees Collected from Motorcyclists for Motorcycle Programs. (23 U.S.C. 405(f)(3))

1. Motorcycle Rider Training Courses

To qualify for a grant based on this criterion, MAP–21 requires a State to have ''an effective motorcycle rider training course that is offered throughout the State, which (i) provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and (ii) that may include innovative training opportunities to meet unique regional needs.'' (23 U.S.C. 405(f)(3)(A)) This remains unchanged from SAFETEA–LU.

To implement this criterion, the IFR sets forth the elements of motorcycle rider training courses that would meet the requirements of MAP–21. (23 CFR 1200.25(e)) In developing these requirements, the agency was guided by the specific language of MAP–21 and by established motorcycle safety programs and practices implemented under SAFETEA–LU. The MAP–21 language is nearly identical to the statutory language in the predecessor program. For this reason, the agency intends to leave in place the familiar practices and programs established under SAFETEA–LU. The motorcyclist training program is well known to the States and provides significant support for State efforts on motorcyclist training.

In order to provide the formal program of instruction in crash avoidance and other safety-oriented operational skills required by MAP–21, the IFR requires that the State use a curriculum approved by the designated State authority having jurisdiction over motorcyclist safety issues. (23 CFR 1200.25(e)(1)(i)) Although MAP–21 uses the term ''motorcycle rider training'' for this criterion, it defines the term ''motorcyclist safety training'' as a ''formal program of instruction approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or motorcycle advisory council appointed by the Governor of the State.'' (23 U.S.C. 405(f)(5)(C)) NHTSA believes Congress intended the terms to apply synonymously and that Congress defined ''motorcyclist safety training'' in order to give additional meaning to the motorcycle rider training courses criterion. This is reflected in the IFR. (23 CFR 1200.25(b)).

Additionally, because State motorcycle rider training courses typically include both in-class and on-the-motorcycle training and both are critical to the effectiveness of a motorcycle rider training course, the IFR requires that the curriculum include both types of training. (23 CFR 1200.25(e)(1)(i))

To effectuate the MAP–21 requirement that a State offer its effective motorcycle rider training course throughout the State, NHTSA intends to follow the process it applied in the predecessor program. The IFR requires that a State offer at least one motorcycle rider training course in a majority of the State's counties or political subdivisions or offer at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles. (23 CFR 1200.25(e)(1)(ii)) For the purposes of this criterion, majority means greater than 50 percent, and the IFR recognizes that locations for motorcycle rider training courses may vary widely from State to State. Accordingly, the agency believes this requirement provides flexibility to States seeking to qualify under this criterion. To implement the MAP–21 requirements for ''an effective motorcycle rider training course that is offered throughout the State,'' the IFR requires States to submit information regarding the motorcycle rider training courses offered in the 12 months

preceding the due date of the grant application. (23 CFR 1200.25(e)(2)(iii))

NHTSA continues to believe it is important that training reach motorcyclists in rural areas because about half of all motorcycle-related fatalities occur in rural areas. Accordingly, consistent with the practice under SAFETEA–LU, in selecting counties or political subdivisions in which to conduct training, NHTSA encourages States to establish training courses and course locations that are accessible to both rural and urban residents. The IFR provides that the State may offer motorcycle rider training courses throughout the State at established training centers, using mobile training units, or any other method defined as effective by the designated State authority having jurisdiction over motorcyclist safety issues. (23 CFR 1200.25(e)(1)(i))

Another requirement is that motorcycle rider training instructors be certified by either the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability. (23 CFR 1200.25(e)(1)(iii)) Requiring instructors to attain certification in order to teach a motorcycle rider training course will contribute to the course's effectiveness by ensuring that instructors have obtained an appropriate level of expertise qualifying them to instruct less experienced motorcycle riders.

Finally, the IFR requires that, to qualify for a grant under this criterion, a State must carry out quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State. (23 CFR 1200.25(e)(1)(iv)) Quality control procedures promote course effectiveness by encouraging improvements to courses when needed. The IFR does not specify the quality control procedures a State must use. Instead, the IFR requires the State to describe in detail what quality control procedures it uses and the changes the State made to improve courses. (23 CFR 1200.25(e)(2)(v)) At a minimum, a State should gather evaluative information on an ongoing basis (e.g., by conducting site visits or gathering student feedback) and take actions to improve courses based on the information collected.

2. Motorcyclist Awareness Program

To satisfy this criterion, MAP–21 requires a State to have ''an effective statewide program to enhance motorists' awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists.'' (23 U.S.C. 405(f)(3(B)) MAP–21 defines ''Motorcyclist Awareness'' and ''Motorcyclist Awareness Program,'' and these definitions are adopted by the IFR. (23 CFR 1200.25(b))

To implement this criterion, the IFR sets forth the elements of motorcyclist awareness programs that meet the MAP–21 requirements. (23 CFR 1200.25(f)(1)) In developing these requirements, the agency was guided by the specific language of MAP–21, the history of the motorcyclist awareness criterion implemented under SAFETEA–LU and the highway safety guidelines on motorcycle safety.

First, the definition of ''motorcyclist awareness program'' in MAP–21 is identical to the definition under SAFETEA–LU and specifies that a program under this criterion be developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues. Before a problem can be effectively addressed, the agency believes that problem identification and prioritization must be performed. Therefore, the IFR requires the State, consistent with practice under SAFETEA–LU, to include as an element under this criterion problem identification and prioritization through the use of State data. (23 CFR 1200.25(f)(1)(ii)) The IFR also requires that a State's motorcyclist awareness program encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues. (23 CFR 1200.25(f)(1)(iii))

Additionally, the IFR requires that a State's motorcyclist awareness program incorporate a strategic communications plan to support the overall policy and program because this criterion contemplates an informational or public awareness program to enhance motorist awareness of the presence of motorcyclists and because awareness efforts rely heavily on communication strategies and implementation. To ensure statewide application, the IFR requires that the communications plan be designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes, using data from the most recent calendar year, but no older than two calendar years prior to the application due date). For the purposes of this criterion, majority means greater than 50 percent. Finally, based on NHTSA's experience with dispersing traffic safety messages, the IFR requires that a communications plan include marketing and educational efforts and use a variety of communication mechanisms to increase awareness of a problem. (23 CFR 1200.25(f)(1)(iv))

3. Reduction of Fatalities and Crashes Involving Motorcycles

To qualify for a grant based on this criterion, MAP–21 requires a State to experience ''a reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations).'' (23 U.S.C. 405(f)(3(C))

To satisfy this criterion, the IFR requires that, based on final Fatality Analysis Reporting System (FARS) data, the State must experience a reduction of at least one in the number of motorcyclist fatalities for most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), the State must experience at least a whole number reduction (i.e., at least a 1.0 reduction) in the rate of motor vehicle crashes involving motorcycles for the most recent calendar year for which final State crash data is available, but no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year. (E.g., for a grant application submitted on July 1, 2013, a State must provide data from the most recently available crash data, but no older than calendar 2011 year data, which would be compared to the data from the calendar year immediately prior to that year.) (23 CFR 1200.25(g)(1))

The IFR does not use the term ''preceding calendar year'' because NHTSA and most States do not have final FARS and State crash data available for the preceding calendar year at the time of the grant application. However, in order to have the most recent data available, the IFR specifies computing the rates required under this criterion using the most recently available FARS data and State crash data. Using the final FARS data, FHWA motorcycle registration data and State crash data, NHTSA will calculate the rates to determine a State's compliance with this criterion.

Consistent with the predecessor program, using the most recent final FARS data will ensure that the most accurate fatality numbers are used to determine each State's compliance with

this criterion. The FARS contains data derived from a census of fatal traffic crashes within the 50 States, the District of Columbia, and Puerto Rico. All FARS data on fatal motor vehicle crashes are gathered from the States' own documents and coded into FARS formats with common standards. Final FARS data provide the most comprehensive and quality-controlled fatality data available to the agency.

NHTSA will use FHWA motorcycle registration data because it contains reliable motorcycle registration data compiled in a single source for all 50 States, the District of Columbia, and Puerto Rico. The FHWA reports and releases motorcycle registration data annually.

Requiring a whole number reduction (i.e., at least a 1.0 reduction) is consistent with MAP–21's requirement that there be a reduction in the number of fatalities and the rate of motor vehicle crashes involving motorcycles in the State. The agency believes that such a reduction remains meaningful when viewed in light of the increase in motorcycle use and registrations in recent years.

Finally, NHTSA data systems for all 50 States, the District of Columbia and Puerto Rico cover only fatal crashes. No national data system currently exists that covers both crashes resulting in injuries and crashes involving property damage. Accordingly, NHTSA will rely on crash data provided by each State for the crash-related portion of this criterion.

4. Impaired Driving Program

To qualify for a grant based on this criterion, MAP–21 requires that a State implement ''a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation.'' (23 U.S.C. 405(f)(3)(D))

To satisfy this criterion, the IFR requires that a State have an impaired driving program that, at a minimum, uses State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, and includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest. (23 CFR 1200.25(h)(1)) For the purposes of this criterion, ''impaired'' will refer to alcohol-or drug-impaired as defined by State law, provided that the State's legal impairment level does not exceed .08 BAC. *Id.*

NHTSA recognizes that the definition of impairment differs from State to State, but that all States' definitions of alcohol-impaired driving currently include at most a .08 BAC limit. Because of the differences among the States, the IFR allows each State to use its definition of impairment for the purposes of this criterion, provided that the State maintains at most a .08 BAC limit. In order to implement a program to reduce impaired driving, a State would use its own data to perform problem identification and prioritization to reduce impaired driving and impaired motorcycle operation in problem areas in the State.

NHTSA considers a State's program that includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator), to be consistent with the MAP–21 requirement that the impaired driving program under this criterion be implemented statewide. For the purposes of this criterion, majority means greater than 50 percent. Finally, as identified in MAP–21, the IFR requires that a State's impaired driving program include specific countermeasures to reduce impaired motorcycle operation. (23 CFR 1200.25(h)(1)(ii))

5. Reduction of Fatalities and Accidents Involving Impaired Motorcyclists

To qualify for a grant based on this criterion, MAP–21 requires that a State must experience ''a reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol-impaired or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations).'' (23 U.S.C. 405(f)(3)(E))

To satisfy this criterion, the IFR requires that, based on final FARS data, the State must experience a reduction of at least one in the number of fatalities involving alcohol-impaired or drug-impaired motorcycle operators for the most recent calendar year for which final FARS data is available, as compared to the final FARS data for the calendar year immediately prior to that year; and based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), the State must experience at least a whole number reduction (i.e., at least a 1.0 reduction) in the rate of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators in the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year. (23 CFR 1200.25(i)(1))

As with the criterion for reduction of fatalities and crashes involving motorcycles, the IFR does not use the term ''preceding calendar year'' because NHTSA and most States do not have final FARS and State crash data available for the preceding calendar year at the time of the grant application. However, in order to have the most recent data available, the IFR requires computing the rates required under this criterion using the most recently available FARS data and State crash data. Using the final FARS data, FHWA motorcycle registration data and State crash data, NHTSA will calculate the rates to determine a State's compliance with this criterion.

As with the impaired driving program criterion, ''impaired'' refers to alcohol-impaired or drug-impaired as defined by State law, provided that the State's legal alcohol impairment level does not exceed .08 BAC.

The use of FARS data, FHWA motorcycle registration data, and State crash data under this criterion mirror the use of these data under the reduction of fatalities and crashes involving motorcycles, as described above, and the rationale is the same. Additionally, the use of FARS data for this criterion will be particularly helpful because one of the limitations of the State crash data files is unknown alcohol use. In order to calculate alcohol-related crash involvement for a State, NHTSA uses a statistical model based on crash characteristics to impute alcohol involvement in fatal crashes where alcohol use was unknown or not reported.

6. Use of Fees Collected From Motorcyclists for Motorcycle Programs

To qualify for a grant based on this criterion, MAP–21 requires that ''all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety programs.'' (23 U.S.C. 405(f)(3)(F)) Under the IFR, a State may qualify for a grant under this criterion as a ''Law State'' or a ''Data State.'' (23 CFR 1200.25(j)(1)) For the purposes of this criterion, a Law State means a State that has a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of

funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. For the purposes of this criterion, a Data State means a State that does not have such a statute or regulation, but in practice uses all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs. The IFR permits a State to qualify under this criterion as either a Law State or a Data State to provide flexibility to States, and is consistent with the MAP–21 language requiring that all fees collected by a State from motorcyclists for the purposes of funding motorcycle training and safety programs be used for motorcycle training and safety programs.

To qualify for a grant under this criterion as a Law State, the IFR requires that a State have in place the statute or regulation as described above. (23 CFR 1200.25(j)(1)(i)) The State statute or regulation must provide that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. *Id.* In addition, the current State fiscal year law (or preceding State fiscal year law, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs must reflect that all such fees are appropriated to motorcycle training and safety programs. (23 CFR 1200.25(j)(2)(i))

To qualify for a grant under this criterion as a Data State, the IFR requires that a State demonstrate that revenues collected for the purposes of funding motorcycle training and safety programs are placed into a distinct account and expended only for motorcycle training and safety programs. (23 CFR 1200.25(j)(1)(ii)) State data and/or documentation from official records from the previous State fiscal year must show that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. (23 CFR 1200.25(j)(2)(ii)) Such data and/or documentation must show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

7. *Uses of Grant Funds.* MAP–21 specifies with particularity how States may use motorcyclist safety grant funds. The IFR adopts this language without change. (23 CFR 1200.25(l))

G. State Graduated Driver Licensing Grant (§ 1200.26)

In general, a graduated driver's licensing system consists of a multi-staged process for issuing driver's licenses to young, novice drivers to ensure that they gain valuable driving experience under controlled circumstances and demonstrate responsible driving behavior and proficiency. Under a previous NHTSA authorization (TEA–21), Congress provided for the adoption of a GDL system as one means that States could use to satisfy the requirements for an alcohol-impaired driving prevention program incentive grant. (formerly codified at 23 U.S.C. 410) The agency issued a rule implementing those GDL provisions. In 2005, Section 2007 of SAFETEA–LU eliminated the GDL option.

MAP–21 reintroduces an incentive grant for States to adopt and implement GDL laws. The minimum qualification criteria set forth for the GDL grant by MAP–21 are prescriptive; few potential applicants currently meet all of the minimum qualification criteria prescribed by MAP–21. Beyond the minimum qualification criteria, MAP–21 provides discretion to the agency to establish additional requirements. This IFR establishes minimum qualification criteria for the GDL Incentive Grant.

MAP–21 requires NHTSA to seek public comment on how to implement the minimum qualification criteria for the GDL program. Accordingly, on October 5, 2012, NHTSA published an NPRM in the **Federal Register** seeking public comment. 77 FR 60956 (Oct. 5, 2012). The agency received comments from the Governors Highway Safety Association (GHSA), the Insurance Institute for Highway Safety (IIHS), the National Transportation Safety Board (NTSB), and from other entities as follows: four from States, seven from interest groups and safety organizations, three from insurance companies, and four from private citizens. Commenters generally expressed support for the GDL State incentive grant and provided specific feedback on particular aspects of the minimum requirements. The IFR addresses these comments under the relevant headings below.

1. Minimum Qualification Criteria

To qualify for a GDL Incentive Grant, the IFR requires a State to submit an application and certain documentation demonstrating compliance with the minimum qualification criteria specifically established by MAP–21 and with certain other requirements. (23 CFR 1200.26(c)(1)) To receive a grant, MAP–21 requires a State's graduated driver's licensing law to include a learner's permit stage and an intermediate stage meeting the minimum requirements set forth below.

2. Learner's Permit Stage

MAP–21 requires that young, novice drivers complete a GDL program prior to receiving an ''unrestricted driver's license''. Although MAP–21 uses the phrase ''unrestricted driver's license,'' NHTSA has elected not to use that terminology in the IFR. Driver's licenses commonly contain restrictions, such as requirements that the driver wear corrective lenses while operating the motor vehicle. In order to avoid confusion, the IFR uses and defines ''full driver's license'' to mean a license to operate a passenger motor vehicle on public roads at all times. Therefore, the learner's permits and intermediate stage licenses required under this program are not considered full driver's licenses, and neither are restricted licenses (such as those permitting operation of a motor vehicle for limited purposes, and therefore not allowing operation of a passenger motor vehicle at all times).

The IFR requires that a State's GDL system begin with a learner's permit stage that applies to any novice driver who is younger than 21 years of age prior to the receipt by such driver from the State of any other permit or license to operate a motor vehicle. (23 CFR 1200.26(c)(2)(i)(A)) To receive a grant, a State may not issue any other motor vehicle permit or license (including a motorcycle permit or license), to a young, novice driver until he or she completes a GDL program. Because the IFR defines a novice driver as a driver who has not been issued an intermediate license or full driver's license by any State (23 CFR 1200.26(b)), the GDL requirements stop short of covering drivers who have been issued such a license in another State but later become residents of a State with a GDL requirement. However, NHTSA encourages States to integrate new residents who possess intermediate licenses into their GDL programs. Drivers younger than 21 years of age who possess only a learner's permit from another State are still considered novice drivers under the IFR and must satisfy all minimum requirements of the applicable stages.

MAP–21 creates limited exceptions for States that enacted a law prior to January 1, 2011, establishing either of the following two classes of permit or license: a permit or license that allows drivers younger than 18 years of age to

operate a motor vehicle in connection with work performed on, or the operation of, a farm owned by family members who are directly related; or a permit or license that is issued because demonstrable hardship would result from its denial to the licensee or applicant. For the second class of permit or license, the IFR clarifies that a demonstration of unique, individualized hardship is required. Although a driver may possess one of these classes of permits or licenses, the IFR does not permit States to provide them any other permit, license or endorsement until they complete the GDL process if they are younger than 21 years of age. (23 CFR 1200.26(c)(4))

Similar to the Section 410 GDL regulations, the IFR requires that the learner's permit stage commence only after an applicant passes vision and knowledge tests, including tests about the rules of the road, signs, and signals. (23 CFR 1200.26(c)(2)(i)(B)) This ensures that novice drivers have a basic level of competency regarding the rules and requirements of driving before being permitted to operate a motor vehicle on public roadways. As required by MAP–21, the learner's permit stage must be at least six months in duration, and it also may not expire until the driver reaches at least 16 years of age. (23 CFR 1200.26(c)(2)(i)(C))

MAP–21 allows the agency discretion to prescribe additional requirements on a learner's permit holder, and it identifies three potential requirements for the agency's consideration: (1) Accompaniment and supervision by a licensed driver who is at least 21 years of age at all times while the learner's permit holder is operating a motor vehicle, (2) receipt by the permit holder of at least 40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age, and (3) completion by the permit holder of a driver education or training course. The Director of the West Virginia Governor's Highway Safety Program (GHSP) submitted a comment supporting implementation of the first requirement, and GHSA recommended that the supervising adult be required to possess a valid driver's license. In response to these comments, NHTSA has adopted the recommended requirement and has defined ''licensed driver'' to be ''a driver who possess a valid full driver's license.'' (23 CFR 1200.26(b), 1200.26(c)(2)(i)(D)(*1*))

Comments regarding a behind-the-wheel training requirement were more varied. GHSA questioned whether there is definitive research on the amount of supervised driving time that is effective for reducing accidents and fatalities, and suggested that a supervised driving requirement would be ''premature.'' In contrast, several other commenters expressed strong support for minimum requirements for behind-the-wheel training. Nationwide Insurance, Allstate, and Advocates for Highway and Auto Safety expressed support for at least thirty hours of minimum behind-the-wheel training. IIHS, Consumers Union, and the GHSP supported a minimum requirement of forty hours, and State Farm supported a minimum requirement of fifty hours. The IFR adopts the requirement for 40 hours of behind-the-wheel training, consistent with the comments and with the MAP–21 suggested approach. (23 CFR 1200.26(c)(2)(i)(D)(*2*))

GHSA asked whether behind-the-wheel driver training would be provided by public or private providers, or whether it called for supervised behind-the-wheel driving. One individual commenter noted that some people, such as young drivers with single parents, may be unable to satisfy a supervised driving requirement. The IFR requires ''40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age.'' It does not specify that the training be provided by a public or private organization; such training may be provided by anyone who possesses a valid unrestricted driver's license and is at least 21 years of age, including individuals or professional driving instructors. The IFR requirements provide significant flexibility, and the agency does not believe that they will result in undue burden.

NHTSA received numerous comments regarding the value or burden of imposing a driver education or training course requirement on learner's permit holders. GHSA stated that there is mixed evidence regarding the effectiveness of driver training courses, which also tend to be expensive for States to provide. IIHS and State Farm expressed concern about studies showing either little effectiveness or increased crash risk resulting from driver training courses. West Virginia noted that, as a rural State, it has many areas where neither schools nor private companies offer driver training, creating a burden on novice drivers without access to those courses. In contrast, AAA recommended that NHTSA include a basic driver education course requirement. The State of New York Department of Motor Vehicles (New York DMV) asked NHTSA to provide guidance on what would qualify as a ''driver training course'' under the regulations, while both AAA and the NTSB suggested that NHTSA should base any such guidance on the Novice Teen Driver Education and Training Administrative Standards.

Integrating driver education more thoroughly with GDL systems, strengthening driver testing, involving parents in the driver education process and preparing them to manage risks for their new driver, and extending the duration of young driver training may have significant safety benefits. Driver education is a key part of the comprehensive approach needed to reduce tragic young driver crashes. NHTSA further believes that requiring driver education is not overly burdensome, and States can choose to implement the requirement so as to best manage the associated costs. The IFR adopts the driver education or training course requirement and adds the requirement that the course attended by the permit holder be certified by the State. (23 CFR 1200.26(c)(2)(i)(D)(*3*)) NHTSA strongly encourages States to consider establishing driver training curriculum standards based on the national standards recommended in the Driver Education Working Group (*Novice Teen Driver Education and Training Administrative Standards. Report from National Conference on Driver Education.* NHTSA, October 2009).

Finally, consistent with the requirements under the regulations for the predecessor GDL program, the IFR requires a learner's permit holder to pass a driving skills test prior to entering the intermediate stage or being issued another permit, license or endorsement. (23 CFR 1200.26(c)(2)(i)(D)(*4*)) This requirement ensures that all novice drivers who enter the learner's permit stage will be evaluated by the State prior to being permitted to drive unsupervised.

3. Intermediate Stage

Under MAP–21, the State must require that all drivers who complete the learner's permit stage and are younger than 18 years of age enter an intermediate stage that commences immediately upon the expiration of the learner's permit stage. The intermediate stage must be in effect for a period of at least six months, but may not expire until the driver reaches at least 18 years of age. The IFR implements these requirements. (23 CFR 1200.26(c)(2)(ii)(A)–(C)) The New York DMV noted that it issues adult licenses to young drivers who turn 18 years old regardless of how long they have had their intermediate license. Under MAP–21, however, this system would not meet the minimum requirements. While the intermediate stage may not expire

prior to the driver turning 18 years of age, the intermediate stage must *also* last a minimum of six months in duration.

The New York DMV also requested that NHTSA include an exemption such that novice drivers who receive driver education or training may receive an unrestricted driver's license prior to reaching 18 years of age. The State expressed concern that, without such an exemption, there would be no incentive for school districts or parents to provide, or young drivers to take, driver education. The State suggests that this could result in the loss of employment and business for numerous traffic safety instructors and driving schools. As a result, New York DMV requested either the exemption or an analysis under the Regulatory Flexibility Act of 1980 (''RFA'') to minimize or analyze the potential effects on small businesses and small governmental jurisdictions.

MAP–21 does not provide the authority for the exemption New York DMV requests. The statute explicitly requires that the intermediate stage last until the driver reaches 18 years of age. Furthermore, NHTSA does not believe that there will be any adverse impact on driver education businesses or instructors, and therefore no analysis is required under the RFA. First, these regulations require that all learner's permit holders complete a driver education or training course in order to receive an intermediate or unrestricted driver's license. Second, no RFA analysis is required because these regulations do not affirmatively mandate anything that would have a direct impact on small businesses. Rather, MAP–21 and this IFR create an incentive grant program for States that elect to comply; States are free to structure their driver's licensing systems and associated training as they see fit.

MAP–21 requires that a State's intermediate stage ''restricts driving at night,'' but leaves the details of that requirement to the discretion of the agency. NHTSA received numerous comments on how best to address the most dangerous driving hours for novices. Comments generally assumed that the most effective restriction would be to require that the driver be accompanied and supervised by a licensed driver who is at least 21 years of age during some period of the night. The NTSB proposed that the restriction period start no later than midnight. IIHS, the National Safety Council, Nationwide Insurance, State Farm, Allstate, Consumers Union, AAA, and Advocates for Highway and Auto Safety proposed that the mandatory driving restrictions begin at 10 p.m., with many proposing that they end at 5 a.m. In addition, most of those commenters emphasized that there should be no exceptions other than for emergencies. The New York DMV and an individual commenter allowed for exceptions, including for driving related to work and education. Finally, AAA proposed that the restrictions last for at least the first six months of independent driving.

NHTSA agrees that the proper restriction for nighttime driving is to require accompaniment and supervision of the intermediate license holder by a licensed driver who is at least 21 years of age. NHTSA also agrees that a 10 p.m. through 5 a.m. restriction would effectively cover the time period when intermediate drivers are most at risk, and the IFR imposes this requirement. While the IFR provides for exceptions in the case of emergency, it does not permit other exceptions during the restricted driving hours. (23 CFR 1200.26(c)(2)(ii)(D)) Such exceptions may be difficult to enforce and could undermine the safety goals of the restriction.

This IFR also adopts the requirement that, during the intermediate stage, drivers must be prohibited from operating a motor vehicle with more than one non-familial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age is in the motor vehicle. (23 CFR 1200.26(c)(2)(ii)(E)) This restriction is specifically mandated by MAP–21, and the National School Transportation Association commented in support of this requirement.

4. Additional Requirements

MAP–21 requires that, during both the learner's permit and intermediate stages, the driver must be prohibited from using a cellular telephone or any communications device while driving except in case of an emergency. The IFR includes this requirement and specifies that this prohibition be enforced as a primary offense. (23 CFR 1200.26(c)(2)(iii)(A)) The IFR also imposes a requirement that, during both the learner's permit and intermediate stages, the driver must remain conviction-free for a period of not less than six consecutive months immediately prior to the expiration of the current stage. (23 CFR 1200.26(c)(2)(iii)(B)) To remain ''conviction-free,'' a driver cannot be convicted of any offense under State or local law relating to the use or operation of a motor vehicle. The definition provides examples of driving-related offenses. (23 CFR 1200.26(b)) With this requirement, any conviction related to the use or operation of a motor vehicle would result in ''resetting the clock'' for the driver's current stage.

The IFR establishes a requirement for license distinguishability similar to the one in the regulations for the predecessor GDL program. Specifically, it requires that the State's learner's permit, intermediate license, and full driver's license be distinguishable from each other. This is necessary to ensure that law enforcement officers are informed about the proper driving restrictions that apply to the driver during a traffic stop. The IFR also clarifies the documentation grant applicants are required to submit in order to prove license distinguishability. (23 CFR 1200.26(c)(3))

5. Grant Awards and Use of Grant Funds

As required by MAP–21, NHTSA will award grants to States that meet the qualification criteria on the basis of the apportionment formula under 23 U.S.C. 402 for that fiscal year. (23 CFR 1200.26(d)(1)) Because it is possible that few States will qualify for grants during the first few years of the GDL incentive grant program, the IFR imposes a cap on awards to prevent any States from receiving an unanticipated and disproportionate share of the available grant funds. The amount of a grant award may not exceed 10 percent of the total amount made available for the grant for that fiscal year. (23 CFR 1200.26(d)(2))

MAP–21 also specifies the permitted uses of grant funds. The IFR implements those limitations and clarifies the permitted uses where necessary. At least 25 percent of the grant funds must be used for expenses connected with a compliant GDL law. (23 CFR 1200.26(e)(1)) If a State has received grant funds but later falls out of compliance with the minimum requirements established by the IFR, the State will not be permitted to use this portion of the grant funds. No more than 75 percent of the grant funds may be used for any eligible project under 23 U.S.C. 402. (23 CFR 1200.26(e)(2))

The NTSB commented that NHTSA should include an evaluation element to the grant process to ensure that States are using the grants effectively to improve their GDL programs. MAP–21 does not provide for performance-based evaluation requirements as a condition of receiving grant funds. Therefore, NHTSA declines to impose this additional burden on the States. NHTSA will continue to conduct and/or evaluate new research regarding the effectiveness of various elements of GDL programs.

IV. Administration of Highway Safety Grants (Section 402 and 405 Grants)

NHTSA has administered the Section 402 grant program in accordance with implementing regulations found at 23 CFR parts 1200, 1205, 1206, 1250, 1251 and 1252 for many years. Those regulations, which are amended by today's action, contain detailed procedures governing the HSP and administration of the Section 402 grant program. Today's action rescinds part 1205 and updates and incorporates parts 1206, 1250, 1251 and 1252 into part 1200 to improve clarity and organization. (With that incorporation, parts 1206, 1250, 1251, and 1252 are rescinded.) Many of the older provisions in 23 CFR Chapter II contain outdated references to the FHWA and the Annual Work Plan (AWP). Since NHTSA assumed sole responsibility for the administration of the Section 402 program, these references to FHWA and the AWP no longer apply, and today's action deletes these references. However, NHTSA and FHWA continue to work closely to coordinate respective State highway safety programs.

Finally, as discussed in more detail below, today's action amends portions of part 1200 to clarify existing requirements and to provide for improved accountability of Federal funds, and it specifies that the grant administration provisions apply to all 23 U.S.C. Chapter 4 grants.

A. Rescission and Reorganization

Under previous authorizations, the Highway Safety Act required the agency to determine, through a rulemaking process, those programs ''most effective'' in reducing crashes, injuries and deaths. Previously, the Act provided that only those programs established under the rule as most effective in reducing crashes, injuries and deaths would be eligible for Federal financial assistance under the Section 402 grant program. The rule identifying those ''most effective'' programs was set forth at 23 CFR part 1205. Under MAP–21, States may use grant funds more broadly in accordance with an HSP approved by the agency. Accordingly, the agency rescinds part 1205 as it no longer applies.

The old regulations for the Section 402 program are contained throughout Chapter II of Title 23, CFR. The IFR reorganizes parts 1250 and 1252, which establish the agency's policies for determining political subdivision participation in State highway safety programs and State matching of planning and administration (P&A) costs, respectively, by moving these parts into two new appendices to part 1200. (Appendices E and F)

Many of the provisions in § 1200.11, special funding conditions, of the old regulations (for the Section 402 program) identify statutory requirements that States must continue to meet. These conditions are part of the certifications and assurances in Appendix A that States submit as part of the HSP. The IFR retains the non-statutory provisions regarding the P&A costs as special funding conditions in the renumbered § 1200.13. The IFR also increases the State's allowance for P&A costs from 10 percent to 13 percent to help offset the additional costs associated with project-level reporting and oversight of Section 405 grant funds. In addition, as more State highway safety offices transition to implementing e-grant systems to manage their highway safety program, the increased P&A allowance will help with the high start-up costs and regular maintenance costs. (23 CFR 1200.13; Appendix F) No P&A costs are allowed from Section 405 grant funds. Finally, the IFR also adds the new MAP–21 statutory condition that States may not use Section 402 grant funds for automated traffic enforcement systems. (23 CFR 1200.13)

The IFR incorporates part 1251, which describes the authority and functions of the State Highway Safety Agency, into § 1200.4 under subpart A of part 1200. This change clarifies the role of the State Highway Safety Agency in administering the grant programs under Sections 402 and 405. The IFR also updates these provisions to include critical authorities and functions related to the State Highway Safety Agency's responsibility to provide oversight and management of the highway safety program. For example, the State Highway Safety Agency must have the ability to establish and maintain adequate staffing to effectively plan, manage, and provide oversight of highway safety projects. It must also be responsible for monitoring changes in the State statute or regulation that would affect the State's qualification for grants and impact the State's highway safety program. In addition, the State Highway Safety Agency must have ready access to State data systems that are critical to having a data-driven highway safety program. Finally, IFR revises these provisions to reflect applicable laws and regulations and to update language. (23 CFR 1200.4)

Part 1206 under the old regulation provides for the rules of procedure for invoking sanctions under the Highway Safety Act of 1966. The IFR incorporates part 1206, along with old § 1200.26, non-compliance, under a new subpart F of part 1200. The provisions of this subpart remain largely unchanged and are applicable to the Section 402 and 405 grant programs. (23 CFR 1200.50 and 1200.51)

As a result of the reorganization of 23 CFR Chapter II, a number of sections have been renumbered, such as the section on Definitions (23 CFR 1200.3), Equipment (23 CFR 1200.31), Program Income (23 CFR 1200.34), Annual Report (23 CFR 1200.35), Appeals (23 CFR 1200.36), Post-Grant Adjustments (23 CFR 1200.42) and Continuing Requirements (23 CFR 1200.43). The IFR deletes the old provision regarding improvement plans as the agency currently provides recommendations and technical assistance to States that have had little or no progress towards achieving State performance targets. While new definitions have been added (performance measure, project, project agreement), as mentioned in Section II.B. and discussed in Section IV.B., and existing definitions clarified (Highway Safety Plan, highway safety program, program area), no other substantive changes have been made to these provisions.

A number of other requirements apply to the Section 402 and 405 programs, including such government-wide provisions as the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR part 18) and the Office of Management and Budget (OMB) Circulars containing cost principles and audit requirements. These provisions are independent of today's notice, and continue to apply in accordance with their terms.

Several provisions in 23 CFR Chapter III (parts 1313, 1335, 1345 and 1350) pertain to grant programs whose authorizations have expired. Those parts are being rescinded by today's action.

For ease of reference, the provisions that have been reorganized are republished in this notice.

B. New Administrative Procedures of Note

The agency is responsible for overseeing and monitoring implementation of the grant programs to help ensure that recipients are meeting program and accountability requirements. Oversight procedures for monitoring the recipients' use of awarded funds can help the agency determine whether recipients are operating efficiently and effectively. Effective oversight procedures based on internal control standards for monitoring the recipients' use of

awarded funds are key to ensuring that program funds are being spent in a manner consistent with statute and regulation. In order to improve oversight of grantee activities and management of federal funds, the IFR makes changes to the procedures for administering the highway safety grant programs.

1. Program Cost Summary

Since the 1980s, States have used HS Form 217 (program cost summary) to provide cost information for the State highway safety program. States will continue to use this form for Section 402 and Section 405 grants. However, States that allocate the grant funds by program area in the HS Form 217 must also provide a list of projects (and project numbers and estimated amount of Federal funds) that will be conducted under each program area. (23 CFR 1200.32; see also 23 CFR 1200.15) The IFR defines project, project agreement and project number in § 1200.3 to provide clarification so that the agency can better track information submitted by the States.

Each State submits this form as part of its HSP and then submits an updated HSP and HS Form 217 within 30 days after the beginning of the fiscal year or date of award. Some States routinely update their HSP and HS Form 217 throughout the fiscal year of the grant. Today's action amends the regulation to clarify that the Approving Official must approve both the amended HSP and amended HS Form 217. This change is intended to help the agency ensure that grant funds are expended for purposes authorized by statute or regulation (e.g., eligibility of use of grant funds, tracking Federal share, local participation). States must also update the list of projects submitted pursuant to § 1200.11(e). As discussed below, reimbursement of vouchers for projects is subject to receipt by NHTSA of an updated list of projects. (23 CFR 1200.32; see also 23 CFR 1200.15)

2. Additional Documentation for Reimbursement of Expenses

While grantees or recipients have primary responsibility to administer, manage, and account for the use of grant funds, the Federal grant-awarding agency also maintains responsibility for oversight in accordance with applicable laws and regulations. Changes to the regulation are necessary to reflect the complexity of current grant programs and to ensure effective oversight. Today's action requires additional documentation from States when submitting vouchers so that the agency has information linking vouchers to expenditures prior to approving reimbursements and to assist subsequent audits and reviews.

Under the old regulation, States submitted vouchers providing detail only at the program area level. Vouchers will still be submitted at the program area level, but the State must also provide an itemization of project numbers and amount of Federal funds expended for each project for which reimbursement is being sought. This can be provided through the State's summary financial reports. In addition, the project numbers (and amount of Federal funds) for which the State seeks reimbursement must match the list of project numbers (and not exceed the identified amount) submitted to NHTSA pursuant to § 1200.11(e) or amended pursuant to § 1200.32. If there is an inconsistency in either the project number or the amount of Federal funds claimed, the voucher will be rejected, in whole or part, until an amended list of projects and/or estimated amount of Federal funds is submitted to and approved by the Approving Official pursuant to § 1200.32.

As under the old regulation, States must make copies of project agreements and other supporting documentation available for review by the Approving Official. However, the IFR now requires that project agreements bear the project number reported in the list of projects submitted by States pursuant to § 1200.11(e). Supporting documentation must also be retained in a manner that enables the agency to track the expenditures to vouchers and projects. With this change, the agency will be better able to track the State's expenditure of grant funds. (23 CFR 1200.33)

3. Availability of Funds

A fundamental expectation of Congress is that funds made available to States will be used promptly and effectively to address the highway safety problems for which they were authorized. To encourage States to liquidate grant funds in a timely fashion, today's action sets forth the procedures for deobligating grant funds that remain unexpended for long periods. We believe that as States increase the timeliness of their grant fund expenditures, safety outcomes can improve.

Section 402 and 405 grant funds are authorized for apportionment or allocation each fiscal year. Because these funds are made available each fiscal year, it is expected that States will strive to use these grant funds to carry out highway safety programs during the fiscal year of the grant. In the past, expending all of the incentive grant funds within the fiscal year was impractical in part because such funds were awarded late in the fiscal year. States often carried forward unexpended grant funds into the next fiscal year.

With the enactment of MAP–21, NHTSA expects to apportion or allocate grant funds early in the fiscal year. States should, to the fullest extent possible, expend these funds during the fiscal year to meet the intent of the Congress in funding an annual program. To address the issue of unexpended balances, the IFR provides that grant funds are available for expenditure for three years after the last day of the fiscal year of apportionment or allocation. (23 CFR 1200.41(b)) This is consistent with section 31101 of MAP–21 that provides that 23 U.S.C. Chapter 1 applies to the Chapter 4 grant programs. *See* 23 U.S.C. 118 (funds in a State shall remain available for obligation in that State for a period of three years after the last day of the fiscal year for which the funds are authorized). During the last year of availability of funds, NHTSA will notify States of unexpended grant funds subject to this requirement no later than 180 days before the end of the period of availability. *Id.* States may commit such unexpended grant funds to a specific project before the end of the period of the availability. Grant funds committed to a specific project must be expended before the end of the succeeding fiscal year and only on that project. At the end of that time period, unexpended grant funds will lapse, and NHTSA will deobligate unexpended balances. *Id.*

4. Reconciliation

Closeout procedures are intended to ensure that recipients have met all financial requirements, provided final reports, and returned any unused funds. NHTSA's grant programs, especially the Section 402 program, are formula grant programs that continue each fiscal year until rescinded by Congress. Each year States submit Highway Safety Plans detailing their highway safety programs. Under the old regulation, with the approval of the Approving Official, States could extend the right to incur costs for up to 90 days and then submit final vouchers. Any funds remaining at the end of the closeout were carried forward to the next fiscal year.

The IFR continues to provide that the HSP expires at the end of the fiscal year. (23 CFR 1200.40) Unlike the old regulation, the IFR provides that States will no longer be permitted to extend the right to incur costs under the old fiscal year's Highway Safety Plan. However, grant funds remaining at the end of the fiscal year are available for

expenditure during the next fiscal year (unless they have lapsed as explained in the previous section), provided the State has a new HSP approved by the Approving Official and the remaining funds are identified and programmed in the HSP, and in an updated and approved HS Form 217. (23 CFR 1200.41(a))

States will still have 90 days after the end of the fiscal year to submit a final voucher against the old fiscal year's Highway Safety Plan. The Approving Official may extend the time period to submit a final voucher against the old fiscal year's Highway Safety Plan only in extraordinary circumstances. This does not constitute an extension of the right to incur costs under the old fiscal year's Highway Safety Plan. (23 CFR 1200.40)

The additional requirement, noted above, is that the funds must not be from a fiscal year earlier than four years prior. The requirement for an annual report evaluating performance on a fiscal year basis is retained. The IFR also allows for extending the due date for submission of the annual report, subject to approval of the Approving Official.

C. Special Provisions for Fiscal Year 2013 Grants and Prior Fiscal Year Grants

MAP–21 provides that most of the new requirements in Section 402 apply to fiscal year 2014 grants, whose grant applications are due on July 1, 2013. The IFR clarifies that the codified regulations in place at the time of grant award continue to apply to fiscal year 2013 Section 402 grants. (23 CFR 1200.60)

The IFR provides that, except for fiscal year 2013 distracted driving grants, the remaining Section 405 grants will be administered through the provisions set forth in today's action. The application due date is 60 days from the publication date of the IFR. MAP–21 sets forth a single application due date for fiscal year 2014 grants under Chapter 4. The application (the HSP) for fiscal year 2014 Section 402 and 405 grants is due July 1, 2013. (23 CFR 1200.61)

As noted above, the agency recognizes that States will have unexpended balances of grant funds from grant programs that have been rescinded by MAP–21 (before fiscal year 2013). Those grant funds will be governed by the laws and implementing regulations or guidance that were in effect during those grant years (23 CFR 1200.62), and must be tracked separately.

V. Immediate Effective Date and Request for Comments

The Administrative Procedure Act (5 U.S.C. 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. We have determined that it is in the public interest for this final rule to have an immediate effective date. NHTSA is expediting a rulemaking to provide notice to the States of the new requirements for the HSP required by Section 402 and the criteria for different components of the Section 405 grants. The fiscal year 2013 grant funds must be awarded to States before the end of the fiscal year, and States need the time to complete their fiscal year 2013 grant applications. For fiscal year 2014 grants, the statutory grant application due date is July 1, 2013, and States need time to complete these applications as well. Early publication of the rule setting forth the requirements for State applications for multiple grants that have separate qualification requirements is therefore imperative.

For these reasons, NHTSA is issuing this rulemaking as an interim final rule that will be effective immediately. As an interim final rule, this regulation is fully in effect and binding upon its effective date. No further regulatory action by the agency is necessary to make this rule effective. However, in order to benefit from comments which interested parties and the public may have, the agency is requesting that comments be submitted to the docket for this notice.

Specifically, MAP–21 directs NHTSA to use these existing performance measures from the report, ''Traffic Safety Performance Measures for States and Federal Agencies,'' now, and make revisions to the set of performance measures going forward, in coordination with GHSA. (23 U.S.C. 402(k)(4)) In anticipation of such further coordination by NHTSA and GHSA in revising the performance measures, NHTSA is seeking comment in this IFR on ways to improve data requirements from States, improve performance measures and criteria, possible additional performance measures to be considered, and test and analyze the effectiveness of programs based on these performance measures to help inform the allocation of resources. In particular, we seek public comment on whether the measures are capturing the correct outcomes and whether the measures and the data submitted by the States enable NHTSA and States to test and identify the cost-effectiveness of highway safety grant programs.

Comments received in response to this notice, as well as continued interaction with interested parties and the public during fiscal years 2013 and 2014, will be considered for making future changes to the programs through these rule provisions. Following the close of the comment period, the agency will publish a notice responding to the comments and, if appropriate, the agency will amend the provisions of this rule.

For ease of reference, the IFR sets forth in full the revised part 1200.

VI. Regulatory Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and to the requirements of the Executive Order. Executive Order 13563 supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. In accordance with Executive Orders 12866 and 13563, this rulemaking was reviewed by OMB and designated by OMB as a ''significant regulatory action.'' A ''significant regulatory action'' is defined as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The annual amount authorized by MAP–21 for highway safety grants ($500 million in FY 2013 and $507 million in FY 2014) exceeds the $100 million threshold. However, the annual amount authorized by SAFETEA–LU for highway safety grants was $564 million in FY 2012. MAP–21 grant programs replace SAFETEA–LU grant programs. The difference in the amount of grant funds authorized for highway safety

grants from the Highway Trust Fund in MAP–21 is less than $100 million than was authorized under SAFETEA–LU. In addition, MAP–21 authorizes two new grants (distracted driving and graduated driver licensing) that were not available under SAFETEA–LU. These two grants account for less than $27 million, much less than $100 million.

MAP–21 highway safety grants are non-discretionary grants directly authorized by Congress. NHTSA's action details grant application procedures and qualification criteria; it does not impact the aggregate amount of grant funds distributed to the States. That amount is specified by MAP–21, as is the manner of distribution—most of the funds are required by MAP–21 to be awarded to qualifying States through a formula (75 percent in the ratio of the State population to the total population and 25 percent in the ratio of public road mileage in the State to the total road mileage in the United States, with a specified minimum apportionment for the Section 402 program). A minor exception is that, consistent with past practice, the rule applies the statutory formula in two cases where MAP–21 does not mandate its application, affecting less than $28 million annually.

The statutory distribution formula continued under MAP–21 for State highway safety grants has been in place for decades. MAP–21 directs NHTSA to ''ensure, to the maximum extent possible, that all [grant funds] are obligated during [the] fiscal year.'' These statutory provisions—the distribution formula and the direction to obligate all grant funds—are prescriptive, and leave little room for discretion. Consequently, the rule does not confer any benefit on the economy that goes beyond what Congress has already specified in law to be distributed in these non-discretionary grants, nor does the rule materially alter the grants' budgetary impacts or the rights or obligations of grant recipients. The rule also does not create an inconsistency or otherwise interfere with an action taken or planned by another agency.

The following information is provided for general information about the benefits of the grants. Based on the statutory formula, FY 2013 grants for States to conduct highway safety programs under the Section 402 grant program (totaling $235 million) range from $21.2 million for the State of California to $1.7 million for 13 States and the District of Columbia (minimum apportionment), and all States receive a distribution. MAP–21 generally prescribes the criteria for the Section 405 grants (totaling $265 million for six grants in FY 2013), and NHTSA has limited discretion in this rulemaking to implement these criteria. However, given differing levels of interest among States and competing State priorities, it is possible that the qualification criteria for the Section 405 grants could result in some States failing to apply or to qualify for some of these grants. NHTSA cannot predict the spread of annual Section 405 grant applications and awards with precision, and therefore we cannot assess likely allocation effects, but it remains true that all Section 405 grant funds will be distributed by operation of the statute.

In the aggregate, the highway safety grant funds required to be distributed under MAP–21 are the driving influence behind the traffic safety activities implemented by all the States (including the District of Columbia, Puerto Rico, the four territories, and the Indian Country), as they have been under previous authorizations for many years. From 2006 to 2010, highway fatalities have decreased by 23 percent and highway injuries have decreased by 13 percent. The traditionally most significant areas of highway safety activities under the formula grant program—occupant protection and alcohol programs—have experienced similarly dramatic safety benefits over the same five-year period. Unbelted passenger vehicle occupant fatalities have decreased by 33 percent and alcohol-impaired driving fatalities have decreased by 24 percent.

The central purpose of the rule is to set forth the application procedures for States seeking highway safety grant funds, and also to identify the MAP–21 qualification criteria for receiving grant funds. While complying with the application procedures is a requirement for receiving grant funds, and the requirement for States to submit a ''highway safety plan'' as part of this application is directed by statute, the rule does not impose any mandate on States to submit an application. However, should a State choose to do so, there are some costs and burdens associated with the application process. The agency is seeking emergency clearance from OMB under the Paperwork Reduction Act (PRA) for FY 2013 grant applications, and elsewhere in this document we detail the estimated costs and burden hours associated with the State application process. Interested persons should consult that information. NHTSA intends to submit a request for PRA clearance for the highway safety grant program under the non-emergency process in the near future. Because MAP–21 introduces a single application process, enabling States to submit one application for all grants rather than the separate applications for individual grants required under previous authorizations, burdens on State resources are likely to be substantially reduced.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This IFR is a rulemaking that will implement new grant programs enacted by Congress in MAP–21. Under these grant programs, States will receive funds if they meet the application and qualification requirements. These grant programs will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255 (August 10, 1999). ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132, and has determined that this IFR would not have sufficient Federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement. However, NHTSA continues to engage with State representatives regarding general implementation of MAP–21, including these grant programs, and expects to continue these informal dialogues.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), ''Civil Justice Reform,'' the agency has considered whether this proposed rule would have any retroactive effect. I conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. This rule does not concern an environmental, health, or safety risk that may have a disproportionate effect on children.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The grant applications and reporting requirements in this IFR are considered to be a collection of information subject to requirements of the PRA. Because the agency cannot reasonably comply with the submission time periods under the PRA and provide States sufficient time to apply for the grants to be awarded in fiscal year 2013, the agency is seeking emergency clearance for information collection related to the fiscal year 2013 Section 405 grants. The agency is proceeding under the regular PRA clearance process for the collection of information related to grants beginning with fiscal year 2014 grants. Accordingly, in compliance with the PRA, we announce that NHTSA is seeking comment on a new information collection for grant applications and reporting requirements beginning with fiscal year 2014 grants.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: State Highway Safety Grant Programs.

Type of Request: New collection.

OMB Control Number: Not assigned.

Form Number: N/A (Highway Safety Plan); HS Form 217.

Requested Expiration Date of Approval: Three years from the approval date.

Summary of Collection of Information: On July 6, 2012, the President signed into law the ''Moving Ahead for Progress in the 21st Century Act'' (MAP–21), Public Law 112–141, which restructured and made various substantive changes to the highway safety grant programs administered by the National Highway Traffic Safety Administration (NHTSA). Specifically, MAP–21 modified the existing formula grant program codified at 23 U.S.C. 402 (Section 402) by requiring States to develop and implement the State highway safety program using performance measures.

MAP–21 also rescinded a number of separate incentive grant programs that existed under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, and replaced them with the ''National Priority Safety Programs,'' codified in a single section of the United States Code (23 U.S.C. 405 (Section 405)). The National Priority Safety Programs include Occupant Protection, State Traffic Safety Information Systems, Impaired Driving Countermeasures, Motorcyclist Safety, and two new grant programs—Distracted Driving and State Graduated Driver Licensing. MAP–21 specifies a single application deadline for all highway safety grants and directs NHTSA to establish a consolidated application process, using the Highway Safety Plan that States have traditionally submitted for the Section 402 program. *See* Sections 31101(f) and 31102, MAP–21.

The statute provides that the Highway Safety Plan is the application for grants under 23 U.S.C. 402 and 405 each fiscal year. The information collected under this rulemaking is to include a Highway Safety Plan consisting of information on the highway safety planning process, performance plan, highway safety strategies and projects, performance report, program cost summary (HS Form 217) and list of projects, certifications and assurances, and application for Section 405 grants. *See* 23 CFR 1200.10. After award of grant funds, States are required to update the program cost summary (HS Form 217) and the list of projects. *See* 23 CFR 1200.15.

Description of the Need for the Information and Use of the Information: As noted above, the statute provides that the Highway Safety Plan is the application for grants under 23 U.S.C. 402 and 405 each fiscal year. This information is necessary to determine whether a State satisfies the criteria for a grant award under Section 402 and Section 405.

Description of the Likely Respondents: 57 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of the Indian Country).

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:

The Highway Safety Plan (HSP) is a planning document for a State's entire traffic safety program and outlines the countermeasures, program activities, and funding for key program areas as identified by State and Federal data and problem identification. By statute, States must submit and NHTSA must approve the HSP as a condition of Section 402 grant funds. MAP–21 also requires States to submit its Section 405 grant application as part of the HSP. States must submit the HSP each fiscal year in order to qualify for Section 402 and 405 grant funds.

The estimated burden hours for the collection of information are based on all eligible respondents (i.e., applicants) for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columba, Puerto Rico,

U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior);

• Section 405(f) grants: 52 (fifty States, the District of Columbia, and Puerto Rico);

• Section 405(a)–(e), (g) grants: 56 (fifty States, the District of Columba, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

We estimate that it will take each respondent approximately 240 hours to collect, review, and submit the reporting information to NHTSA for the Section 402 program. We further estimate that it will take each respondent approximately 180 hours to collect, review, and submit the reporting information to NHTSA for the Section 405 program. During the fiscal year the States prepare a HS Form 217 initially and are required to change the funding category amounts 30 days after Section 402 and 405 funding is received. Each respondent will produce approximately forty HS Form 217s annually. It takes approximately ½ hour or less to complete the document. Therefore, we estimate that it will take each respondent approximately 20 hours to complete the HS Form 217 each year. Based on the above information, the estimated annual burden hours for all respondents are 25,080 hours.

Assuming the average salary of these individuals is $50.00 per hour, the estimated cost for each respondent is $22,000; the estimated total cost for all respondents is $1,254,000.

These estimates present the highest possible burden hours and amounts possible. All States do not apply for and receive a grant each year under each of these programs.

NHTSA notes that under the previous authorization, SAFETEA–LU, States submitted applications separately throughout the fiscal year for various grants (highway safety programs, occupant protection incentive grants, safety belt performance grants, State traffic safety information system improvements, alcohol-impaired driving countermeasures, motorcyclist safety, child safety and child booster seat safety incentive grants). Under the consolidated grant application process, NHTSA estimates that the overall paperwork burden on the States will be reduced by this rulemaking.

Comments are invited on:

• Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.

• Whether the Department's estimate for the burden of the information collection is accurate.

• Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by March 25, 2013.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. We have determined that no voluntary consensus standards apply to this action.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). This IFR would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

I. National Environmental Policy Act

NHTSA has considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this IFR would not have a significant impact on the quality of the human environment.

J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

K. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this IFR under Executive Order 13175, and has determined that today's action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

L. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

• Have we organized the material to suit the public's needs?

• Are the requirements in the rule clearly stated?

• Does the rule contain technical language or jargon that isn't clear?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

• Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this IFR.

M. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. MAP–21 requires NHTSA to award highway safety grants pursuant to rulemaking and separately requires NHTSA to establish minimum requirements for the graduated driver licensing (GDL) grant in accordance with the notice and comment provisions

of the Administrative Procedure Act. (Section 31101(d), MAP–21; 23 U.S.C. 405(g)(3)(A)) For this reason, the Department assigned two separate RINs for each regulatory action—GDL and interim final rule. On October 25, 2012, NHTSA published a separate notice of proposed rulemaking for the GDL grant. (77 FR 60956) As stated in NPRM, NHTSA is combining the GDL regulatory action into this interim final rule.

The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

N. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects in 23 CFR Parts 1200, 1205, 1206, 1250, 1251, 1252, 1313, 1335, 1345, and 1350

Grant programs—Transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure, Alcohol abuse, Drug abuse, Motor vehicles—motorcycles.

For the reasons discussed in the preamble, under the authority of 23 U.S.C. 401 et seq., the National Highway Traffic Safety Administration amends 23 CFR Chapter II and Chapter III as follows:

■ 1. Revise part 1200 to read as follows:

PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

Sec.

Subpart A—General

1200.1 Purpose.
1200.2 Applicability.
1200.3 Definitions.
1200.4 State Highway Safety Agency—Authority and Functions.
1200.5 Due Dates—Interpretation.

Subpart B—Highway Safety Plan

1200.10 General.
1200.11 Contents.
1200.12 Due Date for Submission.
1200.13 Special Funding Conditions for Section 402 Grants.
1200.14 Review and Approval Procedures.
1200.15 Apportionment and Obligation of Federal Funds.

Subpart C—National Priority Safety Program Grants

1200.20 General.
1200.21 Occupant Protection Grants.
1200.22 State Traffic Safety Information System Improvements Grants.
1200.23 Impaired Driving Countermeasures Grants.
1200.24 Distracted Driving Grants.
1200.25 Motorcyclist Safety Grants.
1200.26 State Graduated Driver Licensing Grants.

Subpart D—Administration of the Highway Safety Grants

1200.30 General.
1200.31 Equipment.
1200.32 Changes—Approval of the Approving Official.
1200.33 Vouchers and Project Agreements.
1200.34 Program Income.
1200.35 Annual Report.
1200.36 Appeals of Written Decision by Approving Official.

Subpart E—Annual Reconciliation

1200.40 Expiration of the Highway Safety Plan.
1200.41 Disposition of Unexpended Balances.
1200.42 Post-Grant Adjustments.
1200.43 Continuing Requirements.

Subpart F—Noncompliance

1200.50 General.
1200.51 Sanctions—Reduction of Apportionment.

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Authority: 23 U.S.C. 402; 23 U.S.C. 405; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 1200.1 Purpose.

This part establishes uniform procedures for State highway safety programs authorized under Chapter 4, Title 23, United States Code.

§ 1200.2 Applicability.

The provisions of this part apply to highway safety programs authorized under 23 U.S.C. 402 beginning fiscal year 2014 and, except as specified in § 1200.24(a), to national priority safety programs authorized under 23 U.S.C. 405 beginning fiscal year 2013.

§ 1200.3 Definitions.

As used in this part—

Approving Official means a Regional Administrator of the National Highway Traffic Safety Administration.

Carry-forward funds means those funds that a State has not expended on projects in the fiscal year in which they were apportioned or allocated, that are being brought forward and made available for expenditure in a subsequent fiscal year.

Contract authority means the statutory language that authorizes an agency to incur an obligation without the need for a prior appropriation or further action from Congress and which, when exercised, creates a binding obligation on the United States for which Congress must make subsequent liquidating appropriations.

Fiscal year means the Federal fiscal year, consisting of the 12 months beginning each October 1 and ending the following September 30.

Governor means the Governor of any of the fifty States, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

Governor's Representative for Highway Safety means the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), an official of the Bureau of Indian Affairs or other Department of Interior official who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

Highway Safety Plan (HSP) means the document, coordinated with the State strategic highway safety plan as defined in 23 U.S.C. 148(a), that the State submits each fiscal year as its application for highway safety grants, which describes the strategies and projects the State plans to implement and the resources from all sources it plans to use to achieve its highway safety performance targets.

Highway safety program means the planning, strategies and performance measures, and general oversight and

management of highway safety strategies and projects by the State either directly or through sub-recipients to address highway safety problems in the State. A State highway safety program is defined in the annual Highway Safety Plan and any amendments.

MAP–21 or ''Moving Ahead for Progress in the 21st Century Act'' means Public Law 112–141.

NHTSA means the National Highway Traffic Safety Administration.

Program area means any of the national priority safety program areas identified in 23 U.S.C. 405 or a program area identified by the State in the highway safety plan as encompassing a major highway safety problem in the State and for which documented effective or projected by analysis to be effective countermeasures have been identified.

Project means any undertaking or activity proposed or implemented with grant funds under 23 U.S.C. Chapter 4.

Project agreement means a written agreement at the State level or between the State and a subgrantee or contractor under which the State agrees to provide 23 U.S.C. Chapter 4 funds in exchange for the subgrantee's or contractor's performance of one or more undertakings or activities supporting the highway safety program.

Project number means a unique identifier assigned by a State to each project in the HSP.

Public road means any road under the jurisdiction of and maintained by a public authority and open to public travel.

Section 402 means section 402 of title 23 of the United States Code.

Section 405 means section 405 of title 23 of the United States Code.

State means, except as provided in § 1200.25(b), any of the fifty States of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

State highway safety improvement program means the program defined in section 148(a)(11) of title 23 of the United States Code.

State strategic highway safety plan means the plan defined in section 148(a)(12) of title 23, United States Code.

§ 1200.4 State Highway Safety Agency—Authority and Functions.

(a) *Policy.* In order for a State to receive grant funds under this part, the Governor shall exercise responsibility for the highway safety program through a State Highway Safety Agency that has adequate powers and is suitably equipped and organized to carry out the State's highway safety program.

(b) *Authority.* Each State Highway Safety Agency shall be authorized to—

(1) Develop and execute the Highway Safety Plan and highway safety program in the State;

(2) Obtain information about programs to improve highway safety and projects administered by other State and local agencies;

(3) Maintain or have ready access to information contained in State highway safety data systems, including crash, citation, adjudication, emergency medical services/injury surveillance, roadway and vehicle record keeping systems, and driver license data;

(4) Periodically review and comment to the Governor on the effectiveness of programs to improve highway safety in the State from all funding sources that the State plans to use for such purposes;

(5) Provide financial and technical assistance to other State agencies and political subdivisions to develop and carry out highway safety strategies and projects; and

(6) Establish and maintain adequate staffing to effectively plan, manage, and provide oversight of highway safety projects approved in the Highway Safety Plan.

(c) *Functions.* Each State Highway Safety Agency shall—

(1) Develop and prepare the Highway Safety Plan based on evaluation of highway safety data, including crash fatalities and injuries, roadway, driver and other data sources to identify safety problems within the State;

(2) Establish highway safety projects to be funded within the State under 23 U.S.C. Chapter 4 based on identified safety problems and priorities;

(3) Provide direction, information and assistance to sub-grantees concerning highway safety grants, procedures for participation, and development of projects;

(4) Encourage and assist sub-grantees to improve their highway safety planning and administration efforts;

(5) Review and approve, and evaluate the implementation and effectiveness of State and local highway safety programs and projects from all funding sources that the State plans to use under the HSP, and approve and monitor the expenditure of grant funds awarded under 23 U.S.C. Chapter 4;

(6) Assess program performance through analysis of highway safety data and data-driven performance measures;

(7) Ensure that the State highway safety program meets the requirements of 23 U.S.C. Chapter 4 and applicable Federal and State laws, including but not limited to the standards for financial management systems required under 49 CFR 18.20;

(8) Ensure that all legally required audits of the financial operations of the State Highway Safety Agency and of the use of highway safety grant funds are conducted;

(9) Track and maintain current knowledge of changes in State statute or regulation that could affect State qualification for highway safety grants or fund transfer programs; and

(10) Coordinate the Highway Safety Plan and highway safety data collection and information systems activities with other federally and non-federally supported programs relating to or affecting highway safety, including the State strategic highway safety plan as defined in 23 U.S.C. 148(a).

§ 1200.5 Due Dates—Interpretation.

If any deadline or due date in this part falls on a Saturday, Sunday or Federal holiday, the applicable deadline or due date shall be the next business day.

Subpart B—Highway Safety Plan

§ 1200.10 General.

Beginning with grants authorized in fiscal year 2014, to apply for any highway safety grant under 23 U.S.C. Chapter 4, a State shall submit a Highway Safety Plan meeting the requirements of this subpart.

§ 1200.11 Contents.

Each fiscal year, the State's Highway Safety Plan shall consist of the following components:

(a) *Highway safety planning process.* (1) A brief description of the data sources and processes used by the State to identify its highway safety problems, describe its highway safety performance measures and define its performance targets, develop and select evidence-based countermeasure strategies and projects to address its problems and achieve its performance targets. In describing these data sources and processes, the State shall identify the participants in the processes (e.g., highway safety committees, program stakeholders, community and constituent groups), discuss the strategies for project selection (e.g., constituent outreach, public meetings, solicitation of proposals), and list the information and data sources consulted (e.g., *Countermeasures That Work,* Sixth Edition, 2011).

(2) A description of the efforts to coordinate and the outcomes from the

coordination of the highway safety plan, data collection, and information systems with the State strategic highway safety plan (as defined in 23 U.S.C. 148(a)).

(b) *Performance plan.* A performance plan containing the following elements:

(1) A list of annual quantifiable and measurable highway safety performance targets that is data-driven, consistent with the Uniform Guidelines for Highway Safety Program and based on highway safety problems identified by the State during the planning process conducted under paragraph (a) of this section.

(2) Performance measures developed by DOT in collaboration with the Governor's Highway Safety Association and others, beginning with the MAP–21 directed ''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025), which are used as a minimum in developing the performance targets identified in paragraph (b)(1) of this section. Beginning with grants awarded after fiscal year 2014, the performance measures common to the State's HSP and the State highway safety improvement program (fatalities, fatality rate, and serious injuries) shall be defined identically, as coordinated through the State strategic highway safety plan. At least one performance measure and performance target that is data driven shall be provided for each program area that enables the State to track progress, from a specific baseline, toward meeting the target (e.g., a target to ''increase seat belt use from X percent in Year 1 to Y percent in Year 2,'' using a performance measure of ''percent of restrained occupants in front outboard seating positions in passenger motor vehicles''). For each performance measure, the State shall provide:

(i) Documentation of current safety levels;

(ii) Quantifiable annual performance targets; and

(iii) Justification for each performance target that explains why the target is appropriate and data-driven.

(3) Additional performance measures, not included under paragraph (b)(2) of this section. For program areas where performance measures have not been jointly developed, a State shall develop its own performance measures and performance targets that are data-driven (e.g., distracted driving, bicycles). The State shall provide the same information as required under paragraph (b)(2) of this section.

(c) *Highway safety strategies and projects.* A description of—

(1) Each countermeasure strategy and project the State plans to implement to reach the performance targets identified in paragraph (b) of this section. At a minimum, the State shall describe one year of Section 402 and 405 countermeasure strategies and projects (which should include countermeasure strategies identified in the State strategic highway safety plan) and shall identify funds from other sources, including Federal, State, local, and private sector funds, that the State plans to use for such projects or use to achieve program area performance targets.

(2) The State's process for selecting the countermeasure strategies and projects described in paragraph (c)(1) of this section to allow the State to meet the highway safety performance targets described in paragraph (b) of this section. At a minimum, the State shall provide an assessment of the overall traffic safety impacts of the strategies chosen and proposed or approved projects to be funded.

(3) The data and data analysis or other documentation supporting the effectiveness of proposed countermeasure strategies described in paragraph (c)(1) of this section (e.g., the State may include information on the cost effectiveness of proposed countermeasure strategies, if such information is available).

(4) The evidence-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. At a minimum, the State shall provide for—

(i) An analysis of crashes, crash fatalities, and injuries in areas of highest risk;

(ii) Deployment of resources based on that analysis; and

(iii) Continuous follow-up and adjustment of the enforcement plan.

(5) The planned high visibility enforcement strategies to support national mobilizations.

(d) *Performance report.* A program-area-level report on the State's success in meeting State performance targets from the previous fiscal year's Highway Safety Plan.

(e) *Program cost summary and list of projects.* (1) HS Form 217, meeting the requirements of Appendix B, completed to reflect the State's proposed allocations of funds (including carry-forward funds) by program area. The funding level used shall be an estimate of available funding for the upcoming fiscal year based on amounts authorized for the fiscal year and projected carry-forward funds.

(2) For each program area, an accompanying list of projects that the State proposes to conduct for that fiscal year and an estimated amount of Federal funds for each such project.

(f) *Certifications and assurances.* Appendix A—Certifications and Assurances for Section 402 Grants, signed by the Governor's Representative for Highway Safety, certifying the HSP application contents and providing assurances that the State will comply with applicable laws and regulations, financial and programmatic requirements, and, in accordance with § 1200.13 of this part, the special funding conditions for the Section 402 program.

(g) *Teen Traffic Safety Program.* If the State elects to include the Teen Traffic Safety Program authorized under 23 U.S.C. 402(m), a description of projects that the State will conduct as part of the Teen Traffic Safety Program—a statewide program to improve traffic safety for teen drivers—and the assurances in Appendix C, signed by the Governor's Representative for Highway Safety.

(h) *Section 405 grant application.* Application for any of the national priority safety program grants, in accordance with the requirements of subpart C, including Appendix D—Certifications and Assurances for Section 405 Grants, signed by the Governor's Representative for Highway Safety.

§ 1200.12 Due Date for Submission.

(a) Except as specified under § 1200.61(a), a State shall submit its Highway Safety Plan electronically to the NHTSA regional office no later than July 1 preceding the fiscal year to which the Highway Safety Plan applies.

(b) Failure to meet this deadline may result in delayed approval and funding of a State's Section 402 grant or disqualification from receiving Section 405 grants.

§ 1200.13 Special Funding Conditions for Section 402 Grants.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under § 1200.14 of this part shall be deemed to incorporate these conditions:

(a) *Planning and administration costs.* (1) Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 13 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian

Country, as defined by 23 U.S.C. 402(h), is exempt from the provisions of P&A requirements. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs. Determinations of P&A shall be in accordance with the provisions of Appendix F.

(2) P&A tasks and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module.

(b) *Automated traffic enforcement systems prohibition.* The State may not expend funds apportioned to the State under 23 U.S.C. 402 to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. The term ''automated traffic enforcement system'' includes any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

§ 1200.14 Review and Approval Procedures.

(a) *General.* Upon receipt and initial review of the Highway Safety Plan, NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Failure to respond promptly to a request for additional information concerning the Section 402 grant application may result in delayed approval and funding of a State's Section 402 grant. Failure to respond promptly to a request for additional information concerning any of the Section 405 grant applications may result in a State's disqualification from consideration for a Section 405 grant.

(b) *Approval and disapproval of Highway Safety Plan.* Within 60 days after receipt of the Highway Safety Plan under this subpart—

(1) For Section 402 grants, the Approving Official shall issue—

(i) A letter of approval with conditions, if any, to the Governor and the Governor's Representative for Highway Safety; or

(ii)(A) A letter of disapproval to the Governor and the Governor's Representative for Highway Safety informing the State of the reasons for disapproval and requiring resubmission of the Highway Safety Plan with proposed modifications necessary for approval; and

(B) A letter of approval or disapproval upon resubmission of the Highway Safety Plan within 30 days after NHTSA receives the revised Highway Safety Plan.

(2) For Section 405 grants—

(i) The NHTSA Administrator shall notify States in writing of Section 405 grant awards and specify any conditions or limitations imposed by law on the use of funds; or

(ii) The Approving Official shall notify States in writing if a State's application does not meet the qualification requirements for any of the Section 405 grants.

§ 1200.15 Apportionment and Obligation of Federal Funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year, or soon thereafter, the NHTSA Administrator shall, in writing, distribute funds available for obligation under 23 U.S.C. Chapter 4 to the States and specify any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year the NHTSA Administrator may, in writing, distribute a part of the funds authorized under 23 U.S.C. Chapter 4 contract authority to the States to ensure program continuity, and in that event shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of grant funds, the NHTSA Administrator shall, in writing, promptly adjust the obligation limitation, and specify any conditions or limitations imposed by law on the use of the funds.

(c) Funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the States to satisfy the Federal share of expenses under the approved Highway Safety Plan, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document. Such funds shall be available for expenditure by the States as provided in § 1200.41(b), after which the funds shall lapse.

(d) Notwithstanding the provisions of paragraph (c) of this section—

(1) Reimbursement of State expenses for Section 402 grant funds shall be contingent upon the submission of an updated HS Form 217 and an updated project list that includes project numbers for each project within 30 days after the beginning of the fiscal year or the date of the written approval provided under § 1200.14(b)(1) of this part, whichever is later, and approval of the updated HS Form 217 by the Approving Official.

(2) Reimbursement of State expenses for Section 405 grant funds shall be contingent upon the submission of an updated Highway Safety Plan, HS Form 217, and project list to address the grant funds awarded under subpart C, within 30 days after the beginning of the fiscal year or the date of the grant award notice provided under § 1200.14(b)(2), whichever is later, and approval of the updated Highway Safety Plan and HS Form 217 by the Approving Official. Submitting the updated Highway Safety Plan and HS Form 217 is a precondition to reimbursement of grant expenses.

(3) The updated HS Form 217 required under paragraphs (d)(1) and (d)(2) of this section shall reflect the State's allocation of grant funds made available for expenditure during the fiscal year, including carry-forward funds. Within each program area, the State shall provide a project list to be conducted during the fiscal year.

Subpart C—National Priority Safety Program Grants

§ 1200.20 General.

(a) *Scope.* This subpart establishes criteria, in accordance with 23 U.S.C. 405, for awarding grants to States that adopt and implement programs and laws to address national priorities for reducing highway deaths and injuries.

(b) *Definitions.* As used in this subpart—

Blood alcohol concentration or *BAC* means grams of alcohol per deciliter or 100 milliliters blood, or grams of alcohol per 210 liters of breath.

FARS means NHTSA's Fatality Analysis Reporting System.

Majority means greater than 50 percent.

Passenger motor vehicle means a passenger car, pickup truck, van, minivan or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds.

Personal wireless communications device means a device through which personal wireless services (commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services) are transmitted, but does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

Primary offense means an offense for which a law enforcement officer may stop a vehicle and issue a citation in the absence of evidence of another offense.

(c) *Eligibility.* Except as provided in § 1200.25(c), the 50 States, the District of Columbia, Puerto Rico, American

Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands are each eligible to apply for national priority safety program grants under this subpart.

(d) *Qualification based on State statutes.* Whenever a State statute is the basis for a grant award under this subpart, such statute shall have been enacted by the application due date and be in effect and enforced, without interruption, by the beginning of and throughout the fiscal year of the grant award.

(e) *Award determinations and transfer of funds.*

(1) Except as in provided § 1200.26(d), the amount of a grant award to a State in a fiscal year under this subpart shall be determined by applying the apportionment formula under 23 U.S.C. 402(c) for fiscal year 2009 to all qualifying States, in proportion to the amount each such State received under 23 U.S.C. 402(c) for fiscal year 2009, so that all available amounts are distributed to qualifying States to the maximum extent practicable.

(2) Notwithstanding paragraph (e)(1) of this section, and except as provided in § 1200.25(k), a grant awarded to a State in a fiscal year under this subpart may not exceed 10 percent of the total amount made available for that section for that fiscal year.

(3) If it is determined after review of applications that funds for a grant program under this subpart will not all be distributed, such funds shall be transferred to other programs authorized under 23 U.S.C. 402 and 405 to ensure, to the maximum extent practicable, that each State receives the maximum funding for which it qualifies.

(f) *Matching.* The Federal share of the costs of activities or programs funded using amounts from grants awarded under this subpart may not exceed 80 percent.

§ 1200.21 Occupant protection grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or not properly restrained in motor vehicles.

(b) *Definitions.* As used in this section—

Child restraint means any device (including a child safety seat, booster seat used in conjunction with 3-point belts, or harness, but excluding seat belts) that is designed for use in a motor vehicle to restrain, seat, or position a child who weighs 65 pounds (30 kilograms) or less and that meets the Federal motor vehicle safety standard prescribed by the National Highway Traffic Safety Administration for child restraints.

High seat belt use rate State means a State that has an observed seat belt use rate of 90.0 percent or higher (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340 (e.g., for a grant application submitted on July 1, 2014, the ''previous calendar year'' would be 2013).

Lower seat belt use rate State means a State that has an observed seat belt use rate below 90.0 percent (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340 (e.g., for a grant application submitted on July 1, 2014, the ''previous calendar year'' would be 2013).

Seat belt means, with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt, and with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

Problem identification means the data collection and analysis process for identifying areas of the State, types of crashes, or types of populations (e.g., high-risk populations) that present specific safety or usage challenges in efforts to improve occupant protection.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a high seat belt use rate State or as a lower seat belt use rate State, in accordance with paragraph (d) or (e) of this section, as applicable.

(d) *Qualification criteria for a high seat belt use rate State.* To qualify for an occupant protection grant in a fiscal year, a high seat belt use rate State (as determined by NHTSA) shall submit an executed Part 1 of Appendix D and the following documentation:

(1) *Occupant protection plan.* (i) For a first fiscal year award, a copy of the State occupant protection program area plan to be included in the State HSP that describes the programs the State will implement to achieve reductions in traffic crashes, fatalities, and injuries on public roads.

(ii) For subsequent fiscal year awards, an update of the State's occupant protection plan provided in paragraph (d)(1)(i) of this section.

(2) *Participation in Click-it-or-Ticket national mobilization.* A description of the State's planned participation, and the assurance provided in Part 1 of Appendix D, signed by the Governor's Highway Safety Representative, that the State will participate in the Click it or Ticket national mobilization during the fiscal year of the grant;

(3) *Child restraint inspection stations.* Documentation that the State has an active network of child inspection stations and/or inspection events that are—

(i) Located in areas that service the majority of the State's population and show evidence of outreach to underserved areas; and

(ii) Staffed with at least one current nationally Certified Child Passenger Safety Technician during official posted hours.

(4) *Child passenger safety technicians.* A copy of the State's plan to recruit, train and retain nationally Certified Child Passenger Safety Technicians to staff each child inspection station and inspection events located in the State.

(5) *Maintenance of effort.* The assurance provided in Part 1 of Appendix D, signed by the Governor's Highway Safety Representative, that the State shall maintain its aggregate expenditures from all State and local sources for occupant protection programs at or above the average level of such expenditure in fiscal years 2010 and 2011.

(e) *Qualification criteria for a lower seat belt use rate State.* To qualify for an occupant protection grant in a fiscal year, a lower seat belt use rate State (as determined by NHTSA) shall satisfy all the requirements of and submit all the documentation required under paragraph (d) of this section, and submit documentation demonstrating that it meets at least three of the following additional criteria:

(1) *Primary enforcement seat belt use law.* The assurance provided in Part 1 of Appendix D, signed by the Governor's Highway Safety Representative, providing legal citations to the State statute or statutes demonstrating that the State has enacted and is enforcing occupant protection laws that make a violation of the requirement to be secured in a seat belt or child restraint a primary offense.

(2) *Occupant protection laws.* The assurance provided in Part 1 of Appendix D, signed by the Governor's Highway Safety Representative, providing legal citations to State statute or statutes demonstrating that the State has enacted and is enforcing occupant protection laws that require—

(i) Each occupant riding in a passenger motor vehicle who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height to be secured in an age-appropriate child restraint;

(ii) Each occupant riding in a passenger motor vehicle other than an occupant identified in paragraph (e)(2)(i) of this section to be secured in a seat belt or appropriate child restraint;

(iii) A minimum fine of $25 per unrestrained occupant for a violation of the occupant protection laws described in paragraphs (e)(2)(i) and (ii) of this section.

(iv) No exemption from coverage, except the following:

(A) Drivers, but not passengers, of postal, utility, and commercial vehicles that make frequent stops in the course of their business;

(B) Persons who are unable to wear a seat belt or child restraint because of a medical condition, provided there is written documentation from a physician;

(C) Persons who are unable to wear a seat belt or child restraint because all other seating positions are occupied by persons properly restrained in seat belts or child restraints;

(D) Emergency vehicle operators and passengers in emergency vehicles during an emergency;

(E) Persons riding in seating positions or vehicles not required by Federal Motor Vehicle Safety Standards to be equipped with seat belts;

(F) Passengers in public and livery conveyances.

(3) *Seat belt enforcement.* Documentation of the State's plan to conduct ongoing and periodic seat belt and child restraint enforcement during the fiscal year of the grant involving—

(i) At least 70 percent of the State's population as shown by the latest available Federal census; or

(ii) Law enforcement agencies responsible for seat belt enforcement in geographic areas in which at least 70 percent of the State's unrestrained passenger vehicle occupant fatalities occurred (reported in the HSP).

(4) *High risk population countermeasure programs.* Documentation that the State has implemented data-driven programs to improve seat belt and child restraint use for at least two of the following at-risk populations:

(i) Drivers on rural roadways;

(ii) Unrestrained nighttime drivers;

(iii) Teenage drivers;

(iv) Other high-risk populations identified in the occupant protection plan required under paragraph (d)(1) of this section.

(5) *Comprehensive occupant protection program.* Documentation demonstrating that the State has—

(i) Conducted a NHTSA-facilitated program assessment that evaluates the program for elements designed to increase seat belt usage in the State;

(ii) Developed a multi-year strategic plan based on input from statewide stakeholders (task force) under which the State developed—

(A) *A program management* strategy that provides leadership, training and technical assistance to other State agencies and local occupant protection programs and projects;

(B) *A program evaluation* strategy that assesses performance in achieving the State's measurable goals and objectives for increasing seat belt and child restraint usage for adults and children;

(C) *A communication and education program* strategy that has as its cornerstone the high visibility enforcement model that combines use of media, both paid and earned, and education to support enforcement efforts at the State and community level aimed at increasing seat belt use and correct usage of age appropriate child restraint systems; and

(D) *An enforcement* strategy that includes activities such as encouraging seat belt use policies for law enforcement agencies, vigorous enforcement of seat belt and child safety seat laws, and accurate reporting of occupant protection system information on police accident report forms.

(iii) designated an occupant protection coordinator; and

(iv) established a statewide occupant protection task force that includes agencies and organizations that can help develop, implement, enforce and evaluate occupant protection programs.

(6) *Occupant protection program assessment.*

(i) A NHTSA-facilitated assessment of all elements of its occupant protection program within the three years prior to October 1 of the grant year; or

(ii) For the first year of the grant, the assurance provided in Part 1 of Appendix D, signed by the Governor's Representative for Highway Safety, that the State will conduct a NHTSA-facilitated assessment by September 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to conduct such an assessment by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(f) *Use of grant funds.*

(1) *Eligible uses.* Except as provided in paragraph (f)(2) of this section, use of grant funds awarded under this section shall be limited to the following programs or purposes:

(i) To support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement;

(ii) To train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection;

(iii) To educate the public concerning the proper use and installation of child restraints, including related equipment and information systems;

(iv) To provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints;

(v) To establish and maintain information systems containing data concerning occupant protection, including the collection and administration of child passenger safety and occupant protection surveys; and

(vi) To purchase and distribute child restraints to low-income families, provided that not more than five percent of the funds received in a fiscal year are used for such purpose.

(2) *Eligible uses for high seat belt use rate States.* Notwithstanding paragraph (f)(1) of this section, a State that qualifies for grant funds as a high seat belt use rate State may use up to 75 percent of such funds for any project or activity eligible for funding under 23 U.S.C. 402.

§ 1200.22 State traffic safety information system improvements grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(c), for grants to States to develop and implement effective programs that improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State safety data needed to identify priorities for Federal, State, and local highway and traffic safety programs, evaluate the effectiveness of such efforts, link State data systems, including traffic records and systems that contain medical, roadway, and economic data, improve the compatibility and interoperability of State data systems with national data systems and the data systems of other States, and enhance the agency's ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(b) *Requirement for traffic records coordinating committee (TRCC).*

(1) *Structure and composition.* The State shall have a traffic records coordinating committee that—

(i) Is chartered or legally mandated;

(ii) Meets at least three times annually;

(iii) Has a multidisciplinary membership that includes owners, operators, collectors and users of traffic records and public health and injury control data systems, highway safety, highway infrastructure, law enforcement and adjudication officials, and public health, emergency medical services, injury control, driver licensing, and motor carrier agencies and organizations; and

(iv) Has a designated TRCC coordinator.

(2) *Functions.* The traffic records coordinating committee shall—

(i) Have authority to review any of the State's highway safety data and traffic records systems and any changes to such systems before the changes are implemented;

(ii) Consider and coordinate the views of organizations in the State that are involved in the collection, administration, and use of highway safety data and traffic records systems, and represent those views to outside organizations;

(iii) Review and evaluate new technologies to keep the highway safety data and traffic records system current; and

(iv) Approve annually the membership of the TRCC, the TRCC coordinator, any change to the State's multi-year Strategic Plan required under paragraph (c) of this section, and performance measures to be used to demonstrate quantitative progress in the accuracy, completeness, timeliness, uniformity, accessibility or integration of a core highway safety database.

(c) *Requirement for a state traffic records strategic plan.* The State shall have a Strategic Plan, approved by the TRCC, that—

(1) Describes specific, quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases;

(2) For any identified performance measure, uses the formats set forth in the Model Performance Measures for State Traffic Records Systems collaboratively developed by NHTSA and the Governors Highway Safety Association (GHSA);

(3) Includes a list of all recommendations from its most recent highway safety data and traffic records system assessment;

(4) Identifies which such recommendations the State intends to implement and the performance measures to be used to demonstrate quantifiable and measurable progress; and

(5) For recommendations that the State does not intend to implement, provides an explanation.

(d) *Requirement for quantitative improvement.* A State shall demonstrate quantitative improvement in the data attributes of accuracy, completeness, timeliness, uniformity, accessibility and integration in a core database by demonstrating an improved consistency within the State's record system or by achieving a higher level of compliance with a national model inventory of data elements, such as the Model Minimum Uniform Crash Criteria (MMUCC), the Model Impaired Driving Records Information System (MIDRIS), the Model Inventory of Roadway Elements (MIRE) or the National Emergency Medical Services Information System (NEMSIS).

(e) *Requirement for assessment.* The State shall have conducted or updated, within the five years prior to the application due date, an in-depth, formal assessment of its highway safety data and traffic records system accurately performed by a group knowledgeable about highway safety data and traffic records systems that complies with the procedures and methodologies outlined in NHTSA's Traffic Records Highway Safety Program Advisory (DOT HS 811 644).

(f) *Requirement for maintenance of effort.* The State shall maintain its aggregate expenditures from all State and local sources for State traffic safety information system programs at or above the average level of such expenditure in fiscal years 2010 and 2011, as provided in Part 2 of Appendix D, signed by the Governor's Highway Safety Representative.

(g) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit an executed Part 2 of Appendix D and the following documentation:

(1) Either the TRCC charter or legal citation(s) to the statute or regulation legally mandating a TRCC with the functions required by paragraph (b)(2) of this section;

(2) Meeting schedule, all reports and data system improvement and policy guidance documents promulgated by the TRCC during the 12 months immediately preceding the grant application due date;

(3) A list of the TRCC membership and the organizations and functions they represent;

(4) The name and title of the State's Traffic Records Coordinator.

(5) A copy of the Strategic Plan required under paragraph (c) of this section, including any updates to the Strategic Plan.

(6) Either a written description of the performance measures, and all supporting data, that the State is relying on to demonstrate quantitative improvement in the preceding 12 months of the grant application due date in one or more of the significant data program attributes or the location where this information is detailed in the Strategic Plan.

(7) The certification provided in Part 2 of Appendix D, signed by the Governor's Representative for Highway Safety, that an assessment of the State's highway safety data and traffic records system was conducted or updated within the five years prior to the application due date as provided in paragraph (e) of this section.

(h) *Use of grant funds.* Grant funds awarded under this section shall be used to make quantifiable, measureable progress improvements in the accuracy, completeness, timeliness, uniformity, accessibility or integration of data in a core highway safety database.

§ 1200.23 Impaired driving countermeasures grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(d), for awarding grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol, drugs, or the combination of alcohol and drugs or that enact alcohol ignition interlock laws.

(b) *Definitions.* As used in this section—

24–7 sobriety program means a State law or program that authorizes a State court or a State agency, as a condition of sentence, probation, parole, or work permit, to require an individual who pleads guilty to or was convicted of driving under the influence of alcohol or drugs to—

(1) Abstain totally from alcohol or drugs for a period of time; and

(2) Be subject to testing for alcohol or drugs at least twice per day by continuous transdermal alcohol monitoring via an electronic monitoring device, or by an alternative method approved by NHTSA.

Alcohol means wine, beer and distilled spirits.

Average impaired driving fatality rate means the number of fatalities in motor vehicle crashes involving a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the

most recently reported three calendar years of final data from the FARS.

Assessment means a NHTSA-facilitated process that employs a team of subject matter experts to conduct a comprehensive review of a specific highway safety program in a State.

Driving under the influence of alcohol, drugs, or a combination of alcohol and drugs means operating a vehicle while the alcohol and/or drug concentration in the blood or breath, as determined by chemical or other tests, equals or exceeds the level established by the State or is equivalent to the standard offense for driving under the influence of alcohol or drugs in the State.

Driving While Intoxicated (DWI) Court means a court that specializes in cases involving driving while intoxicated and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Center for DWI Courts.

Drugs means controlled substances as that term is defined under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6).

High visibility enforcement efforts means participation in national impaired driving law enforcement campaigns organized by NHTSA, participation in impaired driving law enforcement campaigns organized by the State, or the use of sobriety checkpoints and/or saturation patrols, conducted in a highly visible manner and supported by publicity through paid or earned media.

High-range State means a State that has an average impaired driving fatality rate of 0.60 or higher.

Low-range State means a State that has an average impaired driving fatality rate of 0.30 or lower.

Mid-range State means a State that has an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60.

Saturation patrol means a law enforcement activity during which enhanced levels of law enforcement are conducted in a concentrated geographic area (or areas) for the purpose of detecting drivers operating motor vehicles while impaired by alcohol and/or other drugs.

Sobriety checkpoint means a law enforcement activity during which law enforcement officials stop motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

Standard offense for driving under the influence of alcohol or drugs means the offense described in a State's law that makes it a criminal offense to operate a motor vehicle while under the influence of alcohol or drugs, but does not require a measurement of alcohol or drug content.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a low-range State, a mid-range State or a high-range State, in accordance with paragraphs (d), (e) or (f) of this section, as applicable. Independent of this range determination, a State may also qualify for a separate grant under this section as an ignition interlock State, as provided in paragraph (g) of this section.

(d) *Qualification criteria for a low-range State.* To qualify for an impaired driving countermeasures grant in a fiscal year, a low-range State (as determined by NHTSA) shall submit an executed Part 3 of Appendix D providing assurances, signed by the Governor's Representative for Highway Safety, that the State will—

(1) Use the funds awarded under 23 U.S.C. 405(d)(1) only for the implementation and enforcement of programs authorized in paragraph (i) of this section; and

(2) Maintain its aggregate expenditures from all State and local sources for impaired driving programs at or above the average level of such expenditure in fiscal years 2010 and 2011, as provided in Part 3 of Appendix D.

(e) *Qualification criteria for a mid-range State.* To qualify for an impaired driving countermeasures grant in a fiscal year, a mid-range State (as determined by NHTSA) shall submit the information required in paragraph (d) of this section and the following additional documentation:

(1) *Statewide impaired driving plan.* If the State has not received a grant under this section for a previously submitted statewide impaired driving plan, the State shall submit a copy of a statewide impaired driving plan that—

(i) Has been developed within the three years prior to the application due date;

(ii) Has been approved by a statewide impaired driving task force that meets the requirements of paragraph (e)(2) of this section;

(iii) Provides a comprehensive strategy that uses data and problem identification to identify measurable goals and objectives for preventing and reducing impaired driving behavior and impaired driving crashes; and

(iv) Covers general areas that include program management and strategic planning, prevention, the criminal justice system, communication programs, alcohol and other drug misuse, and program evaluation and data.

(2) *Statewide impaired driving task force.* The State shall submit a copy of information describing its statewide impaired driving task force that—

(i) Provides the basis for the operation of the task force, including any charter or establishing documents;

(ii) Includes a schedule of all meetings held in the 12 months preceding the application due date and any reports or documents produced during that time period; and

(iii) Includes a list of membership and the organizations and functions represented and includes, at a minimum, key stakeholders from the State Highway Safety Office and the areas of law enforcement and criminal justice system (e.g., prosecution, adjudication, probation), and, as appropriate, stakeholders from the areas of driver licensing, treatment and rehabilitation, ignition interlock programs, data and traffic records, public health, and communication.

(3) *Assurances.* For the first year of the grant as a mid-range State, if the State is not able to meet the requirements of paragraph (e)(1) of this section, the State may provide the assurances provided in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, that the State will convene a statewide impaired driving task force to develop a statewide impaired driving plan that meets the requirements of paragraph (e)(1) of this section and submit the statewide impaired driving plan by September 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to submit the plan by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(f) *Qualification criteria for a high-range State.* To qualify for an impaired driving countermeasures grant in a fiscal year, a high-range State (as determined by NHTSA) shall submit the information required in paragraph (d) of this section and the following additional documentation:

(1) *Impaired driving program assessment.* (i) The assurances provided in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, providing the date of the NHTSA-facilitated assessment of the State's impaired driving program conducted within the three years prior to the application due date; or

(ii) For the first year of the grant as a high-range State, the assurances provided in Part 3 of Appendix D,

signed by the Governor's Representative for Highway Safety, that the State will conduct a NHTSA-facilitated assessment by September 1 of the grant year.

(2) *Statewide impaired driving plan.* (i) *First year compliance.* For the first year of the grant as a high-range State, the assurances provided in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, that the State will convene a statewide impaired driving task force to develop a statewide impaired driving plan, which will be submitted to NHTSA for review and approval by September 1 of the grant year that—

(A) Meets the requirements of paragraph (e)(1) of this section;

(B) Addresses any recommendations from the assessment of the State's impaired driving program required in paragraph (f)(1) of this section;

(C) Includes a detailed plan for spending any grant funds provided for high visibility enforcement efforts; and

(D) Describes how the spending supports the State's impaired driving program and achievement of its performance goals and targets;

(ii) *Subsequent year compliance.* For subsequent years of the grant as a high-range State, the State shall submit for NHTSA review and comment a statewide impaired driving plan that meets the requirements of paragraph (f)(2)(i)(A) through (D) of this section or an update to its statewide impaired driving plan, as part of its application for a grant.

(g) *Ignition interlock State.* To qualify for a separate grant as an ignition interlock State in a fiscal year, a State shall submit the assurances in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citation(s) to the State statute demonstrating that the State has enacted and is enforcing a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to drive only vehicles with alcohol ignition interlocks for a period of not less than 30 days.

(h) *Award.* (1) The amount available for grants under paragraphs (d), (e) and (f) of this section shall be determined based on the total amount of eligible States for these grants and after deduction of the amount necessary to fund grants under paragraph (g) of this section.

(2) The amount available for grants under paragraph (g) of this section shall not exceed 15 percent of the total amount made available to States under this section for the fiscal year.

(i) *Use of grant funds.* (1) *Low-range States* may use grant funds awarded under this section for the following authorized programs:

(i) High visibility enforcement efforts;

(ii) Hiring a full-time or part-time impaired driving coordinator of the State's activities to address the enforcement and adjudication of laws regarding driving while impaired by alcohol;

(iii) Court support of high visibility enforcement efforts, training and education of criminal justice professionals (including law enforcement, prosecutors, judges, and probation officers) to assist such professionals in handling impaired driving cases, hiring traffic safety resource prosecutors, hiring judicial outreach liaisons, and establishing driving while intoxicated courts;

(iv) Alcohol ignition interlock programs;

(v) Improving blood-alcohol concentration testing and reporting;

(vi) Paid and earned media in support of high visibility enforcement of impaired driving laws, and conducting standardized field sobriety training, advanced roadside impaired driving evaluation training, and drug recognition expert training for law enforcement, and equipment and related expenditures used in connection with impaired driving enforcement;

(vii) Training on the use of alcohol screening and brief intervention;

(viii) Developing impaired driving information systems; and

(ix) Costs associated with a 24–7 sobriety program.

(x) Programs designed to reduce impaired driving based on problem identification.

(2) *Mid-range States* may use grant funds awarded under this section for any of the authorized uses described in paragraph (i)(1) of this section, provided that use of grant funds for programs described in paragraph (i)(1)(x) of this section requires advance approval from NHTSA.

(3) *High-range States* may use grant funds awarded under this section for high visibility enforcement efforts and any of the authorized uses described in paragraph (i)(1) of this section, provided the proposed uses are described in a statewide impaired driving plan submitted to and approved by NHTSA in accordance with paragraph (f)(2) of this section and subject to the conditions in paragraph (j) of this section.

(4) *Ignition interlock States* may use grant funds awarded under this section for any of the authorized uses described under paragraph (i)(1) of this section and for eligible activities under 23 U.S.C. 402.

(j) *Special conditions for use of funds by high-range States.* No expenses incurred or vouchers submitted by a high-range State shall be approved for reimbursement until such State submits for NHTSA review and approval a statewide impaired driving plan as provided in paragraph (f)(2) of this section. If a high-range State fails to timely provide the statewide impaired driving plan required under paragraph (f)(2) of this section, the agency will redistribute any grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

§ 1200.24 Distracted driving grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(e), for awarding grants to States that enact and enforce laws prohibiting distracted driving, beginning with fiscal year 2014 grants.

(b) *Definitions.* As used in this section—

Driving means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise, but does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

Texting means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, emailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

(c) *Qualification criteria.* To qualify for a distracted driving grant in a fiscal year, a State shall submit the assurances in Part 4 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citations to the State statute or statutes demonstrating compliance with the following requirements:

(1) *Prohibition on texting while driving.* The statute shall—

(i) Prohibit drivers from texting through a personal wireless communications device while driving;

(ii) Make a violation of the law a primary offense; and

(iii) Establish—

(A) A minimum fine of $25 for a first violation of the law; and

(B) Increased fines for repeat violations within five years of the previous violation.

(2) *Prohibition on youth cell phone use while driving.* The statute shall—

(i) Prohibit a driver who is younger than 18 years of age from using a personal wireless communications device while driving;

(ii) Make a violation of the law a primary offense;

(iii) Require distracted driving issues to be tested as part of the State's driver's license examination; and

(iv) Establish—

(A) A minimum fine of $25 for a first violation of the law; and

(B) Increased fines for repeat violations within five years of the previous violation.

(3) *Permitted exceptions.* A State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of this section:

(i) A driver who uses a personal wireless communications device to contact emergency services;

(ii) Emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; and

(iii) An individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to 49 U.S.C. 31136.

(d) *Use of grant funds.* (1) At least 50 percent of the grant funds awarded under this section shall be used to educate the public through advertising containing information about the dangers of texting or using a cell phone while driving, for traffic signs that notify drivers about the distracted driving law of the State, or for law enforcement costs related to the enforcement of the distracted driving law;

(2) Not more than 50 percent of the grant funds awarded under this section may be used for any eligible project or activity under 23 U.S.C. 402.

§ 1200.25 Motorcyclist safety grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective programs to reduce the number of single-vehicle and multiple-vehicle crashes involving motorcyclists.

(b) *Definitions.* As used in this section—

Impaired means alcohol-impaired or drug-impaired as defined by State law, provided that the State's legal alcohol-impairment level does not exceed .08 BAC.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motorcyclist awareness means individual or collective awareness of the presence of motorcycles on or near roadways and of safe driving practices that avoid injury to motorcyclists.

Motorcyclist awareness program means an informational or public awareness or education program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

Motorcyclist safety training or *Motorcycle rider training* means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the governor of the State.

State means any of the 50 States, the District of Columbia, and Puerto Rico.

(c) *Eligibility.* The 50 States, the District of Columbia and Puerto Rico are eligible to apply for a motorcyclist safety grant.

(d) *Qualification criteria.* To qualify for a motorcyclist safety grant in a fiscal year, a State shall submit an executed Part 5 of Appendix D, signed by the Governor's Representative for Highway Safety, and submit documentation demonstrating compliance with at least two of the criteria in paragraphs (e) through (j) of this section.

(e) *Motorcycle rider training course.* (1) To satisfy this criterion, a State shall have an effective motorcycle rider training course that is offered throughout the State and that provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists. The program shall—

(i) Use a training curriculum that—

(A) Is approved by the designated State authority having jurisdiction over motorcyclist safety issues;

(B) Includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists; and

(C) May include innovative training opportunities to meet unique regional needs;

(ii) Offer at least one motorcycle rider training course either—

(A) In a majority of the State's counties or political subdivisions; or

(B) In counties or political subdivisions that account for a majority of the State's registered motorcycles;

(iii) Use motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(iv) Use quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) A copy of the official State document (e.g., law, regulation, binding policy directive, letter from the Governor) identifying the designated State authority over motorcyclist safety issues;

(ii) Document(s) demonstrating that the training curriculum is approved by the designated State authority having jurisdiction over motorcyclist safety issues and includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists;

(iii) Either:

(A) A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application, if the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in a majority of counties or political subdivisions in the State; or

(B) A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application and the corresponding number of registered motorcycles in each county or political subdivision according to official State motor vehicle records, if the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles;

(iv) Document(s) demonstrating that the State uses motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over

motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(v) A brief description of the quality control procedures to assess motorcycle rider training courses and instructor training courses used in the State (e.g., conducting site visits, gathering student feedback) and the actions taken to improve the courses based on the information collected.

(f) *Motorcyclist awareness program.* (1) To satisfy this criterion, a State shall have an effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists. The program shall—

(i) Be developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) Use State data to identify and prioritize the State's motorcyclist awareness problem areas;

(iii) Encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(iv) Incorporate a strategic communications plan that—

(A) Supports the State's overall safety policy and countermeasure program;

(B) Is designed, at a minimum, to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest or in those jurisdictions that account for a majority of the State's registered motorcycles;

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) A copy of the State document identifying the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) A letter from the Governor's Highway Safety Representative stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues;

(iii) Data used to identify and prioritize the State's motorcycle safety problem areas, including either—

(A) A list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes per county or political subdivision, if the State seeks to qualify under this criterion by showing that it identifies and prioritizes the State's motorcycle safety problem areas based on motorcycle crashes. Such data shall be from the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date (e.g., for a grant application submitted on July 1, 2013, a State shall provide calendar year 2012 data, if available, and may not provide data older than calendar year 2011); or

(B) A list of counties or political subdivisions in the State and the corresponding number of registered motorcycles for each county or political subdivision according to official State motor vehicle records, if the State seeks to qualify under this criterion by showing that it identifies and prioritizes the State's motorcycle safety problem areas based on motorcycle registrations;

(iv) A brief description of how the State has achieved collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(v) A copy of the strategic communications plan showing that it—

(A) Supports the State's overall safety policy and countermeasure program;

(B) Is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes) or is designed to educate motorists in those jurisdictions that account for a majority of the State's registered motorcycles (i.e., the counties or political subdivisions that account for a majority of the State's registered motorcycles as evidenced by State motor vehicle records);

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem (e.g., newspapers, billboard advertisements, email, posters, flyers, mini-planners, or instructor-led training sessions).

(g) *Reduction of fatalities and crashes involving motorcycles.* (1) To satisfy this criterion, a State shall demonstrate a reduction for the preceding calendar year in the number of motorcyclist fatalities and in the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), as computed by NHTSA. The State shall—

(i) Experience a reduction of at least one in the number of motorcyclist fatalities for the most recent calendar year for which final FARS data is available as compared to the final FARS data for the calendar year immediately prior to that year; and

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of crashes involving motorcycles for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) State data showing the total number of motor vehicle crashes involving motorcycles in the State for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (e.g., for a grant application submitted on July 1, 2013, the State shall submit calendar year 2012 data and 2011 data, if both data are available, and may not provide data older than calendar year 2011 and 2010, to determine the rate); and

(ii) A description of the State's methods for collecting and analyzing data submitted in paragraph (g)(2)(i) of this section, including a description of the State's efforts to make reporting of motor vehicle crashes involving motorcycles as complete as possible.

(h) *Impaired driving program.* (1) To satisfy this criterion, a State shall implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation. The program shall—

(i) Use State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas; and

(ii) Include specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) State data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes involving an impaired operator per county or political subdivision. Such data shall be from the most recent

calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date (e.g., for a grant application submitted on July 1, 2013, a State shall provide calendar year 2012 data, if available, and may not provide data older than calendar year 2011);

(ii) A detailed description of the State's impaired driving program as implemented, including a description of each countermeasure established and proposed by the State to reduce impaired motorcycle operation, the amount of funds allotted or proposed for each countermeasure and a description of its specific strategies that are designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator); and

(iii) The legal citation(s) to the State statute or regulation defining impairment. (A State is not eligible for a grant under this criterion if its legal alcohol-impairment level exceeds .08 BAC.)

(i) *Reduction of fatalities and accidents involving impaired motorcyclists.* (1) To satisfy this criterion, a State shall demonstrate a reduction for the preceding calendar year in the number of fatalities and in the rate of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), as computed by NHTSA. The State shall—

(i) Experience a reduction of at least one in the number of fatalities involving alcohol-and drug-impaired motorcycle operators for the most recent calendar year for which final FARS data is available as compared to the final FARS data for the calendar year immediately prior to that year; and

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of reported crashes involving alcohol-and drug-impaired motorcycle operators for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) State data showing the total number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (e.g., for a grant application submitted on July 1, 2013, the State shall submit calendar year 2012 and 2011 data, if both data are available, and may not provide data older than calendar year 2011 and 2010, to determine the rate); and

(ii) A description of the State's methods for collecting and analyzing data submitted in paragraph (i)(2)(i) of this section, including a description of the State's efforts to make reporting of crashes involving alcohol-impaired and drug-impaired motorcycle operators as complete as possible; and

(iii) The legal citation(s) to the State statute or regulation defining alcohol-impaired and drug-impairment. (A State is not eligible for a grant under this criterion if its legal alcohol-impairment level exceeds .08 BAC.)

(j) *Use of fees collected from motorcyclists for motorcycle programs.* (1) To satisfy this criterion, a State shall have a process under which all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are used for motorcycle training and safety programs. A State may qualify under this criterion as either a Law State or a Data State.

(i) A Law State is a State that has a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

(ii) A Data State is a State that does not have a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs but can show through data and/or documentation from official records that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs, without diversion.

(2)(i) To demonstrate compliance as a Law State, the State shall submit the legal citation(s) to the statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs and the legal citation(s) to the State's current fiscal year appropriation (or preceding fiscal year appropriation, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs.

(ii) To demonstrate compliance as a Data State, a State shall submit data or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data or documentation shall show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

(k) *Award limitation.* A grant awarded under the procedures described in § 1200.20(e)(1) may not exceed the amount of a grant made to State for fiscal year 2003 under 23 U.S.C. 402.

(l) *Use of grant funds.* (1) *Eligible uses.* A State may use grant funds awarded under this section for motorcyclist safety training and motorcyclist awareness programs, including—

(i) Improvements to motorcyclist safety training curricula;

(ii) Improvements in program delivery of motorcycle training to both urban and rural areas, including—

(A) Procurement or repair of practice motorcycles;

(B) Instructional materials;

(C) Mobile training units; and

(D) Leasing or purchasing facilities for closed-course motorcycle skill training;

(iii) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

(iv) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the ''share-the-road'' safety messages developed using Share-the-Road model language available on NHTSA's Web site at *http://www.trafficsafetymarketing.gov*.

(2) *Suballocation of funds.* A State that receives a grant under this section may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under this section.

§ 1200.26 State graduated driver licensing incentive grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C.

405(g), for awarding grants to States that adopt and implement graduated driver's licensing laws that require novice drivers younger than 21 years of age to comply with a 2-stage licensing process prior to receiving a full driver's license.

(b) *Definitions.* As used in this section—

Conviction-free means that, during the term of the permit or license covered by the program, the driver has not been convicted of any offense under State or local law relating to the use or operation of a motor vehicle, including but not limited to driving while intoxicated, reckless driving, driving without wearing a seat belt, speeding, prohibited use of a personal wireless communications device, and violation of the driving-related restrictions applicable to the stages of the graduated driver's licensing process set forth in paragraph (c) of this section, as well as misrepresentation of a driver's true age.

Driving, for purposes of paragraph (c)(2)(iii) of this section, means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise, but does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

Full driver's license means a license to operate a passenger motor vehicle on public roads at all times.

Licensed driver means a driver who possesses a valid full driver's license.

Novice driver means a driver who has not been issued by a State an intermediate license or full driver's license.

(c) *Qualification criteria.* (1) *General.* To qualify for a grant under this section, a State shall submit the assurances in Part 6 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citations to the State statute or statutes demonstrating compliance with the requirements of paragraph (c)(2) of this section, and provide legal citation(s) to the statute or regulation or provide documentation demonstrating compliance with the requirements of paragraph (c)(3) of this section.

(2) *Graduated driver's licensing law.* A State's graduated driver's licensing law shall include a learner's permit stage and an intermediate stage meeting the following minimum requirements:

(i) The learner's permit stage shall—

(A) Apply to any novice driver who is younger than 21 years of age prior to the receipt by such driver from the State of any other permit or license to operate a motor vehicle;

(B) Commence only after an applicant for a leaner's permit passes vision and knowledge tests, including tests about the rules of the road, signs, and signals;

(C) Subject to paragraph (c)(2)(iii)(B), be in effect for a period of at least six months, but may not expire until the driver reaches at least 16 years of age; and

(D) Require the learner's permit holder to—

(*1*) Be accompanied and supervised by a licensed driver who is at least 21 years of age at all times while the learner's permit holder is operating a motor vehicle;

(*2*) Receive not less than 40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age;

(*3*) Complete a driver education or training course that has been certified by the State; and

(*4*) Pass a driving skills test prior to entering the intermediate stage or being issued another permit, license or endorsement.

(ii) The intermediate stage shall—

(A) Apply to any driver who has completed the learner's permit stage and who is younger than 18 years of age;

(B) Commence immediately after the expiration of the learner's permit stage;

(C) Subject to paragraph (c)(2)(iii)(B), be in effect for a period of at least six months, but may not expire until the driver reaches at least 18 years of age;

(D) Require the intermediate license holder to be accompanied and supervised by a licensed driver who is at least 21 years of age during the period of time between the hours of 10:00 p.m. and 5:00 a.m., except in case of emergency; and

(E) Prohibit the intermediate license holder from operating a motor vehicle with more than one nonfamilial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age is in the motor vehicle.

(iii) During both the learner's permit and intermediate stages, the State shall—

(A) Impose a prohibition enforced as a primary offense on use of a cellular telephone or any communications device by the driver while driving, except in case of emergency; and

(B) Require that the driver who possesses a learner's permit or intermediate license remain conviction-free for a period of not less than six consecutive months immediately prior to the expiration of that stage.

(3) *Requirement for license distinguishability.* The State learner's permit, intermediate license, and full driver's license shall be distinguishable from each other. A State may satisfy this requirement by submitting—

(i) Legal citations to the State statute or regulation requiring that the State learner's permit, intermediate license, and full driver's license be visually distinguishable:

(ii) Sample permits and licenses that contain visual features that would enable a law enforcement officer to distinguish between the State learner's permit, intermediate license, and full driver's license; or

(iii) A description of the State's system that enables law enforcement officers in the State during traffic stops to distinguish between the State learner's permit, intermediate license, and full driver's license.

(4) *Exceptions.* A State that otherwise meets the minimum requirements set forth in paragraph (c)(2) of this section will not be deemed ineligible for a grant under this section if—

(i) The State enacted a law prior to January 1, 2011, establishing a class of permit or license that allows drivers younger than 18 years of age to operate a motor vehicle—

(A) In connection with work performed on, or for the operation of, a farm owned by family members who are directly related to the applicant or licensee; or

(B) If demonstrable hardship would result from the denial of a license to the licensees or applicants, provided that the State requires the applicant or licensee to affirmatively and adequately demonstrate unique undue hardship to the individual; and

(ii) Drivers who possess only the permit or license permitted under paragraph (c)(4)(i) of this section are treated as novice drivers subject to the graduated driver's licensing requirements of paragraph (c)(2) of this section as a pre-condition of receiving any other permit, license or endorsement.

(d) *Award.* (1) *Grant Amount.* Subject to paragraph (d)(2) of this section, grant funds for a fiscal year under this section shall be allocated among States that meet the qualification criteria on the basis of the apportionment formula under 23 U.S.C. 402 for that fiscal year.

(2) *Limitation.* Amount of grant award to a State under this section may not exceed 10 percent of the total amount made available for Section 405(g) for that fiscal year.

(e) *Use of grant funds.* A State may use grant funds awarded under this section as follows:

(1) At least 25 percent of the grant funds shall be used, in connection with the State's graduated driver's licensing law that complies with the minimum requirements set forth in paragraph (c) of this section, to:

(i) Enforce the graduated driver's licensing process;

(ii) Provide training for law enforcement personnel and other relevant State agency personnel relating to the enforcement of the graduated driver's licensing process;

(iii) Publish relevant educational materials that pertain directly or indirectly to the State graduated driver's licensing law;

(iv) Carry out administrative activities to implement the State's graduated driver's licensing process; or

(v) Carry out a teen traffic safety program described in 23 U.S.C. 402(m);

(2) No more than 75 percent may be used for any eligible project or activity under 23 U.S.C. 402.

Subpart D—Administration of the Highway Safety Grants

§ 1200.30 General.

Subject to the provisions of this subpart, the requirements of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs and projects carried out under 23 U.S.C. Chapter 4. Cost principles include those referenced in 49 CFR 18.22.

§ 1200.31 Equipment.

(a) *Title.* Except as provided in paragraphs (e) and (f) of this section, title to equipment acquired under 23 U.S.C. Chapter 4 will vest upon acquisition in the State or its subgrantee, as appropriate.

(b) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the Approving Official, and neither the State nor any of its subgrantees or contractors shall encumber the title or interest while such need exists.

(c) *Management and disposition.* Subject to the requirement of paragraphs (b), (d), (e) and (f) of this section, States and their subgrantees and contractors shall manage and dispose of equipment acquired under 23 U.S.C. Chapter 4 in accordance with State laws and procedures.

(d) *Major purchases and dispositions.* Equipment with a useful life of more than one year and an acquisition cost of $5,000 or more shall be subject to the following requirements—

(1) Purchases shall receive prior written approval from the Approving Official;

(2) Dispositions shall receive prior written approval from the Approving Official unless the age of the equipment has exceeded its useful life as determined under State law and procedures.

(e) *Right to transfer title.* The Approving Official may reserve the right to transfer title to equipment acquired under 23 U.S.C. Chapter 4 to the Federal Government or to a third party when such third party is eligible under Federal statute. Any such transfer shall be subject to the following requirements:

(1) The equipment shall be identified in the grant or otherwise made known to the State in writing;

(2) The Approving Official shall issue disposition instructions within 120 calendar days after the equipment is determined to be no longer needed for highway safety purposes, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

(f) *Federally-owned equipment.* In the event a State or its subgrantee is provided Federally-owned equipment:

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted;

(3) The State or its subgrantee shall request disposition instructions from the Approving Official when the item is no longer needed for highway safety purposes.

§ 1200.32 Changes—Approval of the Approving Official.

States shall provide documentary evidence of any reallocation of funds between program areas by submitting to the NHTSA regional office an amended HS Form 217, reflecting the changed allocation of funds and updated list of projects under each program area, as provided in § 1200.11(e), within 30 days of implementing the change. The amended HS Form 217 and list of projects is subject to the approval of the Approving Official.

§ 1200.33 Vouchers and Project Agreements.

(a) *General.* Each State shall submit official vouchers for expenses incurred to the Approving Official.

(b) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

(1) Program Area for which expenses were incurred and an itemization of project numbers and amount of Federal funds expended for each project for which reimbursement is being sought;

(2) Federal funds obligated;

(3) Amount of Federal funds allocated to local benefit (provided no less than mid-year (by March 31) and with the final voucher);

(4) Cumulative Total Cost to Date;

(5) Cumulative Federal Funds Expended;

(6) Previous Amount Claimed;

(7) Amount Claimed this Period;

(8) Matching rate (or special matching writeoff used, i.e., sliding scale rate authorized under 23 U.S.C. 120).

(c) *Project agreements.* Copies of each project agreement for which expenses are being claimed under the voucher (and supporting documentation for the vouchers) shall be made promptly available for review by the Approving Official upon request. Each project agreement shall bear the project number to allow the Approving Official to match the voucher to the corresponding activity.

(d) *Submission requirements.* At a minimum, vouchers shall be submitted to the Approving Official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a State receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. A final voucher shall be submitted to the Approving Official no later than 90 days after the end of the fiscal year, and all unexpended balances shall be carried forward to the current fiscal year.

(e) *Reimbursement.* (1) Failure to provide the information specified in paragraph (b) of this section shall result in rejection of the voucher.

(2) Failure to meet the deadlines specified in paragraph (d) of this section may result in delayed reimbursement.

(3) Vouchers that request reimbursement for projects whose project numbers or amounts claimed do not match the list of projects or exceed the estimated amount of Federal funds provided under § 1200.11(e), or exceed the allocation of funds to a program area in the HS Form 217, shall be rejected, in whole or in part, until an amended list of projects and/or estimated amount of Federal funds and an amended HS Form 217 is submitted to and approved by the Approving Official in accordance with § 1200.32.

§ 1200.34 Program Income.

(a) *Definition.* Program income means gross income received by the grantee or subgrantee directly generated by a program supported activity, or earned only as a result of the grant agreement during the period of time between the effective date of the grant award and the expiration date of the grant award.

(b) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real

or personal property acquired with grant funds, from the sale of commodities or items fabricated under the grant agreement, and from payments of principal and interest on loans made with grant funds.

(c) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(d) *Use of program income.* (1) *Addition.* Program income shall ordinarily be added to the funds committed to the Highway Safety Plan. Such program income shall be used to further the objectives of the program area under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the Approving Official. Such use shall not increase the commitment of Federal funds.

§ 1200.35 Annual Report.

Within 90 days after the end of the fiscal year, each State shall submit an Annual Report describing—

(a) A general assessment of the State's progress in achieving highway safety performance measure targets identified in the Highway Safety Plan;

(b) A general description of the projects and activities funded and implemented under the Highway Safety Plan;

(c) The amount of Federal funds expended on projects from the Highway Safety Plan; and

(d) How the projects funded during the fiscal year contributed to meeting the State's highway safety targets. Where data becomes available, a State should report progress from prior year projects that have contributed to meeting current State highway safety targets.

§ 1200.36 Appeals of Written Decision by Approving Official.

Review of any written decision regarding the administration of the grants by an Approving Official under this subpart may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative for Highway Safety, to the Approving Official. Such appeal shall be forwarded promptly to the NHTSA Associate Administrator, Regional Operations and Program Delivery. The decision of the NHTSA Associate Administrator shall be final and shall be transmitted to the Governor's Representative for Highway Safety through the cognizant Approving Official.

Subpart E—Annual Reconciliation

§ 1200.40 Expiration of the Highway Safety Plan.

(a) The State's Highway Safety Plan for a fiscal year and the State's authority to incur costs under that Highway Safety Plan shall expire on the last day of the fiscal year.

(b) Except as provided in paragraph (c) of this section, each State shall submit a final voucher which satisfies the requirements of § 1200.33 within 90 days after the expiration of the State's Highway Safety Plan as provided in paragraph (a) of this section. The final voucher constitutes the final financial reconciliation for each fiscal year.

(c) The Approving Official may extend the time period to submit a final voucher only in extraordinary circumstances. States shall submit a written request for an extension describing the extraordinary circumstances that necessitate an extension. The approval of any such request for extension shall be in writing, shall specify the new deadline for submitting the final voucher, and shall be signed by the Approving Official.

§ 1200.41 Disposition of Unexpended Balances.

(a) *Carry-forward balances.* Except as provided in paragraph (b) of this section, grant funds that remain unexpended at the end of a fiscal year and the expiration of a Highway Safety Plan shall be credited to the State's highway safety account for the new fiscal year, and made immediately available for use by the State, provided the following requirements are met:

(1) The State's new Highway Safety Plan has been approved by the Approving Official pursuant to § 1200.14 of this part;

(2) The State has identified Section 402 carry-forward funds by the program area from which they are removed and identified by program area the manner in which the carry-forward funds will be used under the new Highway Safety Plan.

(3) The State has identified Section 405 carry-forward funds by the national priority safety program under which they were awarded (i.e., occupant protection, state traffic safety information system improvements, impaired driving, ignition interlock, distracted driving, motorcyclist safety or graduated driver licensing). These funds shall not be used for any other program.

(4) The State has submitted for approval an updated HS Form 217 for funds identified in paragraph (a)(2) or (a)(3) of this section. Reimbursement of costs is contingent upon the approval of updated Highway Safety Plan and HS Form 217.

(5) Funds carried forward from grant programs rescinded by MAP–21 shall be separately identified and shall be subject to the statutory and regulatory requirements that were in force at the time of award.

(b) *Deobligation of funds.* (1) Except as provided in paragraph (b)(2) of this section, unexpended grant funds shall not be available for expenditure beyond the period of three years after the last day of the fiscal year of apportionment or allocation.

(2) NHTSA shall notify States of any such unexpended grant funds no later than 180 days prior to the end of the period of availability specified in paragraph (b)(1) of this section and inform States of the deadline for commitment. States may commit such unexpended grant funds to a specific project by the specified deadline, and shall provide documentary evidence of that commitment, including a copy of an executed project agreement, to the Approving Official.

(3) Grant funds committed to a specific project in accordance with paragraph (b)(2) of this section shall remain committed to that project and be expended by the end of the succeeding fiscal year. The final voucher for that project shall be submitted within 90 days of the end of that fiscal year.

(4) NHTSA shall deobligate unexpended balances at the end of the time period in paragraph (b)(1) or (b)(3) of this section, whichever is applicable, and the funds shall lapse.

§ 1200.42 Post-Grant Adjustments.

The expiration of a Highway Safety Plan does not affect the ability of NHTSA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1200.43 Continuing Requirements.

Notwithstanding the expiration of a Highway Safety Plan, the provisions for post-award requirements in 49 CFR part 18, including but not limited to equipment and audit, continue to apply to the grant funds authorized under 23 U.S.C. Chapter 4.

Subpart F—Non-Compliance

§ 1200.50 General.

Where a State is found to be in non-compliance with the requirements of the

grant programs authorized under 23 U.S.C. Chapter 4 or with applicable law, the special conditions for high-risk grantees and the enforcement procedures of 49 CFR part 18, the sanctions procedures in § 1200.51, and any other sanctions or remedies permitted under Federal law may be applied as appropriate.

§ 1200.51 Sanctions—Reduction of Apportionment.

(a) *Determination of sanctions.* (1) The Administrator shall not apportion any funds under 23 U.S.C. 402 to any State which is not implementing an approved highway safety program.

(2) If the Administrator has apportioned funds to a State and subsequently determines that the State is not implementing an approved highway safety program, the Administrator shall reduce the funds apportioned under 23 U.S.C. 402 to the State by amounts equal to not less than 20 percent, until such time as the Administrator determines that the State is implementing an approved highway safety program.

(3) The Administrator shall consider the gravity of the State's failure to implement an approved highway safety program in determining the amount of the reduction.

(4) If the Administrator determines that a State has begun implementing an approved highway safety program not later than July 31 of the fiscal year for which the funds were withheld, the Administrator shall promptly apportion to the State the funds withheld from its apportionment.

(5) If the Administrator determines that the State did not correct its failure by July 31 of the fiscal year for which the funds were withheld, the Administrator shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than the last day of the fiscal year.

(b) *Reconsideration of sanctions determination.* (1) In any fiscal year, if the Administrator determines that a State is not implementing an approved highway safety program in accordance with 23 U.S.C. 402 and other applicable Federal law, the Administrator shall issue to the State an advance notice, advising the State that the Administrator expects to either withhold funds from apportionment under 23 U.S.C. 402, or reduce the State's apportioned funds under 23 U.S.C. 402. The Administrator shall state the amount of the expected withholding or reduction. The advance notice will normally be sent not later than 60 days prior to final apportionment.

(2) If the Administrator issues an advance notice to a State, under paragraph (b)(1) of this section, the State may, within 30 days of its receipt of the advance notice, submit documentation demonstrating that it is implementing an approved highway safety program. Documentation shall be submitted to the NHTSA Administrator, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) If the Administrator decides, after reviewing all relevant information submitted, that the State is not implementing an approved highway safety program in accordance with 23 U.S.C. 402, the Administrator shall issue a final notice, advising the State either of the funds being withheld from apportionment under 23 U.S.C. 402, or of the amount of funds reduced from the apportionment under 23 U.S.C. 402. The final notice will normally be issued no later than September 30. The final notice of a reduction will be issued at the time of a final decision.

Subpart G—Special Provisions for Fiscal Year 2013 Highway Safety Grants and Highway Safety Grants Under Prior Authorizations

§ 1200.60 Fiscal Year 2013 Section 402 Grants.

Highway safety grants apportioned under 23 U.S.C. 402 for fiscal year 2013 shall be governed by the applicable implementing regulations at the time of grant award.

§ 1200.61 Fiscal Year 2013 Section 405 Grants.

(a) For fiscal year 2013 grants authorized under 23 U.S.C. 405(b), (c), (d), (f) and (g), a State shall submit electronically its application as provided in § 1200.11(h) to *NHTSAGrants@dot.gov* no later than March 25, 2013.

(b) If a State's application contains incomplete information, NHTSA may request additional information from the State prior to making a determination of award for each component of the Section 405 grant program. Failure to respond promptly for request of additional information may result in a State's disqualification from one or more Section 405 grants for fiscal year 2013.

(c) After reviewing applications and making award determinations, NHTSA shall, in writing, distribute funds available for obligation under Section 405 to qualifying States and specify any conditions or limitations imposed by law on the use of the funds.

(d) Grant awards are subject to the availability of funds. If there are insufficient funds to award full grant amounts to qualifying States, NHTSA may release interim amounts and release the remainder, up to the State's proportionate share of available funds, when it becomes available in the fiscal year.

(e) The administration, reconciliation and noncompliance provisions of subparts D through F of this part apply to fiscal year 2013 grants awarded to qualifying States.

§ 1200.62 Pre-2013 Fiscal Year Grants.

Highway safety grants rescinded by MAP–21 are governed by the applicable implementing regulations at the time of grant award.

APPENDIX A TO PART 1200—CERTIFICATION AND ASSURANCES FOR HIGHWAY SAFETY GRANTS (23 U.S.C. CHAPTER 4)

State: _____

Fiscal Year:_____

Each fiscal year the State must sign these Certifications and Assurances that it complies with all requirements including applicable Federal statutes and regulations that are in effect during the grant period. (Requirements that also apply to subrecipients are noted under the applicable caption.)

In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following certifications and assurances:

GENERAL REQUIREMENTS

To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for Section 402 and Section 405 grants is accurate and complete. (Incomplete or incorrect information may result in the disapproval of the Highway Safety Plan.)

The Governor is the responsible official for the administration of the State highway safety program through a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1200—Uniform Procedures for State Highway Safety Grant Programs

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, *OMB Guidance on FFATA Subward and Executive Compensation Reporting,* August 27, 2010, (*https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf*) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A unique identifier (DUNS);
- The names and total compensation of the five most highly compensated officers of the entity if:

(i) the entity in the preceding fiscal year received—

(I) 80 percent or more of its annual gross revenues in Federal awards;

(II) $25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (Pub. L. 101–336), as amended (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Civil Rights Restoration Act of 1987 (Pub. L. 100–259), which requires Federal-aid recipients and all subrecipients to prevent discrimination and ensure nondiscrimination in all of their programs and activities; (f) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 U.S.C. 290dd–3 and 290ee–3), relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601, et seq.), relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the application.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- Establishing a drug-free awareness program to inform employees about:
  - ○ The dangers of drug abuse in the workplace.
  - ○ The grantee's policy of maintaining a drug-free workplace.
  - ○ Any available drug counseling, rehabilitation, and employee assistance programs.
  - ○ The penalties that may be imposed upon employees for drug violations occurring in the workplace.
  - ○ Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
- Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
  - ○ Abide by the terms of the statement.
  - ○ Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction.
- Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
  - ○ Taking appropriate personnel action against such an employee, up to and including termination.
  - ○ Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501–1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance

was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., ''grassroots'') lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,* as used in this clause, have the meaning set out in the Definitions and coverage sections of 49 CFR Part 29. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,* as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled

''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's Web site at *www.nhtsa.dot.gov*. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, DC metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1 (888) 221–0045 or visit its Web site at *www.trafficsafety.org*.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashed caused by distracted driving, including policies to ban text messaging while driving company-owned or -rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

ENVIRONMENTAL IMPACT

The Governor's Representative for Highway Safety has reviewed the State's Fiscal Year highway safety planning document and hereby declares that no significant environmental impact will result from implementing this Highway Safety Plan. If, under a future revision, this Plan is modified in a manner that could result in a significant environmental impact and trigger the need for an environmental review, this office is prepared to take the action necessary to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1517).

SECTION 402 REQUIREMENTS

The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))

At least 40 percent (or 95 percent, as applicable) of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of the political subdivision of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C), 402(h)(2)), unless this requirement is waived in writing.

The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))

The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))

The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State as identified by the State highway safety planning process, including:

- Participation in the National high-visibility law enforcement mobilizations;
- Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
- An annual statewide seat belt use survey in accordance with 23 CFR Part 1340 for the measurement of State seat belt use rates;
- Development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
- Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a).

(23 U.S.C. 402(b)(1)(F))

The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))

The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))

I understand that failure to comply with applicable Federal statutes and regulations may subject State officials to civil or criminal penalties and/or place the State in a high risk grantee status in accordance with 49 CFR 18.12.

I sign these Certifications and Assurances based on personal knowledge, after appropriate inquiry, and I understand that the Government will rely on these representations in awarding grant funds.

_____

Signature Governor's Representative for Highway Safety Date

_____

Date

_____

Printed name of Governor's Representative for Highway Safety

APPENDIX B TO PART 1200—HIGHWAY SAFETY PROGRAM COST SUMMARY (HS–217)

State _____
Number _____
Date _____

Program area	Approved program costs	State/local funds	Federally funded programs			Federal share to local
			Previous balance	Increase/(Decrease)	Current Balance	
Total NHTSA						
Total FHWA						
Total NHTSA & FHWA						

State Official Authorized Signature:

Name:
Title:
Date:

Federal Official Authorized Signature:

NHTSA Name:
Title:
Date:
Effective Date:

This form is to be used to provide funding documentation for grant programs under Title 23, United States Code. 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 _____. Public reporting for this collection of information is estimated to be approximately 30 minutes per response, including the time for reviewing instructions and completing the form. All responses to this collection of information are required to obtain or retain benefits. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington DC 20590.

INSTRUCTIONS FOR PROGRAM COST SUMMARY

State—The State submitting the HS Form-217

Number—Each HS–217 will be in sequential order by fiscal year (e.g., 99–01, 99–02, etc.)

Date—The date of occurrence of the accounting action(s) described.

Program Area—The code designating a program area (e.g., PT–99, where PT represents the Police Traffic Services and 99 represents the Federal fiscal year). Funds should be entered only at the program area level, not at the task level or lower.

Approved Program Costs—The current balance of Federal funds approved (but not obligated) under the HSP or under any portion of or amendment to the HSP.

State/local Funds—Those funds which the State and its political subdivisions are contributing to the program, including both hard and soft match.

Previous Balance—The balance of Federal funds obligated and available for expenditure by the State in the current fiscal year, as of the last Federally-approved transaction. The total of this column may not exceed the sum of the State's current year obligation limitation and prior year funds carried forward. (The column is left blank on the updated Cost Summary required to be submitted under 23 CFR 1200.11(e). For subsequent submissions, the amounts in this column are obtained from the ''Current Balance'' column of the immediately preceding Cost Summary.)

Increase/(Decrease)—The amount of change in Federal funding, by program area, from the funding reflected under the ''Previous Balance''.

Current Balance—The net total of the ''Previous Balance'' and the ''Increase/(Decrease)'' amounts. The total of this column may not exceed the sum of the State's current year obligation limitation and prior year funds carried forward.

APPENDIX C TO PART 1200—ASSURANCES FOR TEEN TRAFFIC SAFETY PROGRAM

State: _____

Fiscal Year: _____

The State has elected to implement a Teen Traffic Safety Program—a statewide program to improve traffic safety for teen drivers—in accordance with 23 U.S.C. 402(m).

In my capacity as the Governor's Representative for Highway Safety, I have verified that—

- The Teen Traffic Safety Program is a separately described Program Area in the Highway Safety Plan, including a specific description of the strategies and projects, and appears in HSP page number(s) _____.
- as required under 23 U.S.C. 402(m), the statewide efforts described in the pages identified above include peer-to-peer education and prevention strategies the State will use in schools and communities that are designed to—
  - ○ increase seat belt use;
  - ○ reduce speeding;
  - ○ reduce impaired and distracted driving;
  - ○ reduce underage drinking; and
  - ○ reduce other behaviors by teen drivers that lead to injuries and fatalities.

_____

Signature Governor's Representative for Highway Safety

Date _____

_____

Printed name of Governor's Representative for Highway Safety

APPENDIX D TO PART 1200—CERTIFICATIONS AND ASSURANCES FOR NATIONAL PRIORITY SAFETY PROGRAM GRANTS (23 U.S.C. 405)

State: _____

Fiscal Year: _____

Each fiscal year the State must sign these Certifications and Assurances that it complies with all requirements, including applicable Federal statutes and regulations that are in effect during the grant period.

In my capacity as the Governor's Representative for Highway Safety, I:

- certify that, to the best of my personal knowledge, the information submitted to the National Highway Traffic Safety Administration in support of the State's application for Section 405 grants below is accurate and complete.
- understand that incorrect, incomplete, or untimely information submitted in support of the State's application may result in the denial of an award under Section 405.
- agree that, as condition of the grant, the State will use these grant funds in accordance with the specific requirements of Section 405(b), (c), (d), (e), (f) and (g), as applicable.
- agree that, as a condition of the grant, the State will comply with all applicable laws and regulations and financial and programmatic requirements for Federal grants.

_____

Signature Governor's Representative for Highway Safety

_____

Date

_____

Printed name of Governor's Representative for Highway Safety

Instructions: Check the box for each part for which the State is applying for a grant, fill in relevant blanks, and identify the attachment number or page numbers where the requested information appears in the HSP. Attachments may be submitted electronically.

☐ **Part 1: Occupant Protection (23 CFR 1200.21)**

All States: [*Fill in all blanks below.*]

- The State will maintain its aggregate expenditures from all State and local sources for occupant protection programs at or above the average level of such expenditures in fiscal years 2010 and 2011. (23 U.S.C. 405(a)(1)(H))
- The State will participate in the Click it or Ticket national mobilization in the fiscal year of the grant. The description of the State's planned participation is provided as HSP attachment or page # ____.
- The State's occupant protection plan for the upcoming fiscal year is provided as HSP attachment or page # ____.
- Documentation of the State's active network of child restraint inspection stations is provided as HSP attachment or page # ____.

• The State's plan for child passenger safety technicians is provided as HSP attachment or page # ____.

Lower Seat belt Use States: [*Check at least 3 boxes below and fill in all blanks under those checked boxes.*]

☐ The State's primary seat belt use law, requiring all occupants riding in a passenger motor vehicle to be restrained in a seat belt or a child restraint, was enacted on _____ ____/____ and last amended on ____/_____ ____, is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):

_____

_____

☐ The State's occupant protection law, requiring occupants to be secured in a seat belt or age-appropriate child restraint while in a passenger motor vehicle and a minimum fine of $25, was enacted on ____/____/____ and last amended on ____/____/____, is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

• _____ Requirement for all occupants to be secured in seat belt or age appropriate child restraint

• _____ Coverage of all passenger motor vehicles

• _____ Minimum fine of at least $25

• _____ Exemptions from restraint requirements

☐ The State's seat belt enforcement plan is provided as HSP attachment or page # ____.

☐ The State's comprehensive occupant protection program is provided as HSP attachment # ____.

[*Check one box below and fill in any blanks under that checked box.*]

☐ The State's NHTSA-facilitated occupant protection program assessment was conducted on ____/____/____;

OR

☐ The State agrees to conduct a NHTSA-facilitated occupant protection program assessment by September 1 of the fiscal year of the grant. (This option is available only for fiscal year 2013 grants.)

☐ Part 2: State Traffic Safety Information System Improvements (23 CFR 1200.22)

• The State will maintain its aggregate expenditures from all State and local sources for traffic safety information system programs at or above the average level of such expenditures in fiscal years 2010 and 2011.

[*Fill in at least one blank for each bullet below.*]

• A copy of [*check one box only*] the ☐ TRCC charter or the ☐ statute legally mandating a State TRCC is provided as HSP attachment # ____ or submitted electronically through the TRIPRS database on ____/_____ ____.

• A copy of meeting schedule and all reports and other documents promulgated by the TRCC during the 12 months preceding the application due date is provided as HSP attachment # ____ or submitted electronically through the TRIPRS database on ____/_____ ____.

• A list of the TRCC membership and the organization and function they represent is provided as HSP attachment # ____ or submitted electronically through the TRIPRS database on ____/____/____.

• The name and title of the State's Traffic Records Coordinator is

_____

_____

• A copy of the State Strategic Plan, including any updates, is provided as HSP attachment # ____ or submitted electronically through the TRIPRS database on ____/_____ ____.

• [*Check one box below and fill in any blanks under that checked box.*]

☐ The following pages in the State's Strategic Plan provides a written description of the performance measures, and all supporting data, that the State is relying on to demonstrate achievement of the quantitative improvement in the preceding 12 months of the application due date in relation to one or more of the significant data program attributes: pages _____.

OR

☐ If not detailed in the State's Strategic Plan, the written description is provided as HSP attachment # ____.

• The State's most recent assessment or update of its highway safety data and traffic records system was completed on ____/_____ ____.

☐ Part 3: Impaired Driving Countermeasures (23 CFR 1200.23)

All States:

• The State will maintain its aggregate expenditures from all State and local sources for impaired driving programs at or above the average level of such expenditures in fiscal years 2010 and 2011.

• The State will use the funds awarded under 23 U.S.C. 405(d) only for the implementation of programs as provided in 23 CFR 1200.23(i) in the fiscal year of the grant.

Mid-Range State:

• [*Check one box below and fill in any blanks under that checked box.*]

☐ The statewide impaired driving plan approved by a statewide impaired driving task force was issued on ____/____/____ and is provided as HSP attachment # ____.

OR

☐ For this first year of the grant as a mid-range State, the State agrees to convene a statewide impaired driving task force to develop a statewide impaired driving plan and submit a copy of the plan to NHTSA by September 1 of the fiscal year of the grant.

• A copy of information describing the statewide impaired driving task force is provided as HSP attachment # ____.

High-Range State:

[Check one box below and fill in any blanks under that checked box.]

☐ A NHTSA-facilitated assessment of the State's impaired driving program was conducted on ____/____/____;

OR

☐ For the first year of the grant as a high-range State, the State agrees to conduct a NHTSA-facilitated assessment by September 1 of the fiscal year of the grant;

• [*Check one box below and fill in any blanks under that checked box.*]

☐ For the first year of the grant as a high-range State, the State agrees to convene a statewide impaired driving task force to develop a statewide impaired driving plan addressing recommendations from the assessment and submit the plan to NHTSA for review and approval by September 1 of the fiscal year of the grant;

OR

☐ For subsequent years of the grant as a high-range State, the statewide impaired driving plan developed or updated on _____ ____/____ is provided as HSP attachment # ____.

• A copy of the information describing the statewide impaired driving task force is provided as HSP attachment # ____.

Ignition Interlock Law: [*Fill in all blanks below.*]

• The State's ignition interlock law was enacted on ____/____/____ and last amended on ____/____/____, is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):

. _____

☐ Part 4: Distracted Driving (23 CFR 1200.24)

[*Fill in all blanks below.*]

Prohibition on Texting While Driving

The State's texting ban statute, prohibiting texting while driving, a minimum fine of at least $25, and increased fines for repeat offenses, was enacted on ____/____/____ and last amended on ____/____/____, is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

• _____ Prohibition on texting while driving

• _____ Definition of covered wireless communication devices

• _____ Minimum fine of at least $25 for first offense

• _____ Increased fines for repeat offenses

• _____ Exemptions from texting ban

Prohibition on Youth Cell Phone Use While Driving

The State's youth cell phone use ban statute, prohibiting youth cell phone use while driving, driver license testing of distracted driving issues, a minimum fine of at least $25, increased fines for repeat offenses, was enacted on ____/____/____ and last amended on ____/____/____, is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

• _____ Prohibition on youth cell phone use while driving

• _____ Driver license testing of distracted driving issues

• _____ Minimum fine of at least $25 for first offense

• _____ Increased fines for repeat offenses

• _____ Exemptions from youth cell phone use ban

☐ Part 5: Motorcyclist Safety (23 CFR 1200.25)

[*Check at least 2 boxes below and fill in any blanks under those checked boxes.*]

☐ Motorcycle riding training course:

• Copy of official State document (e.g., law, regulation, binding policy directive,

letter from the Governor) identifying the designated State authority over motorcyclist safety issues is provided as HSP attachment # ____.

• Document(s) showing the designated State authority approving the training curriculum that includes instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle is provided as HSP attachment # ____.

• Document(s) regarding locations of the motorcycle rider ____.

• Document showing that certified motorcycle rider training instructors teach the motorcycle riding training course is provided as HSP attachment # ____.

• Description of the quality control procedures to assess motorcycle rider training courses and instructor training courses and actions taken to improve courses is provided as HSP attachment # ____.

☐ Motorcyclist awareness program:

• Copy of official State document (e.g., law, regulation, binding policy directive, letter from the Governor) identifying the designated State authority over motorcyclist safety issues is provided as HSP attachment # ____.

• Letter from the Governor's Representative for Highway Safety regarding the development of the motorcyclist awareness program is provided as HSP attachment # ____.

• Data used to identify and prioritize the State's motorcyclist safety program areas is provided as HSP attachment or page # ____.

• Description of how the State achieved collaboration among agencies and organizations regarding motorcycle safety issues is provided as HSP attachment # or page #____.

• Copy of the State strategic communications plan is provided as HSP attachment # ____.

☐ Reduction of fatalities and crashes involving motorcycles:

• Data showing the total number of motor vehicle crashes involving motorcycles is provided as HSP attachment or page # ____.

• Description of the State's methods for collecting and analyzing data is provided as HSP attachment or page # ____.

☐ Impaired driving program:

• Data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas is provided as HSP attachment or page # ____.

• Detailed description of the State's impaired driving program is provided as HSP attachment or page # ____.

• The State law or regulation defines impairment. Legal citation(s):

_____

☐ Reduction of fatalities and accidents involving impaired motorcyclists:

• Data showing the total number of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators is provided as HSP attachment or page # ____.

• Description of the State's methods for collecting and analyzing data is provided as HSP attachment or page # ____.

• The State law or regulation defines impairment. Legal citation(s):

_____

☐ Use of fees collected from motorcyclists for motorcycle programs: [*Check one box below and fill in any blanks under the checked box.*]

☐ Applying as a Law State—

• The State law or regulation requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. Legal citation(s):

_____

AND

• The State's law appropriating funds for FY ____ requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs be spent on motorcycle training and safety programs. Legal citation(s):

_____

☐ Applying as a Data State—

• Data and/or documentation from official State records from the previous fiscal year showing that *all* fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs were used for motorcycle training and safety programs is provided as HSP attachment # ____.

☐ **Part 6: State Graduated Driver Licensing Laws (23 CFR 1200.26)**

[*Fill in all applicable blanks below.*]

The State's graduated driver licensing statute, requiring both a learner's permit stage and intermediate stage prior to receiving a full driver's license, was enacted on ____/____/____ and last amended on ____/____/____, is in effect, and will be enforced during the fiscal year of the grant.

Learner's Permit Stage—requires testing and education, driving restrictions, minimum duration, and applicability to novice drivers younger than 21 years of age.

Legal citations:

• _____ Testing and education requirements

• _____ Driving restrictions

• _____ Minimum duration

• _____ Applicability to notice drivers younger than 21 years of age

• _____ Exemptions from graduated driver licensing law

Intermediate Stage—requires driving restrictions, minimum duration, and applicability to any driver who has completed the learner's permit stage and who is younger than 18 years of age.

Legal citations:

• _____ Driving restrictions

• _____ Minimum duration

• _____ Applicability to any driver who has completed the learner's permit stage and is younger than 18 years of age

• _____ Exemptions from graduated driver licensing law

Additional Requirements During Both Learner's Permit and Intermediate Stages

Prohibition enforced as a primary offense on use of a cellular telephone or any communications device by the driver while driving, except in case of emergency. Legal citation(s):

_____

Requirement that the driver who possesses a learner's permit or intermediate license remain conviction-free for a period of not less than six consecutive months immediately prior to the expiration of that stage. Legal citation(s):

_____

License Distinguishability (*Check one box below and fill in any blanks under that checked box.*)

☐ Requirement that the State learner's permit, intermediate license, and full driver's license are visually distinguishable. Legal citation(s):

_____

OR

☐ Sample permits and licenses containing visual features that would enable a law enforcement officer to distinguish between the State learner's permit, intermediate license, and full driver's license, are provided as HSP attachment #_____.

OR

☐ Description of the State's system that enables law enforcement officers in the State during traffic stops to distinguish between the State learner's permit, intermediate license, and full driver's license, are provided as HSP attachment #_____.

APPENDIX E TO PART 1200—PARTICIPATION BY POLITICAL SUBDIVISIONS

(a) Policy. To ensure compliance with the provisions of 23 U.S.C. 402(b)(1)(C) and 23 U.S.C. 402(h)(2), which require that at least 40 percent or 95 percent of all Federal funds apportioned under Section 402 to the State or the Secretary of Interior, respectively, will be expended by political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs, the NHTSA Approving Official will determine if the political subdivisions had an active voice in the initiation, development and implementation of the programs for which funds apportioned under 23 U.S.C. 402 are expended.

(b) Terms.

Local participation refers to the minimum 40 percent or 95 percent (Indian Nations) that must be expended by or for the benefit of political subdivisions.

Political subdivision includes Indian tribes, for purpose and application to the apportionment to the Secretary of Interior.

(c) Determining local share.

(1) In determining whether a State meets the local share requirement in a fiscal year, NHTSA will apply the requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single entity for this purpose. Therefore, at least 40 percent of each State's apportionments (or at least 95 percent of the apportionment to the Secretary of Interior) from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the period when funds would normally lapse.

The local participation requirement is applicable to the State's total federally funded safety program irrespective of Standard designation or Agency responsibility.

(2) When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures are clearly part of the local share. Local highway safety-project-related expenditures and associated indirect costs, which are reimbursable to the grantee local governments, are classifiable as local share. Illustrations of such expenditures are the costs incurred by a local government in planning and administration of highway safety project-related activities, such as occupant protection, traffic records system improvements, emergency medical services, pedestrian and bicycle safety activities, police traffic services, alcohol and other drug countermeasures, motorcycle safety, and speed control.

(3) When Federal funds apportioned under 23 U.S.C. 402 are expended by a State agency for the benefit of a political subdivision, such funds may be considered as part of the local share, provided that the political subdivision has had an active voice in the initiation, development, and implementation of the programs for which such funds are expended. A State may not arbitrarily ascribe State agency expenditures as ''benefitting local government.'' Where political subdivisions have had an active voice in the initiation, development, and implementation of a particular program or activity, and a political subdivision which has not had such active voice agrees in advance of implementation to accept the benefits of the program, the Federal share of the cost of such benefits may be credited toward meeting the local participation requirement. Where no political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, but a political subdivision requests the benefits of the program as part of the local government's highway safety program, the Federal share of the cost of such benefits may be credited toward meeting the local participation requirement. Evidence of consent and acceptance of the work, goods or services on behalf of the local government must be established and maintained on file by the State until all funds authorized for a specific year are expended and audits completed.

(4) State agency expenditures which are generally not classified as local are within such areas as vehicle inspection, vehicle registration and driver licensing. However, where these areas provide funding for services such as driver improvement tasks administered by traffic courts, or where they furnish computer support for local government requests for traffic record searches, these expenditures are classifiable as benefitting local programs.

(d) Waivers. While the local participation requirement may be waived in whole or in part by the NHTSA Administrator, it is expected that each State program will generate political subdivision participation to the extent required by the Act so that requests for waivers will be minimized. Where a waiver is requested, however, it must be documented at least by a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State and must recommend the appropriate percentage participation to be applied in lieu of the local share.

APPENDIX F TO PART 1200—PLANNING AND ADMINISTRATION (P&A) COSTS

(a) Policy. Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 13 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian country, as defined by 23 U.S.C. 402(h), is exempt from these provisions. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs.

(b) Terms.

Direct costs are those costs identified specifically with a particular planning and administration activity or project. The salary of an accountant on the State Highway Safety Agency staff is an example of a direct cost attributable to P&A. The salary of a DWI (Driving While Intoxicated) enforcement officer is an example of direct cost attributable to a project.

Indirect costs are those costs (1) incurred for a common or joint purpose benefiting more than one cost objective within a governmental unit and (2) not readily assignable to the project specifically benefited. For example, centralized support services such as personnel, procurement, and budgeting would be indirect costs.

Planning and administration (P&A) costs are those direct and indirect costs that are attributable to the management of the Highway Safety Agency. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs specific to the Highway Safety Agency.

Program management costs are those costs attributable to a program area (e.g., salary and travel expenses of an impaired driving program manager/coordinator of a State Highway Safety Agency).

(c) Procedures. (1) P&A activities and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module. Federal participation shall not exceed 50 percent (or the applicable sliding scale) of the total P&A costs. A State shall not use NHTSA funds to pay more than 50 percent of the P&A costs attributable to NHTSA programs. In addition, the Federal contribution for P&A activities shall not exceed 13 percent of the total funds in the State received under 23 U.S.C. 402 each fiscal year.

(2) A State at its option may allocate salary and related costs of State highway safety agency employees to one of the following:

(i) P&A;

(ii) Program management of one or more program areas contained in the HSP; or

(iii) Combination of P&A activities and the program management activities in one or more program areas.

(3) If an employee works solely performing P&A activities, the total salary and related costs may be programmed to P&A. If the employee works performing program management activities in one or more program areas, the total salary and related costs may be charged directly to the appropriate area(s). If an employee is working time on a combination of P&A and program management activities, the total salary and related costs may be charged to P&A and the appropriate program area(s) based on the actual time worked under each area(s). If the State Highway Safety Agency elects to allocate costs based on actual time spent on an activity, the State Highway Safety Agency must keep accurate time records showing the work activities for each employee. The State's recordkeeping system must be approved by the appropriate NHTSA Approving Official.

PART 1205—[Removed and Reserved]

■ 2. Remove and reserve part 1205.

PART 1206—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 1206.

PART 1250—[REMOVED AND RESERVED]

■ 4. Remove and reserve part 1250.

PART 1251—[REMOVED AND RESERVED]

■ 5. Remove and reserve part 1251.

PART 1252—[REMOVED AND RESERVED]

■ 6. Remove and reserve part 1252.

PART 1313—[REMOVED AND RESERVED]

■ 7. Remove and reserve part 1313.

PART 1335—[REMOVED AND RESERVED]

■ 8. Remove and reserve part 1335.

PART 1345—[REMOVED AND RESERVED]

■ 9. Remove and reserve part 1345.

PART 1350—[REMOVED AND RESERVED]

■ 10. Remove and reserve part 1350.

Issued in Washington, DC, on: January 4, 2013 under authority delegated in 49 CFR 1.95.

David L. Strickland,

Administrator, National Highway Traffic Safety Administration.

Victor M. Mendez,

Administrator, Federal Highway Administration.

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Part III

Department of Education

34 CFR Chapter VI

Final Priorities; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)—College Savings Account Research Demonstration Project; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[CFDA Number: 84.334D.]

Final Priorities; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)—College Savings Account Research Demonstration Project

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final priorities.

SUMMARY: The Assistant Secretary for Postsecondary Education announces priorities under the GEAR UP College Savings Account Research Demonstration Project. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2013 and later years. We take this action to determine the effectiveness of implementing college savings accounts and providing financial counseling in conjunction with other GEAR UP activities as part of an overall college access and success strategy.

DATES: *Effective Date:* These priorities are effective February 22, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine St. Clair, U.S. Department of Education, 1990 K Street NW., room 7056, Washington, DC 20006–8524. Telephone: (202) 502–7579 or by email: *Catherine.StClair@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The GEAR UP Program is a discretionary grant program that provides financial support for academic and related support services that eligible low-income students, including students with disabilities, need to enable them to obtain a secondary school diploma and prepare for and succeed in postsecondary education.

Program Authority: 20 U.S.C. 1070a–21 to 1070a–28.

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on June 1, 2012 (77 FR 32612). That notice contained background information and our reasons for proposing the priorities.

There are differences between the NPP and this notice of final priorities (NFP) as discussed in the *Analysis of Comments and Changes* section elsewhere in this notice.

A summary of the major changes follows.

- GEAR UP State grantees that received a new State grant in FY 2012 and will have ninth grade students in the 2014–2015 academic year are eligible to apply for funding.
- The Federal matching contribution has been changed from up to $10 per month to up to $25 per month for a maximum of $300 in Federal matching funds each year for a maximum of four years.
- The funding eligibility criteria have been changed so that, to be eligible, a GEAR UP State grant funded in FY 2011 or FY 2012 must support activities under this demonstration project in at least six high schools, each of which must serve a cohort of at least 30 ninth grade GEAR UP students. For the purposes of these priorities, a high school must serve students in grades 9–12.
- Applicants must identify the names, locations, and National Center for Education Statistics (NCES) identification numbers of the GEAR UP high schools that the applicant proposes to participate in the demonstration project.
- Project directors and appropriate project staff are required to participate in meetings that the Department will convene, likely in conjunction with the annual meetings of the National Council for Community and Education Partnerships (NCCEP), to provide professional development and technical assistance to grantees participating in the demonstration project.
- In order to protect the integrity of the project evaluation, grantees may not solicit, or raise money from, non-Federal sources as additional contributions to the student's non-Federal college savings account.

Public Comment: In response to our invitation in the notice of proposed priorities, 19 parties submitted comments.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities since publication of the notice of proposed priorities follows.

Comment: Commenters were generally very supportive of the Department's proposal. They offered various suggestions for improving the demonstration program, keeping in mind the Department's desire to provide and promote incentives for greater college savings by families of GEAR UP students, keep administrative costs and effort manageable, provide flexibility where possible, and develop and implement a study design that would answer important questions about the usefulness of college savings accounts as a way to promote increased high school graduation rates and rates of enrollment in postsecondary education.

Discussion: The Department appreciates these comments and is gratified that the commenters were generally very supportive of our proposal and the desirability of this special GEAR UP project. We address our responses to areas of specific commenter recommendations, by topic heading, in the following discussion.

Changes: None.

Costs, Training, and Support

Comment: One commenter asked for clarification about whether, given the GEAR UP program's match requirement, grantees would need to raise additional matching funds on top of the funds they must already raise to support their regular GEAR UP projects. The commenter stated that applicants need to know the extent of their financial commitment before they apply, and that unless these funds are needed to carry out the demonstration project, the Department should consider waiving the additional matching fund requirement.

Another commenter also sought clarification about the requirement that grantees provide a matching contribution to the amount of the GEAR UP award for this demonstration project.

Discussion: Under section 404C(b) of the HEA, successful GEAR UP applicants must provide from State, local, institutional, or private funds, not less than 50 percent of the cost of the program. The regulations at 34 CFR § 694.7(a) and (b) further require that applicants must include in their budgets the percentage of costs of the GEAR UP project to be provided annually from non-Federal funds, and grantees must make substantial progress toward meeting the matching percentage stated in the approved application for each year of the project period.

Successful applicants for the College Savings Account Research Demonstration Project must already be GEAR UP program State grantees, and the Department expects that most recipients of these demonstration grants will not have to provide additional matching funds beyond what they are already providing to meet the match for their initial GEAR UP award. This is because a grantee may count any ''over-matched'' non-Federal funds it has already committed to its regular GEAR UP project toward its match for the

demonstration project. Moreover, a grantee under this demonstration project may treat contributions of students, families, or others to a student savings account as a matching contribution in its project budget. If, however, during any project year these private contributions to savings accounts are less than anticipated, a State would have to ensure by the end of each project year that it had met the annual matching requirement through other non-Federal contributions to this project or to the regular GEAR UP activities. Thus, we anticipate that only those grantees that have not ''over-matched'' non-Federal funds in their regular GEAR UP projects or that do not secure sufficient non-Federal deposits in the students' savings accounts will need to contribute non-Federal matching contributions to their College Savings Account Research Demonstration projects.

Changes: We have added a clarifying citation to 34 CFR § 694.7 in Priority 2, section I, paragraph (n).

Comment: One commenter recommended the use of online resources to facilitate the project.

Discussion: The Department agrees that online resources are important for helping students and families manage their accounts. Under Priority 2, successful applicants must ensure that students, students' parents, or others on the students' behalf are able to make online deposits to accounts. In addition, students also must be able to view account balances online. While the Department believes that online resources could also be a very useful source of support for the required financial counseling or technical assistance and professional development for staff, we do not think it is appropriate to require online access for these purposes. Rather, grantees should have flexibility to take advantage of the resources that they believe are best suited for their projects.

Changes: None.

Comment: A commenter was concerned that the *Background* section of the notice of proposed priorities provided conflicting information about the amount of seed money that grantees will make available from GEAR UP funds for GEAR UP students.

Discussion: We agree with this commenter that the *Background* section of the NPP should not have referred to an approximate amount of seed money.

Changes: This notice of final priorities clarifies that the amount of seed money for a GEAR UP-funded account for each participating GEAR UP student is $200. The seed amount is set out in Priority 2, Section I, paragraph (b)(1).

Comment: A commenter suggested that the Department consider establishing basic design requirements—for both program management and evaluation purposes—for data and account management as most grantees will not have experience in the administration of these kinds of college savings accounts. The commenter also suggested that we provide grantees with data collection software and training on how to use it. Other commenters noted that it will be critical for grantees to receive guidance, technical assistance, and access to experts on establishing and maintaining these savings accounts, and on the responsibilities of trustees and custodians.

Another commenter stated that the Department should be prepared to assist grantees in negotiating account features and contract terms with financial institution partners, and may even need to solicit financial institution partners for grantees.

Another commenter stated that based on its experience with schools, local governments, and others in the design and development of college savings accounts, grantees will likely need significant technical support from the Department in various areas of their projects, particularly in the selection of savings accounts, program design, and program administration.

Finally, noting that the Department had proposed that money families deposit into students' college savings accounts would not count against their children for purposes of determining eligibility for Federal student financial assistance, one commenter recommended that we likewise ensure that these savings be excluded from other means-tested Federal programs, such as Medicaid and Temporary Aid to Needy Families. The commenter stated that if both the Federal-funds account and the student's account are held in trust, the fact that the family does not have direct ownership of either should resolve the issue, but the commenter also noted that any hint of worry about this issue might create a chilling effect on deposit activity. The commenter recommended that the Department provide guidance to account administrators on how to address this issue of asset test at the Federal, State, and local levels and how to communicate the answers to students and families.

Discussion: The Department agrees that extensive and ongoing technical assistance on important aspects of project implementation is crucial to helping grantees establish and manage savings accounts, and that this kind of support is particularly important for those with no experience in this area. To address these concerns, the Department plans to provide presentations and other technical assistance on important aspects of project implementation at national GEAR UP conferences. These activities would include general considerations that should be taken into account when implementing these types of savings accounts. The Department is also working with the Treasury Department, the National Credit Union Administration (NCUA), and the Federal Deposit Insurance Corporation (FDIC) to develop materials that will give applicants key information about implementing college savings accounts, including tax and asset test implications, such as those pertaining to Medicaid and Temporary Aid to Needy Families. However, grantees would tailor account characteristics to best meet their needs and the needs of their GEAR UP students, and would select their own financial partners, provided the requirements of Priority 2 are met.

The Department would not participate in grantee (or applicant) discussions with financial institutions that would (or might) implement these savings accounts. With regard to the comment that the Department provide data collection software and training in its use, the Department may not endorse any specific data-collection software programs. Grantees should use their professional judgment in selecting appropriate software that meets their needs and the needs of the financial institutions with which they would partner. Grant funds may be used to purchase software and any needed training in its use for the purpose of providing and tracking demonstration project services and outcomes.

Changes: None.

Comment: One commenter wanted clarity on whether grantees may use grant funds for costs of programmatic support, given that certain supportive project activities, such as outreach and account administration, are labor intensive and particularly necessary at the local level.

Discussion: The Department understands that college savings account programs can be labor intensive and require a significant investment in outreach and administration to be successful. In the proposed budgets they include in their project applications, applicants should include all expected costs of implementing the proposed projects, including provision of payment to the account administrator, the account trustee, and costs for managing and administering the project

over the course of the project period (and later if the grantee expects the account administrator to be conducting activities after the end of the project period).

Changes: None.

Comment: One commenter recommended that demonstration projects partner with local organizations, such as public broadcasting stations, to create high-quality digital content and services on financial literacy.

Another commenter said that the success of State GEAR UP grantees will require strong partnerships with local governments and school districts.

One commenter recommended that the applications from State grantees include plans for local partnerships. This commenter noted that local partnerships can also help to tie this savings demonstration project to other community-based programs, such as free tax preparation, financial education resources, and help with the process of preparing a student's FAFSA application.

Discussion: The Department is currently working with the Treasury Department, the NCUA, the FDIC, and other Federal and non-Federal partners to identify other opportunities to provide grantees with technical assistance around financial literacy. Further, while we agree that grantees partnering with local organizations to create high-quality digital content can be very important for helping students and their families better understand financial literacy, we do not believe that requiring such a partnership is necessary. Grantees will be working with local educational agencies that already are implementing GEAR UP projects, and those GEAR UP grantees already engage in community partnerships that are key to the successful implementation of a GEAR UP project. We are confident that if a State GEAR UP grantee believes that a local partnership to develop digital materials would contribute to the success of this demonstration project, it will include this activity in its application. However, because we believe that applicants should design their applications using their best judgment of how best to achieve the goal of having the largest number of families of GEAR UP students make regular deposits in their children's college savings accounts, we do not believe that requiring all grantees to partner with local organizations that can help to create high-quality digital content is either necessary or desirable.

Changes: None.

Comment: One commenter recommended the Department take specific actions to promote financial literacy, such as providing support to grantees to identify and select quality financial education curricula.

Discussion: The Department will offer ongoing trainings to grantees that will include group format trainings (at annual GEAR UP conferences or via Webinar) and one-on-one advising, as needed. The Department is also holding discussions with Federal and non-Federal partners to identify other opportunities to provide support for grantees. This includes developing materials that will give applicants key information about implementing college savings accounts. The Department will also monitor financial education delivery over time to ensure quality.

Changes: None.

Funding Eligibility

Comment: A number of commenters recommended that the Department expand eligibility so that the demonstration project may benefit priority students served in a State GEAR UP project as well as students who are in a cohort.

One commenter noted that by limiting eligibility to State GEAR UP grantees that use the cohort approach, the Department is making ineligible many valuable, experienced, and interested stakeholders, including existing GEAR UP grantees, and it is limiting its ability to identify crucial barriers to implementation on a broader scale.

A second commenter did not question our proposal that eligibility not extend to schools in which members of a GEAR UP cohort already are the beneficiaries of a matched college savings account program. Rather, it urged the Department to permit schools to be eligible if these college savings accounts were only made available in those schools to GEAR UP priority students who would not participate in this demonstration project. The commenter stated that one State would soon be implementing this kind of hybrid program and did not believe ineligible students under the State's program should also be ineligible under this demonstration program.

Another commenter recommended that eligibility be expanded to include both partnership and State GEAR UP grantees that meet all requirements of this competition.

Discussion: We appreciate the broad interest in the project. While the Department agrees that both State and partnership grantees using the priority model for determining student eligibility are engaging in important and high-quality work, we have limited the pool of eligible grantees to State GEAR UP grantees that determine eligibility using the cohort approach for two reasons.

First, permitting students who are selected for the regular GEAR UP project on the basis of priority to participate in this college savings account demonstration is incompatible with the project's research design. In order to ensure that the potential effects of savings accounts are properly evaluated, grantees will need to serve entire cohorts (i.e., grades) of students in at least six GEAR UP high schools that (1) can be randomly assigned, and (2) have a sufficient number of GEAR UP participants in a ninth grade cohort whose progress and outcomes can be tracked over the grant period. We think that being able to evaluate the effects of savings accounts provided to all students in a cohort is important, because serving all students may create peer effects that indicate the importance of providing such accounts to every student, as opposed to a few individuals in a given school. Such a structure, however, necessitates that entire grades participate in the GEAR UP program, which is the case for a State grant that selects students using the cohort approach but not for grants that select students using the priority approach.

Second, with regard to the comment that we extend eligibility to apply for a grant under this demonstration project to GEAR UP partnership grantees that select students using the cohort approach, we first note that under section 404D(a) and (b) of the HEA, GEAR UP funds may be used for scholarships and other financial assistance for participating students only as provided in section 404E of the HEA; therefore the use of GEAR UP funds for college savings accounts is permissible only as a supplement to the GEAR UP funds that a grantee is already reserving for financial assistance under section 404E in its regular GEAR UP project. Few GEAR UP partnership grantees reserve GEAR UP funds in their regular projects under requirements in section 404E. Furthermore, we believe State GEAR UP grantees, unlike the few partnership grantees that reserve GEAR UP funds for financial assistance under section 404E, have the needed capacity and infrastructure in place to manage this demonstration project.

Changes: None.

Comment: One commenter recommended maintaining the cohort approach, believing that ''universality'' is critical to creating a college-going culture. This commenter also expressed concern about precluding States and

municipalities with strong knowledge and experience in establishing student accounts from applying and recommended that the Department extend eligibility to States that are not now current GEAR UP grantees and to GEAR UP partnership grantees with strong municipal partners.

Discussion: While the Department appreciates that a number of States and municipalities have been conducting some innovative and promising experiments on college savings, the Department needs to limit this competition to existing GEAR UP grantees. Under section 404C(a) of the HEA, the Department may provide GEAR UP funds only to applicants that submit an application to conduct the full panoply of GEAR UP activities required by law, and the Department does not have program funding available to support new GEAR UP grantees that would conduct all of these program activities and also implement this demonstration project.

In addition, an important part of evaluating the effectiveness of college savings accounts is to do so in the context of wraparound services—that is, supports that combine academic activities like providing tutoring or encouragement to enroll in challenging coursework with mentoring, information on student financial aid, building family engagement, and other help that is not explicitly academic in nature. By providing grants to existing programs that have been operating for at least a year or two, we are ensuring that demonstration project grantees have had the time needed to put those wraparound services into place in a way that new grantees could not.

Finally, we are not extending eligibility to local GEAR UP projects with strong municipal partners for the reasons expressed in response to the prior comment.

Changes: None.

Comment: One commenter requested that we clarify whether the demonstration project is open to all students in a cohort or only to those who are low-income and, if the latter, how income requirements would be set.

Discussion: The demonstration project is open to any students in a GEAR UP cohort beginning in ninth grade, so long as they attend a school that has been randomly selected to receive seed and match funding for the college savings accounts. There are no additional tests for income or poverty beyond those in section 404B(d) of the HEA that apply to the schools in which the cohorts of students are enrolled and in which State GEAR UP grantees are already providing GEAR UP services.

Changes: None.

Comment: Several commenters requested that the Department expand grantee eligibility under Priority 1 to allow FY 2012 GEAR UP State grantees with ninth graders in the fall of the 2014–2015 school year to participate in the demonstration project. These commenters stated that the Department's proposal unnecessarily limits the pool of potential State GEAR UP grantees eligible to participate in this project.

Discussion: We agree with these comments. Under Proposed Priority 1, GEAR UP State grantees that received a new award in FY 2012 and that select students on the basis of the cohort approach would not have been eligible to receive funding under this demonstration project because their students would predominantly be in the eighth grade during the 2013–2014 academic year. However, we think it is appropriate to revise Priority 1 to permit GEAR UP State grantees that received new awards in 2012 and that are using the cohort approach to apply for funding under this demonstration project. Doing so will help to ensure that more State GEAR UP grantees are able to participate without undermining the evaluation of the demonstration project.

Changes: Eligibility has been expanded to include 2012 GEAR UP State grantees that select participating students using the cohort approach and that provide GEAR UP services to ninth graders in the fall of the 2014–2015 school year.

Comment: Several commenters requested that the Department revise Priority 1 to lower the minimum class size of participating schools from the proposed 50 students in order to avoid bias against applicants serving rural schools.

Discussion: The Department had initially proposed a class size of 50 to ensure that services are provided in a cost-effective manner and to provide a sufficient cushion so that even if some students and their families chose not to agree to participate in the surveys needed for the project evaluation, the evaluation would still have a sufficiently large sample of students and families. However, we agree with these comments that the proposed minimum class size of 50 students may have been unnecessarily high and would have made it difficult for many rural schools to participate even if their State is among the successful applicants. Historical data from State grantees indicate that high schools served by GEAR UP using the cohort approach have an average of far more than 30 participants in the ninth grade cohorts. Using the lower number alleviates any potential rural bias but still ensures a sufficient number of GEAR UP students in each participating school both to enable cost-efficient administration of the demonstration activities and to sustain the integrity of the evaluation design.

Changes: We have revised paragraph (a) in Section I of Priority 1 to state that when the applicant begins providing college savings accounts to its GEAR UP ninth grade students, each of the applicant's participating schools must serve a cohort of a minimum of 30 ninth graders.

Comment: One commenter noted the possibility that limiting applications to projects that select eligible GEAR UP students using the cohort approach could lead to overrepresentation of applications from certain geographic parts of the country. The commenter suggested that the Department consider having applicants identify their proposed projects as urban, rural, or suburban, and in the selection process give preference to applicants whose projects would serve urban and rural schools.

Discussion: The Department agrees that the demonstration project should not unnecessarily disadvantage projects based upon the geographic location of their schools, particularly those serving schools in rural areas. That is why we are revising paragraph (a) in Section I of Priority 1 to specify that the applicant's high schools must each serve a minimum ninth grade class-size of 30 GEAR UP participants. Historical data from State GEAR UP grantees indicate that high schools using the cohort approach have an average of far more than 30 participants in the ninth grade cohorts. Therefore, we believe that reducing the minimum number of participants to 30 will be sufficient to address any concerns about geographic distribution and that no other actions are required. The Department believes that urban schools do not need special priority. As applicants for grants under this demonstration project are State GEAR UP grantees, the size of schools that a State identifies for inclusion in the proposed project should have no impact on the quality of the applications. Hence reducing the required size of the ninth grade cohort to 30 will not negatively impact larger urban schools. Moreover, these urban schools already make up a large portion of existing GEAR UP projects. Finally, the Department has found no correlation between a State GEAR UP grantee's geographic location and its choice to

administer a cohort- or priority-based approach.

Changes: We have revised paragraph (a) of Priority 1 to state that the schools that an applicant would serve must have at least 30 GEAR UP participants who will be in ninth grade during the 2013–2014 or 2014–2015 academic year (depending on whether they received their new GEAR UP award in FY 2011 or FY 2012).

Comment: One commenter recommended that the Department expand eligibility to include a GEAR UP State grantee initially funded in 2008, asserting that its State has had significant experience with college savings accounts since 2003 and has the Nation's highest proportion of disadvantaged students.

Another commenter recommended that the Department begin establishing the savings accounts and availability of match well before ninth grade for needy students whose parents are not college educated, given that these students would benefit from starting to save earlier in life.

Discussion: The College Savings Accounts Research Demonstration Project is designed to study whether a combination of supported personal savings accounts and associated financial incentives and counseling provided during GEAR UP students' high school years will have a positive effect on a variety of measures of college readiness, financial well-being, high school graduation, and college enrollment. GEAR UP students participating in a State grant funded in 2008 would be in the twelfth grade at the start of the research study. Therefore, if we extended eligibility to include a GEAR UP State grantee initially funded in 2008, not only would GEAR UP funds provide these students with a very small amount of funding to be used for college expenses, but the research purpose of the demonstration project would not be realized.

With respect to starting the demonstration project with students not yet in ninth grade, the Department recognizes that there may be some benefits to exploring the effectiveness of starting college savings earlier than ninth grade. However, one of the goals of the demonstration project is to look at the effects of college saving for a multiyear period while students are in high school. By starting with students in ninth grade cohorts, the Department can ensure that all students receiving college savings accounts will be attending high schools where they can receive the wraparound GEAR UP services that we think may be important for success in preparing them for, and promoting their enrollment in, college. By contrast, starting the demonstration projects when students are in an earlier grade could result in some students receiving valuable services while in middle school but then moving to high schools where they may not receive wraparound GEAR UP supports or the required financial counseling for the savings accounts. Moreover, in view of limitations on the amount of GEAR UP funds the Department has available to support this demonstration project, and our interest in receiving robust evaluation results earlier rather than later, we believe that beginning this demonstration project while students are in middle school would seriously undermine project results.

Changes: None.

Comment: One commenter recommended that any State-level project demonstrate clear and strong support of State political leadership, including the Governor, State treasurer, and school district leadership. The commenter stated that the demonstration projects would likely need cooperation among these offices for permissions and other data. The commenter further noted that State leadership would be particularly important if grantees used banks or credit unions rather than 529 college savings plans because individual banks and credit unions have their own account structures, unlike 529 plans.

Discussion: The Department notes that, consistent with our proposal, paragraph (c) in Section II of Priority 2 requires a letter of support from the LEAs that would participate in the project. The Department agrees that a broad demonstration of support for the project is important to help ensure its success. However, we think demonstrations of support are most important from the districts and schools that participate. They will have to work with grantees to give students wraparound services, provide financial literacy information, and help ensure that the account administrator and trustee have the data they need for deposits, withdrawals, and distribution of GEAR UP funds. By contrast, while we think that having the endorsements of a State's political leadership could be helpful, projects can likely succeed without these endorsements, and requiring them would add additional, and we think unnecessary, burden to the application process.

Changes: None.

Comment: One commenter strongly recommended that students who enroll in GEAR UP schools in a grade whose cohort is served by a GEAR UP grant after the beginning of the demonstration project be allowed to participate and be given access to seeded savings accounts. The commenter stated that while researchers could track these students separately, the grantee should maintain a grade-level cohort.

Discussion: In order to properly evaluate the effectiveness of the demonstration project, we need to start with a cohort of students in the ninth grade and then follow them throughout high school. Adding students who join the cohort after ninth grade would add costs to the project. And while the evaluation could separately track these students (with presumably smaller amounts of deposits in student accounts), doing so will add complexity to the evaluation. Therefore, we are not changing Priority 2 to require that grantees include in this project students who enter a participating school and join the cohort of GEAR UP students after the ninth grade.

That said, we understand that prohibiting these students from receiving services and savings accounts provided through this project could be difficult to explain and could create very undesirable tensions in the school communities. For this reason, we believe that grantees should, if they desire, be able to establish accounts for students who join the grantees' ninth grade cohort by enrolling after ninth grade in high schools in which cohort members have already received accounts. However, if a grantee chooses to provide savings accounts to these new members of the cohort, it must ensure that it has sufficient GEAR UP program funds to first provide matching deposits for students it is required to serve.

Changes: We have added a new paragraph (f)(4) in Section I of Priority 2 that, at the discretion of the grantee, permits students who become members of the GEAR UP cohort during the project period after transferring from a non-treatment high school into a treatment GEAR UP high school after ninth grade to have an account with the $200 seed money and availability of matching funds, provided that the grantee ensures that it has sufficient GEAR UP program funds to first provide matching deposits for students it is required to serve.

Comment: None.

Discussion: In Proposed Priority 1, the funding eligibility criteria would have required a GEAR UP State grant funded in FY 2011 or FY 2012 to support activities in ''multiple'' high schools. Through internal Department deliberation, we concluded that the term ''multiple'' was too vague and that the better approach is to specify a

precise minimum number. We chose to use six schools as the threshold because it represents the minimum number of participating schools in each SEA that will make the project cost-effective to implement and evaluate.

Changes: We have revised paragraph (a) of *Priority 1: Funding Eligibility* to provide that an applicant must implement a GEAR UP project in ''at least six high schools'' rather than simply ''multiple high schools.''

Comment: None.

Discussion: Proposed Priority 1 states that an applicant must have received a GEAR UP project grant that supports activities in ''at least six high schools,'' but does not define ''high school'' or what grade span would be considered ''high school.'' Through internal Department deliberation, we concluded that it is necessary to clarify that, for the purposes of these priorities, a ''high school'' must be a school that serves students in grades 9–12. This clarification is needed first to ensure that grantees will be able to provide participating students with GEAR UP services for the entirety of the project. In addition, participating students in high schools that serve grades 9–12 will be able to receive the required financial counseling for four years in conjunction with their savings accounts. By serving students in the ninth grade who then may transfer to a non-GEAR UP high school for grades 10–12, many of these counseling benefits would be lost.

Change: We have revised paragraph (a) of *Priority 1: Funding Eligibility* to provide a note clarifying that for the purposes of this notice of final priorities, a high school must be a school that serves students in grades 9–12.

Savings Account Matching Contributions

Comment: Several commenters requested that the Department revise Priority 2 and increase the proposed Federal matching contribution of $10 per month so as to provide greater incentives for GEAR UP students to go on to college and for families to save for their children's college expenses.

One commenter recommended that between the $200 per student seed money and the GEAR UP matching funds, the total amount of possible Federal funds deposited into each account be a number that is easy for a family to remember, such as $1,500 or $2,000.

Another commenter recommended that the Department provide flexibility in the amount of Federal matching funds that would be provided based on grantee determination of the needed family contribution. This commenter noted that having a variety of minimum matching rates would impact the evaluation but believes that the size of the treatment group should allow for such flexibility and help to answer the question of what level of match optimizes families' savings contributions. Another commenter recommended that the Department not establish a monthly match based on a fixed amount of family savings but instead focus on regular savings because, according to the commenter, research suggests this approach would be more effective in promoting accumulated savings.

Discussion: We agree with some of these comments.

Having examined the level of GEAR UP program funding that we expect to be available for this demonstration project, we believe that we can offer greater financial incentives for GEAR UP students or their families to save money for postsecondary education than the $10 per month Federal match that we had proposed. We therefore are revising the priority to specify that grantees will be able to match up to $25 per month. Thus, rather than the maximum of $120 of GEAR UP funds per year (and up to $480 over the maximum four years of savings) that we had proposed, grantees now will be able to provide each GEAR UP student a contribution of up to $300 per year (and up to $1,200 over this four-year period). The increase in the Federal matching contribution should increase the incentive for families to save for college and result in higher levels of family savings. We believe that $1,200 over four years will also give students and families a clearer amount of total seed and match funding available. While we appreciate one commenter's suggestion that matching amounts vary based upon a determination of family need, we do not think this approach is appropriate here. Varying the match would increase complexity for administrators, who would have to develop a needs-analysis formula and find ways to communicate these differences to students and families clearly. Beyond having grantees make available this fixed amount, the Department believes that providing other options for families to receive further deposits of GEAR UP funds beyond those specified in Priority 2 adds too much complexity to the administration of the project.

Changes: We have revised paragraph (b)(2), of Section I of *Priority 2: College Savings and Financial Counseling* to increase the Federal matching contribution from up to $10 per month to up to $25 per month, for a maximum of $300 in Federal matching funds each year for four years.

Comment: One commenter recommended the Department lower the match rate and raise the Federal matching contribution cap to maximize savings contributions. The commenter stated that families would be more motivated to save if the Department raised the amount of GEAR UP funds available for these savings accounts but lowered the match percentage from the 50 percent that we had proposed. The commenter offered this approach, stating that it would increase the amount of funds families would have available for college savings without greatly increasing the level of commitment of GEAR UP funds.

Discussion: The Department agrees with one of the recommendations in the comment. The match cap has been raised to $25 per month for a maximum of $300 in Federal matching funds each year for four years. The Department is not lowering the match rate, one dollar of GEAR UP contribution to the savings account for every dollar of student or family contribution, because we do not believe that lowering the match rate will result in increased non-Federal savings contributions.

Changes: The Federal matching contribution cap has been increased to $25 per month.

Comment: One commenter recommended revising the proposed priorities to allow grantees the option of matching family deposits in excess of the Federal limit, thereby providing an opportunity to leverage other incentive programs, such as savings match programs through a Section 529 plan.

Discussion: While we agree that offering more matching funds would provide a greater incentive to save, the demonstration project is designed to determine the impact of a fairly specific set of college-savings-oriented services and the provision of a set amount of Federal funds as a match for private savings accounts. Grantees actively seeking to encourage additional family deposits in college savings accounts by offering a match against other non-Federal contributions will interfere with the project evaluation. Therefore, the amount of matching must be kept consistent for all participating GEAR UP grantees.

Changes: None.

Comment: One commenter recommended that the Department provide greater funding to accounts of families with fewer resources. The commenter noted that while this approach presents unique challenges, such as asking for a child's Social Security number in order that the child

participates in the demonstration, this effort is needed if the demonstration is serious about policy influence.

Discussion: The Department does not agree with the commenter. We believe that existing eligibility requirements of the GEAR UP program ensure that large numbers of participating students will be low-income and first-generation college students. Moreover, changing the amount of matching funding based upon additional factors will call into question the reliability of the results of the project, add complexity to administering the program, and make it harder to communicate to students and families about the level of available funding. Therefore, we want to offer a consistent level of seed and match funding for all participating students.

Changes: None.

Comment: One commenter asked that we clarify whether the family's contribution to its college savings account must be made monthly in order to receive the full Federal contribution. Specifically, the commenter asked whether the project would contribute the full monthly level of matching contributions if the family had over-matched in one month and under-matched in another, but averaged at least $25 per month. The commenter also asked the Department to consider other savings models, such as permitting a family to receive the maximum amount of the GEAR UP contribution to the federally funded college savings account so long as it has made the required match at any point over this period.

Discussion: A student or family that has over-matched its account in one month and under-matched in another would not be able to have the amount of its over-matches count for future monthly matches, including any catch-up period contributions. One of the goals of the demonstration project is to encourage students and families to regularly save for college. Allowing the amount of over-matching in one month to count toward the matching amount in subsequent months would discourage regular saving and make the program more complex and costly to administer.

The Department appreciates the comment that the match be available to families so long as the required contribution is made at any point over this period. While we think that families should have some flexibility and opportunities to make up for lost contributions, those opportunities should not be provided indefinitely. That is why we are requiring grantees to provide families a quarterly catch-up period of two weeks. We believe these frequent catch-up opportunities balance the desire to give families the opportunity to make up for missed contributions with a project goal of providing regular deadlines that encourage savings.

Changes: Paragraph (p) in Section I of Priority 2 has been revised to clarify that a family that over-matches the Federal account in any month may not receive credit for the amount of over-match in any future month, including a catch-up period, for purposes of meeting that month's GEAR UP program matching contribution.

Comment: Rather than offer monthly matching contributions of GEAR UP funds, a number of commenters recommended that the Department instead add to accounts when certain levels of private savings are achieved, provide bonuses when families have added to accounts for perhaps six consecutive months, or, after making the initial deposit of GEAR UP funds, provide periodic deposits of Federal funds when students reach particular ages. One commenter said that these approaches would both be much simpler to implement than our proposal and that the latter option has proven successful in the United Kingdom. The commenter further recommended that rather than contributing Federal funds through matching, the Department should consider providing Federal funds for student accounts as behavioral incentives at certain milestones for financial or educational achievement. The commenter stated that this approach might be a more effective way to motivate student behavior and that research suggests that the approach also might better encourage long-term savings compared to matching monthly deposits.

Discussion: While we appreciate the summary of research presented by the commenter, the Department does not agree that the proposed approaches are feasible for the purposes of this demonstration project. We think matching savings account contributions when they occur provides immediate positive feedback to students and families that will encourage additional saving. Moreover, we think that additional benefits, such as bonuses for repeatedly saving, will make accounts more complicated and costly to administer and harder for students and families to understand. As for providing matches based upon student age or other milestones, we think that including these other benefits would likewise make administering the accounts more complicated and make it too burdensome for grantees to manage them. Therefore, we are not including additional matches for meeting other milestones.

Changes: None.

Comment: One commenter recommended that grantees be able to raise funds for savings accounts from community and philanthropic organizations, but it cautioned that in this case there should be restrictions on the use of these funds for activities that are related to education or finance, and supported by adequate documentation.

Discussion: Proper evaluation of the demonstration project requires that students served by all project grantees are subject to the same maximum matching and seeding amounts. Proper evaluation also requires that grantees not solicit or otherwise seek funds from sources other than the student's family and friends to contribute to the student's non-Federal account. Doing otherwise could compromise the demonstration project evaluation.

Changes: Paragraph (c) in Section I of Priority 2 has been revised to clarify that a grantee may not solicit or raise money from non-Federal sources as additional contributions to the student's non-Federal college savings account.

Requirements for Savings Accounts

Comment: Several commenters emphasized that, in order to meet the needs of their communities, the Department should allow grantees flexibility in the design of their programs and thus not require all grantees to use the same type of savings account.

One commenter recommended that in providing such flexibility, the Department should require that all accounts have certain minimum qualities, such as making the accounts accessible, safe, and effective, avoiding excessive fees to students, and being easy to use. The commenter also stated that this approach allows for some uniformity while also providing variation for research purposes, and added that if the Department decides to require a single account type, it should not use 529 savings plans. The commenter stated that despite their positive features, these plans have more onerous data disclosure requirements than alternative account models and thus would exclude more students than necessary from participation.

Another commenter, urging the Department to maintain flexibility in the type of account the applicant would select, noted that 529 plans generally cannot be accessed by deposits into local bank branches and may prove difficult to use by unbanked low-income households since in-person deposits would be very difficult. The commenter

noted that 529 accounts often have minimum deposit requirements, often in the $15 to $25 range, and require deposits to be made online or by mail; the commenter stated that these considerations would obstruct the use of these 529 accounts by many low-income families, particularly since the commenter's experience is that the ability to make small cash deposits is very important for this population.

On the other hand, a number of commenters recommended that we have grantees use existing 529 savings plans. One commenter noted that these plans provide a ready common infrastructure designed to support college savings that is not readily available in the case of banks or credit unions, that they would be available to students and parents after the end of this demonstration project, and that experience in one State demonstrates that use of a Section 529 account by all participating students has made it possible to monitor savings patterns and performance very accurately. The commenter also noted that, for this demonstration project, these Section 529 savings plans would need to be flexibly implemented, and urged the Department to clarify that States may work with the 529 providers to craft special arrangements for account opening, account-holder information requirements, and account structure that are specific to the demonstration project.

Finally, two organizations that work with members to enhance 529 plans submitted joint comments that, among other things, stated that the 2004 studies referenced in the NPP with regard to income bands and typical 529 plan participation are outdated and do not reflect efforts made in recent years to expand knowledge about and participation in 529 plans. In this regard, the commenters provided copies of two reports provided to the United States Treasury in February 2010 about 529 plans and efforts of those implementing the plans to broaden their reach.

The commenters also stated that 529 plans do encourage savings by those with modest incomes and that virtually all of these plans have required contributions of as little as $10 to $25 per month; have a wide variety of savings instruments, including very conservative ones; and low-fee options. The commenters said that they would defer to the State applicants about the specifics of implementing the Department's proposed study and the logistics of funding of the GEAR UP supplementary college savings accounts with required criteria and characteristics, particularly privacy aspects, but asked the Department to remain open to allowing a variety of funding vehicles in the study. The commenters emphasized that the greater the flexibility that is available for implementation efforts, the greater the chances of success. The commenters also said that the State educational agency (SEA) in each State should work with the State's 529 plan wherever possible, since by utilizing 529 plans for this purpose, it will take advantage of an existing infrastructure that administers college savings programs and in many instances administers a matching grant or other type of program for law and moderate income families.

Discussion: We appreciate these comments, but we believe it is important to provide appropriate flexibility to grantees to choose the type of savings vehicle that works best for them and that they believe will work best for participating students and their families. As we proposed, the Department is providing each grantee flexibility to determine which type of savings program administration they will use, provided that the grantee ensures that:

(a) It has a partnership with a financial institution that will provide GEAR UP students starting in ninth grade with an account that allows saving in a federally insured deposit account that accumulates interest, an account composed of U.S. Government Treasury securities, or a fully guaranteed savings option within a Section 529 college savings plan. Accounts may also provide students and families with investment options that present risks in exchange for the potential for larger returns but that are in no way guaranteed.

(b) Federal funds are maintained in a single ''notional'' account that is in fact separate from any non-Federal funds. The amount of Federal GEAR UP seed and matching funds and accrued interest earned by each student is tracked, each student is permitted to see both the Federal funds and associated interest earned as well as any non-Federal funds and interest earned in a single account statement, and Federal funds are invested only in federally insured vehicles or U.S. Treasury securities.

Even with these conditions, grantees will have many different types of accounts to choose from, such as 501(c)(3) plans and 529 plans.

With regard to the comment raising concerns about 529 plans, the Department believes that the requirements outlined in the priority will protect against those concerns such that plans that have the flaws the commenter identified would not meet the requirements for selection. Similarly, we are confident that these requirements do not preclude grantees from using 529 plans but instead provide grantees with sufficient flexibility to choose what works best for them.

Changes: None.

Comment: One commenter from an association of financial institutions offered to leverage its member bank and banking contacts to help identify institutions interested in participating in the project, should the Department select savings accounts as an eligible account type.

Discussion: The Department appreciates the commenter's interest in partnering with grantees to administer accounts. However, the Department thinks it is important that grantees have flexibility in selecting the provider that is best for them, and so we cannot recommend a specific type of account or provider. We do encourage the commenter to work with applicants and grantees to determine if their partnership would be appropriate.

Changes: None.

Comment: One commenter suggested that the Department allow for, and even encourage, maximum flexibility and experimentation across many of the dimensions of the accounts specified in Proposed Priority 2.

Another commenter offered recommendations about the way the savings accounts should be set up, suggesting for example that (1) the basic savings accounts be interest bearing with no minimum balance and no fees, (2) parents be able to invest funds in a certificate of deposit or investment product such as a mutual fund, (3) accounts be in the student's name so that assets in the accounts not affect family eligibility for Medicaid and Temporary Assistance for Needy Families (TANF), and (4) withdrawals for unauthorized purposes result in loss of GEAR UP matching funds.

Another commenter stated that while flexibility was important, there are a number of advantages of structuring the saving accounts using a custodial or trustee model and holding all funds under a single tax identification number. These advantages include: accounts can be opened automatically and universally and without the need for Social Security number or parental consent, funds are protected from early or non-qualified withdrawals, account earnings accrue tax free without the need of parents to report these earnings, and assets are not held in a family's name, thus avoiding asset tests for public benefits eligibility.

Yet another commenter recommended that the Department have grantees structure their accounts and projects so that (1) they are free of any fees on the students or the custodians, (2) all funds are insured by the FDIC, (3) there is no minimum balance or deposit amount, (4) parents and students have a range of deposit options, (5) there is strong competency in the management and exchange of data between the projects and financial institutions, (6) while making available limited withdrawals, families are provided access to their funds in the case of an emergency, and (7) families have access to account balances through an online system.

Discussion: The Department acknowledges the recommendations received on the structure and implementation of the savings accounts. We agree that allowing grantees to tailor account characteristics to their preferred circumstances could have some benefits, and, as discussed previously, the Department has proposed to provide flexibility in choosing the type of savings account administration program provided certain core requirements are met. At the same time, we need to limit flexibility in other areas such as the amount of seeding or matching funds to ensure that the demonstration project is evaluating a specific set of college savings-oriented services. The responsibility for designing and managing these accounts, within the specified guidelines, rests with the State GEAR UP grantee. Successful applicants will propose an implementation plan that is most effective for their State and target population.

Changes: None.

Comment: A number of commenters recommended the elimination of the requirement that savings account administrators establish and maintain parallel accounts for each student, one for GEAR UP funds and the other for family contributions.

One commenter stated that the family contributions should instead be held in sub-accounts of the single master account, meaning that there would be no need for parallel accounts since the Federal seed deposit and match funds could be accurately and easily tracked using a ledger system.

Another commenter stated that while some college savings account programs use the dual-account approach the Department had proposed, others use software to track and accrue savings matches virtually while keeping the matching funds in a pooled account. Under this approach, when it is time for qualified withdrawals, the appropriate amount is withdrawn from the pool and paid to the institution of higher education or other vendor. The reduction in the number of separate accounts creates large decreases in administrative burden.

Similarly, another commenter stated that to decrease administrative burden, the Department should make use of notional accounts in which the Federal funds would be placed in an account that is parallel to the account holding non-Federal funds. The commenter noted that while the Department might be legally required to use this arrangement, given the enormous number of potential savings accounts and the fact that it could not be a viable method of account delivery in the long term, the commenter urged the Department to use a single account design that would use software to track and account for Federal and non-Federal deposits.

Discussion: We appreciate these comments. While we agree that eliminating the requirement for grantees to maintain parallel accounts for students would reduce by half the number of accounts, we think the provisions in Priority 2 that concern use of Federal dollars deposited into these accounts make parallel accounts preferable. In order to make sure Federal dollars are properly invested, they must be invested in federally insured vehicles or U.S. Treasury securities. Were we to require only a single account type, non-Federal matches would be restricted to similar investments, which would restrict savings options. Moreover, GEAR UP funds deposited into these accounts that are unused will need to be returned to the Department, something that would be very hard to manage with a single account for deposits of both Federal GEAR UP funds and private savings. Therefore, we think it is necessary that the two-fund structure be maintained.

Changes: None.

Comment: One commenter recommended establishing a process that allows for quick and easy deposit of funds to a student's savings accounts. Another commenter recommended that the Department give priority to applicants that provide a convenient or automatic way for families to make deposits into students' accounts, while another commenter provided research findings that automatic enrollment in a savings account yields much greater and sustained participation than having individuals open accounts on their own.

However, another commenter stressed its concern that auto-enrollment without parental consent would be less effective for achieving both the needed parental buy-in to college savings and the student enthusiasm for college that would come from requiring parental engagement, such as a requirement that parents expressly ''opt-in'' to the project. And another commenter stated that while 529 accounts offer convenience and simplicity, requiring grantees to use these accounts may (1) lead to the removal of other attractive features of accounts, such as the need for families that already had savings accounts to open and add deposits to another, and (2) create much greater administrative burden that could dampen support by those administering the project.

Discussion: The Department believes that making it easier for students to enroll in the savings accounts, particularly by doing so in an automatic or near-automatic fashion, is important for encouraging participation and savings. Therefore, we agree with commenters recommending easy enrollment and note that proposed Priority 2 allows quick and easy deposit of funds to a student's savings account. Each successful applicant will be required to ensure that individual deposits can be made easily and at no cost to the student, the student's parents, or others who make deposits on the student's behalf. Consistent with the proposal, a student or parent would be able to deposit funds online, in person at convenient locations, or by mail. While the Department agrees that more engaged parents may be more likely to contribute to savings accounts and build enthusiasm for college, we think that requiring an express ''opt-in'' would make it more complicated to enroll and participate and could depress usage. Instead, we encourage grantees to work with families to build their interest and knowledge in the program, including through required financial counseling.

Changes: None.

Comment: One commenter recommended that the Department provide a strong preference for ensuring that grantees work with a single financial institution that can provide accounts with uniform terms and conditions, and at low cost, across the State. The commenter stated that such an approach would promote a better test of a college savings plan that included all students, would decrease administrative burden throughout the project, limit variability in savings accounts for administrative and evaluative purposes, and facilitate tracking and submission of more complete and accurate data about the projects.

Discussion: We agree with much of this comment. With respect to requiring a single financial institution, we recognize that for many grantees a single

partner may be sufficient and indeed even preferable to using multiple institutions. However, we also recognize that such a structure would not necessarily work in a larger State or in other circumstances. Therefore, we encourage grantees to use their professional judgment when determining how many financial partnerships they need to set up the college savings accounts for participating students in their States.

Changes: None.

Comment: One commenter recommended that the Department have grantees invite account personnel to attend regular meetings of parents at which they offer envelopes for mailing deposits and other ways to encourage savings.

Discussion: While the Department thinks it is important that grantees have flexibility in deciding how counseling to parents should be provided, this requirement would not preclude account personnel from providing some or all of this assistance.

Changes: None.

Comment: While fully supporting the Department's proposal to require that grantees provide families with automatic enrollment and encouragement of automatic savings deposits as useful design elements to encourage saving for a student's college education, a commenter recommended that the Department also consider a number of other behavioral design elements. While these recommendations are addressed under the next topic headings, the commenter recommended that under Priority 2, the Department require each State grantee to secure technical assistance in designing behavioral interventions that suit the particular implementation of this project and that are customized to the operational constraints of the participating schools, account administrators, and the financial situation of participating students and their families.

Discussion: The Department does not agree with this comment. Grantees may certainly design their projects to provide various approaches that they believe will be effective in encouraging families to focus on the importance of saving for college, and grantees may use GEAR UP funds to secure any desired technical assistance. However, while we appreciate that different behavioral designs may result in interesting variations in savings accounts, proper evaluation of the accounts requires consistent administration across grantees. Adding in such behavioral design elements would thus further complicate the evaluation and is not recommended.

Changes: None.

Financial Counseling and Behavioral Interventions

Comment: One commenter recommended that the Financial Counseling component be given ''the same weight'' as the Student Savings Account component. We understand the commenter to be asking that the Department require grantees to implement both the Financial Counseling and Savings Account components of Priority 2.

Discussion: The Department agrees with this comment and notes that, as proposed, Priority 2 requires grantees to implement both the Financial Counseling component and the Student Savings Account component. The College Savings Accounts Research Demonstration Project has two main parts: (1) establishing, operating, and having students participate in college savings accounts and financial counseling, and; (2) assessing the effect of providing the college savings accounts and related financial counseling to students and their parents. Both of these parts are in the absolute priority published in this notice of final priorities and incorporated by reference in the notice inviting applications for the College Savings Account Research Demonstration Project published elsewhere in this issue of the **Federal Register**. Therefore, successful applicants will need to address both the Financial Counseling and Student Savings Account components.

Changes: None.

Comment: One commenter expressed concern that students may be penalized when parents are unable or unwilling to attend required parent financial counseling sessions. The commenter recommended that counseling for parents be optional and that we provide incentives to parents who participate.

Discussion: Grantees will be expected to find and utilize the most effective methods at participating schools for reaching out to and counseling parents. While grantees are required to provide ''at least biannual counseling meetings for parents,'' they are not required under Priority 2 to meet specific attendance figures. Therefore, students whose parents do not attend the session will not be penalized.

Changes: None.

Comment: One commenter expressed concern that individually targeted financial counseling may be too burdensome for projects to implement successfully with existing resources. This commenter recommended partnering with outside organizations, such as Consumer Credit Counseling Services, to help provide such counseling.

Discussion: We agree that grantees should make use of existing resources, both theirs and those of outside organizations, to provide financial counseling, and we encourage grantees to seek partners that can help them in this effort. However, we do not feel that it is necessary to include a statement to this effect in the final priority as applicants will no doubt craft a counseling plan that best meets their needs.

The comment prompted us to examine paragraph (g) in Section I of Priority 2, which, as proposed, did not clarify whether all students in the treatment group need to participate in the required financial counseling. We have revised the provision to clarify that all students must be included.

Changes: Paragraph (g) of Priority 2 has been revised to clarify that all students in the treatment group must receive the required financial counseling.

Comment: A commenter recommended adding a requirement that financial counseling, particularly for parents, be conducted in languages other than English, while another recommended that the Department encourage applicants to work with experienced partners in the delivery of culturally and linguistically appropriate financial education and counseling for parents and families.

Another commenter, noting the importance of financial counseling, recommended that each State grantee implement financial counseling using curricula that are consistent and standardized across sites and that are focused on helping GEAR UP students to increase their savings. The commenter indicated that evaluation results with respect to the measure and impact of financial counseling would thereby be as valid and reliable as possible. In order to promote efficiencies and appropriate evaluation results, the commenter also emphasized the need of grantees, in States that mandate a financial education curriculum, to coordinate with that curriculum in the design phase of their projects.

Discussion: While we recognize the need to provide linguistically and culturally appropriate financial counseling, we do not feel that it is necessary to require this for all participating projects. Grantees are expected to use their professional judgment and conduct teaching and

counseling that best meets the needs of parents and students, including those who need financial counseling in languages other than English. We have no doubt that in States that mandate a financial education curriculum, grantees will want to have participating schools and LEAs coordinate their financial counseling with this curriculum. However, we do not think it is appropriate to mandate that each grantee under this demonstration project use a particular curriculum that is consistent and standardized across school sites.

Changes: None.

Comment: One commenter recommended a change to Proposed Priority 2 to allow States to obtain technical assistance on the design of behavioral interventions that would help to encourage regular and greater savings for college, such as social support groups or the disbursement of matching funds through prizes that suit the particular implementation of the college savings accounts research demonstration project.

Discussion: We agree with this recommendation but do not believe a change to Priority 2 is needed to accomplish the goal. The Department realizes there is an array of behavioral design interventions that may encourage regular deposits into savings accounts; we, therefore, encourage States to design their college savings account demonstration projects to include viable interventions that are likely to maximize college savings for students.

Changes: None.

Comment: One commenter recommended that, in order to better encourage parents to add deposits to their children's college savings accounts, grantees should consider activities such as sending reminder letters and emails, preferably early in the month rather than at the end of the month; providing reminder magnets; and communicating to them what other families are doing or saying, e.g., the number of families that provided regular contributions in the preceding year or months.

Discussion: We agree with the commenter that grantees should reach out to parents to provide them with reminders about saving. We believe, however, that States should be given flexibility to determine how this should be carried out. Therefore, we are not adding a specific requirement.

Changes: None.

Financial Education

Comment: One commenter suggested that the Department encourage grantees to conduct financial education in multiple formats to ensure that the most effective method is used. The commenter also suggested that one of the required formats include classroom lessons during the school day, allowing GEAR UP to leverage the work of States that already mandate financial education in the schools.

Another commenter emphasized that financial literacy and college savings accounts are not enough to overcome barriers, particularly for first-generation college students, in areas such as preparing for college academically and financially, how to apply to college, and how to choose the right college and career path. The commenter urged the Department to pursue high-impact mentoring, information about academic and career preparedness, and the engagement of parents, counselors, teachers, and other stakeholders as important interventions in addition to college savings accounts. The commenter urged the Department to address these interventions—including through use of the Internet and online tools—as well as college savings accounts in order to provide a more robust set of outcomes.

Discussion: While we agree with the commenter that multiple educational formats may be more effective than a single format in reaching varied audiences with differing learning styles, we do not feel it necessary to mandate this practice. We believe that grantees will want to use educational formats that work best for their particular audience, relying on current and proven educational research. We also agree that the availability of savings accounts for GEAR UP students and promotion of financial literacy are likely insufficient by themselves to overcome all barriers. However, we note that all students participating in this program will also be receiving all regular GEAR UP services. By statute, GEAR UP grantees are required to provide participating students with a variety of mentoring, outreach, and supportive services (as referenced in the last sentence of paragraph (g) in Section I of Priority 2). These services will give students some of the mentoring and information assistance mentioned by the commenter, but we think much of what the commenter seeks requires a vehicle broader than this demonstration project.

Changes: None.

Comment: One commenter recommended that the Department help to prepare grantees to meet the financial education requirement by offering ongoing training to grantees, including one-on-one advising as needed; providing help to grantees to identify and select quality educational financial curricula; and monitoring financial education delivery over time. The commenter also recommended that the Department require financial education to be delivered in the classroom rather than after school and urged that it be coordinated with any financial education already required in grantees' States.

Noting the proposed requirement for individually targeted financially counseling, another commenter stated that many grantees would not have existing capacity to provide this higher intensity service and that this counseling would be very costly. The commenter urged the Department to invest additional resources in providing needed grantee training and to permit grantees to provide this counseling in partnership with outside organizations with the capacity to assist.

Discussion: The Department agrees that extensive and ongoing technical assistance on important aspects of project implementation is crucial to helping grantees establish and manage savings accounts and that support is particularly important for those with no experience in this area. To address these concerns, the Department plans, among other things, to provide technical assistance training at national GEAR UP conferences on important aspects of project implementation. These aspects include general considerations that should be taken into account when implementing these types of savings accounts. The Department is also working with partners at the Treasury Department, the NCUA, and the FDIC to develop materials that will give applicants key information about the implementation of college savings accounts.

While we appreciate the suggestion that the Department require grantees to provide financial counseling in the classroom rather than after school, we do not think it is appropriate to require this. Some schools may not be able to incorporate it into classroom time, and such a requirement could create problems with finding appropriate instructors. Likewise, we do not believe that an explicit requirement is necessary for coordinating with any financial education already required in grantees' States. The Department notes that, in their applications under this demonstration project, potential grantees will describe project services that are most appropriate to the needs of the target population and that maximize the effectiveness of project services through the collaboration of appropriate partners.

Changes: None.

Catch-Up Options

Comment: A number of commenters recommended that the Department eliminate or reduce the catch-up period. One commenter stated that the proposed catch-up provision would add costs and complexity to the project and encourage delays in making deposits. Instead, the Department should consider requiring small regular deposits, which makes saving for college more manageable and ritualized.

Another commenter recommended that we make this provision more flexible, both to reduce project complexity and to give students the greatest chance to acquire the maximum amount of Federal deposits.

Discussion: The Department understands that lower- and moderate-income families sometimes have to make tough financial decisions that can seriously impede their ability to save for college regularly. We want to provide these families the flexibility to continue to receive matching funds by affording parents a two-week catch-up period. We think two weeks is an appropriate amount of time because it gives students and families ample opportunity to make catch-up contributions but does not provide so long a time period as to create a disincentive to make regular contributions to their children's college savings accounts.

Changes: None.

Comment: One commenter recommended offering additional annual or four-year opportunities to catch up on required deposits. Another commenter recommended that we clarify the amount of catch-up that is needed when families have over-matched in certain months but under-matched in others.

Discussion: The monthly savings component of the project is intended to instill a habit of consistent saving and methodical planning for education expenses. While we understand that family incomes may at times be inconsistent, this project aims to help encourage participants to regularly save money towards the costs of a college education. We are concerned that offering additional annual or four-year opportunities to catch-up will deter families from saving habitually.

With regard to the request for clarification about a family that over-matched in any month, as we have expressed in response to a prior comment, we believe that given the project's focus on promoting regular savings the amount of a family's overmatch should not be available as a credit for a month in which the family did not meet its match amount. Thus, we also believe that the family should still need to provide catch-up contributions for any months in which it did not provide any contributions and that this should be the result regardless of how much a family over-matched in a given month. We have clarified Priority 2 in this regard.

One of the goals of the demonstration project is to encourage students and families to regularly save for college. Allowing over-matching in one month to count in subsequent months would discourage regular saving and make the program more complex and costly to administer.

Changes: Paragraph (p) in Section I of Priority 2 has been added to clarify that a family that over-matches the Federal account in any month may not receive credit for the amount of the over-match in any future month, including a catch-up period, for purposes of meeting that month's GEAR UP program matching contribution.

Account Administrator

Comment: One commenter sought clarity on the role of the account administrator.

Discussion: Under Priority 2, each successful applicant must designate a savings account administrator to hold the account funds, accept deposits, and issue qualified withdrawals. The account administrator must be a federally regulated or State-regulated financial institution, such as an investment firm that manages a State's 529 plan or a federally insured bank or credit union that partners with the State to administer GEAR UP savings accounts.

Changes: None.

Comment: One commenter requested that we explain the difference between the account administrator and savings account trustee over the duration of the project and beyond the five-year grant period. The commenter also noted that students may hold their accounts for up to six years following high school graduation, meaning that the account administrators and trustees would need to serve the accounts (and presumably report data about them) for up to 11 years. The commenter expressed concern that few potential account administrators and trustees will be willing to provide these services for this length of time, and that the administrative fees they are paid will last only five years.

Discussion: Under Priority 2, each successful applicant must designate a savings account administrator and a savings account trustee. The savings account administrator is responsible for holding the account funds, accepting deposits, and issuing qualified withdrawals. The savings account trustee is responsible for managing the account funds and approving withdrawals and other account activities.

The Department appreciates that accounts will have to be administered for a longer period of time than the grantee's project period. But this extended timeframe is necessary to ensure that students are able to access their accounts throughout their time in postsecondary education. While we appreciate that this extended timeframe does place some burden on trustees and creates some uncertainty about how applicants and grantees would budget for these trustee costs, we think that the management of such accounts may become easier as families stop making contributions and instead begin withdrawing funds. In their applications under the program, potential grantees should budget up-front for all years for which the services of the account administrator and trustee will be needed. Moreover, grantees may budget for, and charge GEAR UP funds for, the reasonable and necessary costs of managing the savings accounts. Thus GEAR UP program funds will be available to pay the reasonable and necessary costs that the trustees can be expected to incur.

Changes: None.

Savings Account Ownership

Comment: One commenter sought clarity on the ownership structure of the student savings accounts. The commenter stated that whether the account is owned by the trustee, the student, or the student's family will affect account administration and families' funding decisions. The commenter recommended that the trustee own both the student account and the match account.

Discussion: The Department agrees with the commenter's recommendation. Both the students' account containing Federal funds and match account with non-Federal contributions will be owned by the account trustee. Participating GEAR UP students will be named as beneficiaries. This is the same structure banks use for minors' savings accounts.

Changes: None.

Account Withdrawals

Comment: One commenter sought clarification on what constitutes a ''qualified withdrawal.'' The commenter asked, for example, whether the cost of an enrollment in preparatory course for a college entrance exam or the purchase of a computer would be a qualified

withdrawal, or whether grantees may develop their own rules that align with the specific requirements of the account types they select.

Another commenter recommended that the program follow the guidelines established by 529 programs for what constitutes a qualified withdrawal. Yet another commenter recommended that, to reduce administrative complexity, we eliminate provisions for reducing the prior match of GEAR UP funds for unqualified withdrawals from the student's account.

Another commenter urged the Department to consider reasonable restrictions on the purposes of withdrawals, perhaps with exceptions for emergencies, or limiting withdrawals to only a certain number of times per year. According to this commenter, surveys and focus groups of low-income individuals have suggested that these approaches may help encourage college savings.

Discussion: Under Priority 2, students or their parents may withdraw Federal GEAR UP funds from the student savings accounts in which grantees have deposited them upon approval of the savings account trustee. Under paragraph (d) in Section I of Priority 2, withdrawals of GEAR UP funds may only be for qualified purposes, which are (1) funds provided to an institution of higher education on behalf of a student upon that student's enrollment in an HEA title IV-eligible institution of higher education (which includes colleges and universities as defined by the HEA) for the purposes of paying for tuition, fees, course materials, living expenses, and other covered educational expenses as defined in the HEA, or (2) funds the student or parent need for such costs that would not be provided directly to the IHE. In addition, we have added to paragraph (d) permission to use funds in the Federal account for other costs related to postsecondary education that the account trustee, based on instructions from the grantee, determines to be appropriate. At the grantee's discretion, these additional qualified purposes costs could include such items as the cost of enrollment in a preparatory course for a college entrance examination or the purchase of a computer required for college.

Successful applicants also will establish rules for the withdrawal and transfer of non-Federal funds, which must include a requirement that the account trustee oversees any withdrawal or transfer of non-Federal funds. In terms of requests for additional restrictions on withdrawals or limiting the number of withdrawals allowed per year, the Department thinks that the restrictions placed on withdrawals of the Federal funds are appropriate. For the non-Federal matching funds, however, the Department does not think we need to establish additional restrictions since the loss of previously matched Federal funds that would accompany an unqualified withdrawal should be sufficient to dissuade this from often occurring. If, however, States wish to provide additional restrictions on withdrawing funds from the student's non-Federal college savings account, that is their purview.

Changes: None.

Comment: One commenter noted that the Department had proposed that the college savings accounts be held for the GEAR UP students in trust pending their graduation from high school and enrollment ''in a college or university,'' and asked what we mean by a ''college or university.'' The commenter asked whether the phrase is limited to accredited institutions, and whether technical schools such as culinary institutes, automotive schools, or cosmetology schools would qualify.

Discussion: By ''college or university,'' the Department means an institution of higher education that participates in the Title IV Student Financial Assistance programs and is described in section 102 of the HEA. This interpretation is necessary because GEAR UP funds may only be used for college savings accounts as a supplement to financial assistance that GEAR UP grantees are already provided as scholarships and student financial assistance under section 404E of the HEA. Section 404E provides that to receive this assistance students must be enrolled in such an institution of higher education.

Changes: We have added language to paragraph (d) in Section I of Priority 2 to clarify that GEAR UP funds deposited into the college savings account and used for the costs associated with postsecondary education must be used for costs associated with enrollment at an institution of higher education, as the term is defined in section 102 of the HEA.

Data Collection and Evaluation

Comment: A commenter agreed with the Department's proposal to avoid collecting Social Security Numbers (SSNs) and taxpayer identification numbers (TINs). The commenter noted that many schools are not allowed to collect or disclose such personally identifiable information about their students, and yet many institutions, including 529 plans, require all account holders to provide this information. The commenter also identified locations that it stated were able to implement college savings accounts without SSNs or TINs. Finally, because of what the commenter viewed as ''Know Your Customer'' provisions of the Patriot Act and Bank Secrecy Act, the commenter urged the Department, perhaps together with other entities or experts in this area, to advise on the propriety of opening accounts without SSNs and TINs.

Discussion: The Department encourages grantees to avoid collecting SSNs or TINs when it is feasible to do so. For example, we note that some financial institutions may accommodate the use of unique identifiers for students in lieu of SSNs or TINs. However, we acknowledge that some financial institutions may require personally identifiable information for the purposes of managing accounts. The Department does not prohibit grantees from collecting this information in the event that doing so is necessary in a given State. We expect to provide technical assistance to grantees on this topic, including any implications that collecting this personal identifiable information may have under Federal privacy laws.

Changes: None.

Comment: One commenter urged the Department to design, write code, and implement common account monitoring standards across the full demonstration project since, according to the commenter, without such a comprehensive design plan, there is a substantial risk of substantial data failure on savings patterns and performance. We read the comment to be concerned, in part, with the quality of data that grantees would need to provide for the project evaluation.

Discussion: While those preparing the Department's evaluation of this demonstration project will review comments on the account monitoring standards, the specific data items and data collection structure to be used in the Department's evaluation were not part of the notice of proposed priorities and are not subject to public comment.

Changes: None.

Comment: A number of commenters recommended approaches for the design of the Department's evaluation of this demonstration project. Among other things, commenters recommended that the evaluation collect and analyze differences in GEAR UP services across schools, family financial stability data and the different types of financial counseling provided by grantees and their relationship to impacts. The commenters also recommended that the evaluation use statistical techniques to account for school-level clustering of students in the analysis.

Discussion: While those preparing the Department's evaluation of this demonstration project will review comments on the research design, the specific data items and statistical analyses to be used in the Department's evaluation were not part of the notice of proposed priorities and are not subject to public comment.

We note, however, that the Department intends that the evaluation will address, to the extent possible, the ways in which both regular and demonstration GEAR UP services are implemented across schools. We also intend to collect some information about income and assets through parent surveys conducted in spring 2014 and 2016. However, we do not believe that we can adequately address family financial stability and how that might relate to the timing and levels of contributions to savings accounts without more frequent and longer surveys that would be burdensome to parents and costly for the evaluation to implement. Finally, the Department plans for the evaluation to appropriately adjust for clustering of students within schools in performing the statistical analysis of impacts.

Changes: None.

Grantee Attendance at Project Meetings

Comment: None.

Discussion: Paragraph (h) in Section I of Proposed Priority 2 required the grantee's project director to attend one particular meeting held by the Department. We have revised this paragraph to provide more details and require attendance at multiple Department meetings, likely held in conjunction with the annual meetings of the National Council for Community and Education Partnerships (NCCEP), where technical assistance will be provided. We made these changes to ensure that we provide sufficient technical assistance to grantees and to allow grantees to be better prepared to attend these meetings.

Changes: Paragraph (h) in Section I of Priority 2 has been revised to state that project directors, site coordinators, and other appropriate project staff are required to participate in meetings of GEAR UP grantees that the Department will convene to provide professional development and technical assistance to grantees participating in the demonstration project.

Final Priorities: The Assistant Secretary for Postsecondary Education establishes these priorities to determine the effectiveness of implementing college savings accounts and providing financial counseling in conjunction with other GEAR UP activities as part of an overall college access and success strategy.

Priority 1: Funding Eligibility.

To meet this priority, an applicant must—

(a) Have received a new GEAR UP State grant in FY 2011 or FY 2012 that supports activities in at least six high schools, each of which must serve a cohort of at least 30 GEAR UP participants who will be in ninth grade during the 2013–2014 academic year (for recipients of FY 2011 grants) or 2014–2015 academic year (for recipients of FY 2012 grants);

For the purposes of this priority, ''high school'' means a school that serves students in grades 9–12.

(b) Use the cohort approach (see Section 404B(d)(1) of the Higher Education Act (HEA)) to select participating GEAR UP students; and

(c) Identify in its application the names, locations, and National Center for Education Statistics (NCES) identification numbers of the GEAR UP high schools expected to participate in the demonstration and the number of GEAR UP participants expected to be in ninth grade during the 2013–2014 or 2014–2015 academic year at each GEAR UP school identified. (NCES school identification numbers can be found at: *http://nces.ed.gov/ccd/schoolsearch/*).

Priority 2: College Savings Accounts and Financial Counseling.

To meet this priority, an applicant must submit in its application a comprehensive plan for providing (1) students in half of the GEAR UP high schools identified by the applicant with safe and affordable deposit accounts at federally insured banks, credit unions, or other institutions that offer safe and affordable financial services consistent with provisions of this Priority, and (2) financial incentives to encourage saving and related financial counseling to students and parents.

An applicant also must agree in its application to participate in an evaluation of this college savings account demonstration project that will examine the effect of college savings accounts and counseling on student and family behaviors and attitudes associated with college enrollment, as described in the *Research Evaluation* section of this priority. The Department's Institute of Education Sciences (IES) in partnership with the Office of Postsecondary Education (OPE) will oversee the evaluation, which will be conducted by an IES evaluation contractor.

I. College Savings Accounts and Financial Counseling

The applicant must describe in its application its plan for implementing college savings accounts and financial counseling, including how, preferably at the time of application but no later in time than to have all savings accounts operational before the start of the cohort's ninth grade in the 2013–2014 or 2014–2015 school years, it will—

(a) *Student Savings Accounts.*

(1) In partnership with a financial institution, provide students with an account that allows saving in an interest-bearing, federally insured deposit account, U.S. Government Treasury securities, or a fully guaranteed savings option within a 529 college savings plan. Accounts may also present students and families with investment options that present risks in exchange for the potential for larger returns but that are in no way guaranteed.

(2) Ensure that Federal funds are maintained in a single ''notional'' account that is in fact separate from any non-Federal funds, tracks the amount of Federal GEAR UP seed and matching funds and accrued interest earned by each student, permits each student to see both the Federal funds and associated interest earned as well as any non-Federal funds in a single account statement, and is invested only in federally insured vehicles or U.S. Treasury securities;

(3) Ensure that the non-Federal investments are in U.S. Government Treasury securities or a low- or no-fee age-based fund unless the parents or student chooses otherwise;

(4) Open savings accounts for students in automatic or nearly automatic fashion and describe how the savings account enrollment approach entails or approximates an automatic enrollment framework. Automatic enrollment means parents and students are not required to opt into the account, but may opt out of it. If parents and students take no action, the account is opened. Action is required to decline participation.

Note: Applicants are also encouraged to propose automatic savings options, such as automatic payroll deductions by parents of participating students.

(5) Ensure that individual deposits could be made easily and at no cost by the student, the student's parents, or others on the student's behalf; that deposits would be able to be made online, including on mobile devices, in person at convenient locations, or by mail; and that account information

would be viewable online, including on mobile devices; and

(6) Ensure that funds are held in the name of the account trustee described in paragraph (k) of part I of this priority with the participating students named as beneficiaries.

(b) *Federal Seed and Matching.* Provide for Federal seed and matching of Federal funds in student savings accounts for students in participating treatment high schools as follows:

(1) Within two weeks of the beginning of students' ninth grade school year in the fall of 2013 or the fall of 2014, seed each student's account with $200 in Federal GEAR UP funding.

(2) Each month, for every contribution up to $25 beyond the initial seed amount that the student or family deposits into the student's account, deposit an additional equal size contribution up to $25 of Federal GEAR UP funding into the account, for a maximum of $300 in Federal matching funds each year for a maximum of four years.

(3) Notwithstanding the monthly cap on contributions referenced in paragraph two above, once per quarter during each calendar year during the project period, on a date approved by the Department, offer students and parents a two-week catch-up period if the student has not earned the maximum monthly match for that year and encourage students and families to make contributions at least sufficient to earn up to the maximum Federal match.

(4) Ensure that if, at the end of each calendar year, the student has not exhausted the Federal match, any unearned matching funds would no longer be available to that student or to the applicant and would be returned to the Department.

(c) *Non-Federal Seed and Matching.* Not provide additional seed or matching funding from GEAR UP or non-GEAR UP resources to participating students beyond the funds described in (b), or solicit or raise money from non-Federal sources as additional contributions to the student's non-Federal college savings account.

(d) *Withdrawal and Transfer of Federal Funds.* Provide for the withdrawal and transfer of Federal GEAR UP funds as follows:

(1) The applicant must ensure that withdrawals of Federal GEAR UP funds are made only upon approval of the savings account trustee and are only made from the account to eligible students, or to an institution of higher education, as the term is defined in section 102 of the HEA, on behalf of a student upon that student's enrollment in an HEA Title IV-eligible institution of higher education, as the term is defined in section 102 of the HEA, for the purposes of paying for tuition, fees, course materials, living expenses, and other covered educational expenses as defined in the HEA, and other costs related to postsecondary education that the account trustee, based on instructions from the grantee, determines to be appropriate.

(2) An account trustee may not withdraw Federal GEAR UP funds for non-qualified purposes and may not transfer them to other individuals. If this rule is broken, the Department may require the applicant to terminate its relationship with the trustee and select a different entity to serve as savings account trustee. The initial trustee may be subject to penalties for misuse of Federal funds.

(e) *Withdrawal and Transfer of Non-Federal Funds.* Establish rules for the withdrawal and transfer of non-Federal funds, which must include a requirement that any withdrawal or transfer of non-Federal funds must be overseen by the account trustee. A withdrawal of non-Federal funds from the savings account for non-qualified purposes will result in a removal of Federal matching funds that have been contributed on behalf of the student if the amount of non-Federal funds remaining in the account after the non-qualified withdrawal is less than the total amount of Federal matching funds contributed (not including the $200 Federal seed).

For example, if student and parent contributions total $140, Federal GEAR UP matches total $120, and the student withdraws $50 in non-Federal funds for non-qualified purposes, then $30 in Federal GEAR UP matching funds earned up until that point would be removed from the account because the amount of non-Federal funds remaining in the account after the non-qualified withdrawal—$90—is $30 less than the amount of Federal matching funds contributed. The Federal matching funds could be earned back in catch-up periods during that same year. The $200 seed money provided with Federal GEAR UP funds will not be removed from the account.

(f) *Student Eligibility.* Establish student eligibility to receive Federal GEAR UP funds as a seed and match for GEAR UP student savings accounts as follows:

(1) Students must be enrolled in the ninth grade in one of the randomly selected treatment high schools (as described in the *Research Evaluation* section of this priority) in the fall of 2013 or the fall of 2014.

(2) If a student does not use funds in the student's account within six years of his or her scheduled completion of secondary school, the undisbursed Federal GEAR UP funds must be returned to the Department.

(3) Students who transfer from a GEAR UP high school to a non-GEAR UP high school during the project period will continue to remain eligible for the matching funds from the grantee.

(4) At the discretion of the grantee, students who during the project period become members of the GEAR UP cohort by transferring from a non-treatment high school into a treatment GEAR UP high school after ninth grade may have an account with the $200 seed money and availability of matching funds, provided that the grantee has sufficient funds to first make the matches it is required to make for students in the treatment high schools.

(g) *Financial Counseling.* Provide general and targeted (that is, specific to each individual's account and financial circumstances) savings account and financial counseling to all students in the treatment group and to their parents. Counseling should encourage regular saving and prepare students and their families to make informed financial decisions about college and other matters. Counseling must include at least 12 hours per year of counseling for students and at least biannual counseling meetings for parents, which must include a review of the contributions to the account and any interest accrued. The counseling must be in addition to, and may not serve as, the financial aid, financial literacy, or college savings counseling already provided as part of regular GEAR UP services.

(h) *Staff Professional Development and Coordination with the Department.*

(1) Agree to participate in Department-provided professional development for the GEAR UP or school staff who will deliver the financial planning and counseling described in paragraph (g) of part I of this priority.

(2) Ensure that the project director, site coordinators, and appropriate project staff participate in meetings of GEAR UP grantees that the Department will convene to provide professional development and technical assistance to GEAR UP grantees participating in the demonstration.

Note: The meetings are likely to be held in conjunction with the annual meetings of the National Council for Community and Education Partnerships (NCCEP), the association of GEAR UP grantees. The February 2013 meeting, held in conjunction with the GEAR UP Capacity-Building Workshop, will likely cover technical

assistance to the State administrators of the college savings plans, and the logistical and administrative issues in setting up the college savings accounts. The remainder of the meetings during the project period will likely focus on professional development for GEAR UP staff providing the counseling to families.

(i) *Site Coordination.* Designate a site coordinator for each GEAR UP high school that participates in the demonstration and describe the role of the coordinator and to whom he or she will be accountable. The site coordinators in schools that are randomly selected to provide college savings accounts and financial counseling (treatment schools) have responsibility, exercised consistent with the State's plan and approved project application, for ensuring that their schools meet all requirements for participating in the college savings demonstration project. Coordinators must, for example, ensure that college savings accounts are opened and seeded within two weeks of the start of ninth grade; that related financial counseling and coaching are provided to participating students and parents; and that schools cooperate with data collection for the evaluation. (See the *Research Evaluation* section of this priority for further information on selection of the treatment schools). Site coordinators in schools that are not participating in the college savings account and counseling components (control schools) must ensure that their schools cooperate with the data collection for the evaluation.

(j) *Savings Account Administrator.* Select a savings account administrator to hold the account funds, accept deposits, and issue qualified withdrawals. The applicant must identify the account administrator in the application or describe the process by which the account administrator will be selected.

The account administrator must be able to fulfill its role until all Federal funds have been disbursed or returned to the Department. During the grant project period, modest administrative fees, not to exceed one percent of account balances, could be paid to the savings account administrator with Federal GEAR UP funds to cover expenses related to the GEAR UP College Savings Account Demonstration Project.

(k) *Savings Account Trustee.* Select a savings account trustee to manage the account funds and approve withdrawals and other account activities. The account trustee must have demonstrated experience in successfully managing financial services. The applicant must identify the account trustee in the application or describe the process by which the account trustee will be selected.

The account trustee must be able to fulfill its role until all Federal funds have been disbursed or returned to the Department. The account trustee may not be a student's parent or guardian, and must be separate and distinct from the account administrator. The trustee must be a State agency, such as a State Department of Treasury, Office of the Governor, Lieutenant Governor, or Comptroller, a tax-exempt non-profit organization or foundation, or for-profit organization or business with demonstrated expertise and experience in successfully managing financial services. During the grant project period, modest administrative fees, not to exceed one percent of account balances, could be paid to the savings account trustee with Federal GEAR UP funds to cover expenses related to the GEAR UP College Savings Account Demonstration Project.

(l) *Grantee Coordinator.* Specify a person or persons at the State and local educational agency (LEA) level who will administer and coordinate all components of the demonstration, including provision of services provided by the GEAR UP high schools, monitoring the rules established for and activities carried out by the savings account administrators and trustees including distribution of letters, notifying parents or guardians about the administration of the student survey by the evaluator and about the release of designated ''directory information'' from the education records of the student to the savings account administrator, the savings account trustee, or both, as needed to assist with establishing and managing the college savings accounts, and distributing forms enabling parents or guardians to opt out of participation in the college savings demonstration project. (The Department will provide a sample parent/guardian letter and opt out form.) The grantee coordinator must also include aggregate information about the college savings account demonstration project in the grantee's annual performance report to the Department, including the number of accounts opened and the total amount of Federal GEAR UP matching funds deposited on behalf of students. The grantee coordinator must also respond to the evaluators' annual request for information on individual student accounts, including the timing and amounts of disbursements of seed and matching funds, and the student's name, address, and date of birth.

(m) *Directory Information Policies.* Include only districts or schools that will have directory information policies in place prior to July 1, 2013, or July 1, 2014, that allow for student information to be shared in compliance with Federal law with the savings account administrator, the savings account trustee, or both, as needed to establish and manage the college savings accounts. Under the provisions of the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations (20 U.S.C. 1232g and 34 CFR Part 99), each of the LEAs or schools in the application must have provided public notice that the district or schools have designated as ''directory information'' under FERPA the student's name, address, grade level, and date of birth. In addition, in accordance with FERPA, if any parent or guardian of a student has opted out of the disclosure of this ''directory information,'' the school or LEA will not provide the ''directory information'' for that student to the savings account administrator, the savings account trustee, or both, as needed to assist with establishing the college savings accounts, and savings accounts with GEAR UP seed money will not be opened in his or her name, unless the parent or guardian of that student provides consent under 34 CFR 99.30.

(n) *Grantee Non-Federal Match Requirement.* Meet the statutory non-Federal match requirement (see Section 404C(b) of the HEA and 34 CFR 694.7.)

Note: A State grantee would meet the statutory match requirement tied to these additional research demonstration project funds through any ''over-matched'' non-Federal funds it already is committed to providing under its regular GEAR UP application. A State that would need to provide other non-Federal funds in order to meet the statutory match requirement tied to GEAR UP funds provided for the research demonstration project would need to include with its application a budget of how it proposed to do so. Contributions of students, families, parents' employers, community-based organizations, religious organizations, and others to student savings account could be treated as a matching contribution, but, if during any project year these private contributions to savings account were less than anticipated, a State would have to ensure by the end of each project year that it had met the annual matching requirement through other non-Federal contributions to this project or the regular GEAR UP activities.

(o) *Budget.* Provide a budget and budget narrative with projected charges of Federal GEAR UP funds and any non-Federal matching contributions, that describes the expected costs of implementing the proposed project, including provision of payment to the account administrator, the account

trustee, or both of reasonable costs for managing the savings accounts according to requirements of this section.

(p) *Over-matching.* A family that over-matches the Federal account in any month may not receive credit for the amount of over-match in any future month, including a catch-up period, for purposes of meeting that month's GEAR UP program matching contribution.

II. Research Evaluation

The applicant must describe in its application its agreement to the following:

(a) *Random Assignment of Schools.* An applicant must—

(1) Agree to a random assignment by the evaluation contractor of one-half of the GEAR UP high schools identified in its application for their students to receive demonstration services (treatment schools). In addition to the regular GEAR UP services offered at these treatment schools, GEAR UP projects must also offer the college savings account and financial counseling intervention in accordance with Priority 1 (Funding Eligibility). The students in the remainder of the high schools (control schools) will not receive the college savings account and financial counseling components but will continue to receive regular GEAR UP services.

(2) Agree not to offer a program that provides seed or matching funds for college savings accounts in the control schools for the duration of the GEAR UP grant.

(b) *Data Collection.* The applicant and the LEA(s) and GEAR UP high schools that would like to implement college savings accounts (some of which will become control schools) must agree to participate and cooperate in the data collection conducted by the Department's evaluator, which will include the following:

(1) Two surveys of GEAR UP project directors at the State education agency (SEA) or LEA level and site coordinators for each school about the implementation of the college savings account and counseling components, including the extent to which the college savings account counseling was provided in the treatment schools and counseling and other services were provided under the GEAR UP grant in both treatment and control schools;

(2) Two surveys of GEAR UP students about their participation in GEAR UP program activities and other college access programs; their expectations about college enrollment and costs; their knowledge about college savings and financial aid; their financial literacy; their plans for enrollment in college-preparatory courses; and their financial behaviors, including the extent to which they are saving for college;

(3) Two surveys of parents of students participating in the GEAR UP program, in a form that will be comprehensible to parents of English language learners, about their participation in GEAR UP program activities and other college access programs; their expectations about their child's college enrollment and costs; their knowledge about college savings and financial aid; their financial literacy; and their financial decisions, including the extent to which they are saving for college;

(4) For treatment schools, data on the extent to which their staff attend the required professional development;

(5) For both treatment and control schools, rosters of all GEAR UP participants who are in the ninth grade in fall 2013 or fall 2014, including the names of the students, and other identifying information (such as their dates of birth, zip codes, parent contact information, or district or school identification numbers) that will enable the Department's evaluator to request school administrative records from the State or LEA for the appropriate students;

(6) Access to the appropriate State or LEA school administrative records, which will be used to measure student characteristics and achievement prior to the ninth grade, student attendance, course taking patterns, and credits in grades 9–12 for students in the treatment and control schools;

(7) From the grantee, annual information on the accounts of individual students, including the timing and amounts of disbursements of seed and matching funds, and the student's name, address, and date of birth.

(c) *Letters of Support.* Each applicant must include in its application the following:

(1) Letters of support from the relevant LEAs. Unless the SEA agrees in the application to provide this same data on its own, these letters of support also must contain the LEA's agreement to provide the relevant school records data to the evaluation contractor, including the following school records data for GEAR UP participants who are enrolled in the ninth grade in the treatment schools and control schools in the fall 2013 or fall 2014, regardless of whether the student has continued to be enrolled in his or her original high school:

(i) Scores on State or district-administrated assessments of reading and math for the seventh and eighth grades and high school years;

(ii) High school attendance;

(iii) High school courses in which the student was enrolled and grades and credits received for those courses;

(iv) Demographic information such as gender, race/ethnicity, parents' educational attainment, English proficiency, and the extent to which a language other than English is spoken at home;

(v) Whether the student is certified as eligible for free or reduced price lunch through the National School Lunch Program; and

(vi) Whether the student has an individualized education program.

(2) A letter from the principal of each high school identified in the application agreeing to participate in all aspects of the evaluation and grant, including:

(i) Random assignment of the high school;

(ii) If randomly selected to implement the demonstration services, allowing the GEAR UP program to offer the college savings account and counseling components to eligible GEAR UP participants at the principal's high school; and

(iii) Regardless of whether a school is in the treatment or control group, provision to the evaluation contractor of rosters of GEAR UP participants who are in the ninth grade in fall 2013 or fall 2014, including identifying information (such as student names, dates of birth, zip codes, parent contact information, or district or school identification numbers) that will enable the contractor to request the administrative records from the State or LEA about the appropriate students.

(3) Letter from the superintendent of each LEA overseeing the schools in the evaluation, agreeing to all aspects of the evaluation and grant, including—

(i) Random assignment of their GEAR UP high schools listed in the application;

(ii) If randomly selected to implement the demonstration services, an agreement allowing the State GEAR UP program to offer the college savings account and financial counseling to eligible GEAR UP participants consistent with the priorities and requirements in this notice of final priorities; and

(iii) Regardless of whether the schools are in the treatment or control group, an agreement to provide to the evaluation contractor rosters of GEAR UP participants who are in the ninth grade in fall 2013 or fall 2014, including identifying information (such as student names, dates of birth, zip codes, parent contact information, or district or school

identification numbers) that will enable the contractor to request the administrative records from the State or LEA about the appropriate students.

(iv) An agreement to have district or school directory information policies in place prior to July 1, 2013, or July 1, 2014, that allow for student information to be shared in compliance with Federal law with the savings account administrator, the savings account trustee, or both, as needed to establish and manage the college savings accounts. Under the provisions of the FERPA and its implementing regulations, each of the LEAs in the application or schools therein must have provided public notice that the district or school has designated as ''directory information'' under FERPA the student's name, grade level, address, and date of birth. In addition, in accordance with FERPA, if any parents or guardians of a student has opted out of the disclosure of this student directory information, the school or LEA will not provide ''directory information'' on that student to the savings account administrator or the savings account trustee, and savings accounts with GEAR UP seed money will not be opened in his or her name, unless the parent or guardian of that student provides consent under 34 CFR 99.30.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice of final priorities does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice of final priorities does *not* solicit applications. In any year in which we choose to implement this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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: *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: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 16, 2013.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–01125 Filed 1–22–13; 8:45 am]

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Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 104

Pattern of Violations; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

RIN 1219–AB73

Pattern of Violations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising the Agency's existing regulation for pattern of violations (POV). MSHA has determined that the existing regulation does not adequately achieve the intent of the Federal Mine Safety and Health Act of 1977 (Mine Act) that the POV provision be used to address mine operators who have demonstrated a disregard for the health and safety of miners. Congress included the POV provision in the Mine Act so that mine operators would manage health and safety conditions at mines and find and fix the root causes of significant and substantial (S&S) violations, protecting the health and safety of miners. The final rule simplifies the existing POV criteria, improves consistency in applying the POV criteria, and more effectively achieves the Mine Act's statutory intent. It also encourages chronic safety violators to comply with the Mine Act and MSHA's health and safety standards.

DATES: The final rule is effective on March 25, 2013.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at *triebsch.george@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). (These are not toll-free numbers.)

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Availability of Information

Access rulemaking documents electronically at *http://www.msha.gov/regsinfo.htm* or *http://www.regulations.gov* on the day following publication of this notice in the **Federal Register**.

I. Executive Summary

A. Purpose of the Regulatory Action

Congress enacted the pattern of violations (POV) provision to provide MSHA with an additional enforcement tool, when other tools had proven ineffective. The final rule implements the statutory and legislative intent that safe and healthful conditions be restored at noncompliant mines.

This rule will have both quantitative and qualitative benefits and will reduce accidents, injuries, and fatalities in mines. This final rule is responsive to recommendations in the Office of the Inspector General's Report (OIG Report) on MSHA's implementation of its POV authority. The safety and health conditions that led to the accident at the Upper Big Branch (UBB) mine on April 5, 2010, further demonstrated the need to revise the POV regulation.

The POV final rule is one of MSHA's highest priority regulatory initiatives. It strengthens MSHA's ability to focus on those mine operators who demonstrate a disregard for the health and safety of miners through a recurring pattern of significant and substantial (S&S) violations. This final rule allows MSHA to focus on the most troubling mines, provide those operators with notice that they are out of compliance, and review their health and safety conditions until they are improved. This rule will not affect the vast majority of mines that operate in compliance with the Federal Mine Safety and Health Act of 1977 (Mine Act).

Congress intended that MSHA act quickly to address mines with recurring safety and health violations. MSHA's existing POV regulation limits the Agency's effective use of the POV provision, resulting in delays in taking action against chronic violators and depriving miners of necessary safety and health protections.

B. Summary of Major Provisions

The final rule simplifies the existing POV criteria, improves consistency in applying the POV criteria, and increases the efficiency and effectiveness in issuance of a POV notice. The final POV rule:

- Retains the existing regulatory requirement that MSHA review all mines for a POV at least once each year;
- Eliminates the initial screening and the potential pattern of violations (PPOV) notice and review process;
- Eliminates the existing requirement that MSHA can consider only final orders in its POV review;
- Like the existing rule, establishes general criteria that MSHA will use to identify mines with a pattern of significant and substantial (S&S) violations;
- Provides for posting, on MSHA's Web site, the specific criteria (e.g., the number or rate of S&S violations) that MSHA will use in making POV determinations. This is consistent with existing practice; and
- Mirrors the provision in the Mine Act for termination of a POV.

In addition, in response to commenter concerns, the preamble to the final rule addresses:

- MSHA's Monthly Monitoring Tool for Pattern of Violations that operators can use to monitor their compliance performance;
- MSHA's commitment to requesting stakeholder input to revisions of the specific criteria; and
- MSHA's response to commenters' due process concerns;

(1) Operator can submit a corrective action program;

(2) Operator can request a meeting with the District Manager to discuss discrepancies in MSHA data; and

(3) Operator can request expedited temporary relief from a POV closure order.

C. Projected Costs and Benefits

This rule is not economically significant. Net benefits are approximately $6.7 million. Total annualized benefits are $12.6 million and total annualized costs are $5.9 million. The final rule will not have a significant economic impact on a substantial number of small mining operations.

MSHA estimates that the final rule will prevent 1,796 non-fatal and non-disabling injuries over 10 years.

MSHA expects that qualitative benefits will:

- Encourage chronic violators to more effectively and quickly comply with safety and health standards;
- Provide for a more open and transparent process;
- Promote a culture of safety and health at mines and hold operators more accountable; and
- Simplify MSHA's procedures to improve consistency.

II. Background

A. Statutory Provision

In enacting the Federal Mine Safety and Health Act of 1977 (Mine Act), Congress included the pattern of violations (POV) provision in section 104(e) to provide MSHA with an additional enforcement tool to protect miners when the mine operator demonstrated a disregard for the health and safety of miners. The need for such

a provision was forcefully demonstrated during the investigation of the Scotia Mine disaster, which occurred in 1976 in Eastern Kentucky (S. Rep. No. 181, 95th Cong., 1st Sess. at 32). As a result of explosions on March 9 and 11, 1976, caused by dangerous accumulations of methane, 23 miners and three mine inspectors lost their lives. The Scotia Mine had a chronic history of persistent, serious violations that were repeatedly cited by MSHA. After abating the violations, the mine operator would permit the same violations to recur, repeatedly exposing miners to the same hazards. The accident investigation showed that MSHA's then existing enforcement program had been unable to address the Scotia Mine's history of recurring violations.

The Mine Act places the responsibility for ensuring the health and safety of miners on mine operators. The legislative history of the Mine Act emphasizes that Congress reserved the POV provision for mine operators with a record of repeated significant and substantial (S&S) violations. Congress intended the POV provision to be used for mine operators who have not responded to the Agency's other enforcement efforts. The legislative history states that Congress believed that the existence of a pattern would signal to both the mine operator and the Secretary that ''there is a need to restore the mine to effective safe and healthful conditions and that the mere abatement of violations as they are cited is insufficient'' (S. Rep. No. 181, supra at 33).

The Mine Act does not define pattern of violations. Section 104(e)(4) authorizes the Secretary ''to establish criteria for determining when a pattern of violations of mandatory health or safety standards exists.'' Congress provided the Secretary with broad discretion in establishing these criteria, recognizing that MSHA may need to modify the criteria as experience dictates.

B. Regulatory History

MSHA proposed a POV regulation in 1980 (45 FR 54656). That proposal included: purpose and scope, initial screening, pattern criteria, issuance of notice, and termination of notice. Commenters were generally opposed to the 1980 proposal and it was never finalized.

On February 8, 1985 (50 FR 5470), MSHA announced its withdrawal of the 1980 proposed rule and issued an advance notice of proposed rulemaking (ANPRM) that addressed many of the concerns expressed about the 1980 proposal. In the 1985 ANPRM, MSHA stated that it intended to focus on the health and safety record of each mine rather than on a strictly quantitative comparison of mines to industry-wide norms. In the ANPRM, MSHA stated that the Agency envisioned simplified criteria, focusing on two principal questions:

- Were S&S violations common to a particular hazard or did S&S violations throughout the mine represent an underlying health and safety problem?
- Is the mine on a § 104(d) unwarrantable failure sequence, indicating that other enforcement measures had been ineffective?

MSHA requested suggestions for additional factors the Agency should use in determining whether a POV exists and requested ideas on administrative procedures for terminating a pattern notice.

Based on the comments on the 1985 ANPRM, MSHA published a new proposed rule on May 30, 1989 (54 FR 23156), which included criteria and procedures for identifying mines with a pattern of S&S violations. The 1989 proposal included procedures for initial identification of mines developing a POV; criteria for determining whether a POV exists at a mine; notification procedures that would provide both the mine operator and miners' representative an opportunity to respond to the Agency's evaluation that a POV may exist; and procedures for terminating a POV notice. The 1989 proposal addressed the major issues raised by commenters on the 1980 proposal and the 1985 ANPRM. Commenters' primary concerns were MSHA's policies for enforcing the S&S provisions of the Mine Act, the civil penalty regulation, and MSHA's enforcement of the unwarrantable failure provision of the Mine Act. MSHA held two public hearings. After consideration of the information and data in the rulemaking record, MSHA issued a final rule on July 31, 1990 (55 FR 31128).

MSHA proposed revisions to its POV rule on February 2, 2011 (76 FR 5719). The Agency held five public hearings: June 2 in Denver, CO; June 7 in Charleston, WV; June 9 in Birmingham, AL; June 15 in Arlington, VA; and July 12 in Hazard, KY. MSHA also extended the comment period three times to April 18, June 30, and August 1, 2011.

C. Enforcement History

Until mid-2007, POV screening was decentralized; MSHA District offices were responsible for conducting the required annual POV screening of mines. Following the accidents at the Sago, Darby, and Aracoma mines in 2006, MSHA developed a centralized POV screening process.

MSHA initiated a newly developed ''Pattern of Violations Screening Criteria and Scoring Model'' in mid-2007, using a computer program based on the screening criteria and scoring model to generate lists of mines with a potential pattern of violations (PPOV). In late 2009, MSHA determined that the Agency needed to revise its POV regulation and placed Part 104—Pattern of Violations on the Agency's 2010 Spring Semi-annual Regulatory Agenda. The safety and health conditions at the Upper Big Branch (UBB) mine that led to the accident on April 5, 2010, further demonstrated the need to update the POV regulation. As one commenter stated, the UBB mine avoided being placed on a POV despite an egregious record of noncompliance.

In order to increase transparency, the Agency also created a user-friendly, ''Monthly Monitoring Tool for Pattern of Violations'' (on-line Monthly Monitoring Tool) that provides mine operators, on a monthly basis, a statement of their performance with respect to each of the PPOV screening criteria posted on MSHA's Web site.

Prior to MSHA's creation of the on-line Monthly Monitoring Tool, mine operators had to track each mine's compliance performance and calculate the statistics to determine whether the mine met each of the specific screening criteria. Many mine operators relied on MSHA to issue a PPOV notice. Now, with MSHA's on-line Monthly Monitoring Tool, they do not have to calculate the statistics. Operators, including those that own multiple mines, can easily monitor their performance.

MSHA's on-line Monthly Monitoring Tool is quick and easy to use; it does not require extra skill or training. To use the on-line Monthly Monitoring Tool, mine operators enter their mine ID number, view their mine's performance, and see whether that performance triggers the applicable threshold for each of the screening criteria. The mine operator:

(1) Goes to MSHA's Web site at *http://www.msha.gov;*

(2) Goes to the Pattern of Violations Single Source Page;

(3) Enters the mine ID number under the ''Monthly Monitoring Tool for Pattern of Violations;'' and

(4) Clicks on the ''Search'' button.

The on-line Monthly Monitoring Tool reports results in clear, color-coded indicators of the mine's performance (red YES = meets criterion, green NO = does not trigger criterion) for each criteria and a mine's overall performance.

In 2010, the U.S. Department of Labor's Office of the Inspector General (OIG) audited MSHA's POV program. On September 29, 2010, the OIG published its audit report titled, ''In 32 Years MSHA Has Never Successfully Exercised Its Pattern of Violations Authority'' (Report No. 05–10–005–06–001). The OIG found that the existing POV regulation created limitations on MSHA's authority that were not present in the Mine Act, specifically,

- Requiring the use of final citations and orders in determining a PPOV, and
- Creating a PPOV warning to mine operators and a subsequent period of further evaluation before exercising its POV authority.

The final rule allows MSHA to focus on the most troubling mines that disregard safety and health conditions and will not affect the vast majority of mines, which operate substantially in compliance with the Mine Act.

III. Section-by-Section Analysis

A. § 104.1 Purpose and Scope

Final § 104.1 provides the purpose and scope of the rule and is substantively unchanged from the existing provision.

Commenters suggested that the scope be changed to exclude those mines with effective safety and health management programs that have already demonstrated proactive measures to protect the health and safety of miners. Other commenters suggested that MSHA exempt salt mines that have an exemplary record of safety.

Consistent with the Mine Act, the final rule covers all mines. MSHA acknowledges, however, that the majority of mine operators are conscientious about providing a safe and healthful work environment for their miners. The POV regulation is not directed at these mine operators. Consistent with the legislative history, it is directed at those few operators who have demonstrated a repeated disregard for the health and safety of miners and the health and safety standards issued under the Mine Act. The final rule addresses situations where a mine operator allows violations to occur and hazardous conditions to develop repeatedly without taking action to ensure that the underlying causes of the violations are corrected.

B. § 104.2 Pattern Criteria

Like the proposal, final § 104.2 combines existing §§ 104.2 and 104.3 into a single provision. In combining existing §§ 104.2 and 104.3, the final rule eliminates the initial screening review process and the PPOV notification. Like the proposal, the final rule eliminates the requirement that MSHA consider only final orders when evaluating mines for a POV. Final § 104.2 specifies the general criteria that MSHA will use to identify mines with a POV. The final rule simplifies the process for determining whether a mine has a POV and more accurately reflects the statutory intent.

1. § 104.2—Elimination of Potential Pattern of Violations Initial Screening and Notification

Final § 104.2, like the proposal, does not include a provision for a PPOV. Commenters in support of eliminating the PPOV stated that mine operators should know the details of their compliance history; there is no need for MSHA to warn an operator in advance that a mine may be subject to enhanced enforcement measures. Commenters said that eliminating the PPOV process would remove the incentive for mine operators to make just enough short-term improvements to get off the PPOV list, but then backslide and wait for MSHA to issue the next PPOV notice. Commenters stated that the elimination of the PPOV process should serve to effect greater improvements for more miners, at more operations, and on a longer-term basis.

Many commenters opposed the proposed elimination of the PPOV process. These commenters stated that elimination of the PPOV provisions denies mine operators their constitutional rights to adequate notice and a fair opportunity to be heard before MSHA issues one of its toughest sanctions. They also stated that elimination of the PPOV process further aggravates the impact of basing POV decisions on violations issued rather than on final orders.

Many commenters stated that eliminating the existing PPOV notice worsens the impact of any inaccurate data on which the POV is based. Some commenters stated that self-monitoring is unlikely to result in the prompt action that a PPOV notice would have triggered. Some stated that the problem in relying on self-monitoring is that MSHA and mine operators often reach different conclusions based on the same data. In their view, the existing PPOV notice process is straightforward and provides an opportunity for mine operators to address differences with MSHA. Some commenters stated that the elimination of PPOV also eliminates an element of transparency, as well as any chance of discussing the basis for the POV with MSHA before suffering loss due to inaccurate information or data.

Commenters pointed out that 94 percent of mine operators who received the PPOV notice reduced their S&S citations by at least 30 percent and 77 percent reduced S&S citations to levels at or below the national average for similar mines. These commenters stated that the initial screening is effective in identifying poor performance. Some said that the PPOV process has been effective at rehabilitating a significant number of problem mines and should not be changed. Commenters urged MSHA to focus efforts on those few mine operators who fail to improve performance, to not eliminate a program that allows mine operators and MSHA to work together, and to retain the existing two-step process.

Beginning in June 2007 through September 2009, MSHA conducted seven cycles of PPOV evaluations, on an average of every 6 to 9 months. In each cycle, eight to 20 of all mines met the criteria for issuance of a PPOV. During that period, MSHA sent 68 PPOV letters to 62 mine operators (six mine operators received more than one notification). After receiving the PPOV, 94 percent of the mines that remained in operation to the next evaluation reduced the rate of S&S citations and orders by at least 30 percent, and 77 percent of the mines reduced the rate of S&S citations and orders to levels at or below the national average for similar mines. These improvements declined over time at some mines. Compliance at 21 percent (13/62 = 0.21) of the 62 mines that received PPOV letters deteriorated enough over approximately a 24-month period to warrant a second PPOV letter (MSHA Assessment data). Six of these mines were actually sent a second PPOV letter, while the other seven (of the 13) could have received a second letter but did not, generally due to mitigating circumstances. MSHA believes that the final rule will result in more sustained improvements in mines that may have conditions that approach the POV criteria.

Commenters stated that MSHA already possesses the graduated enforcement tools necessary to shut down all or any part of unsafe operations through the use of unwarrantable failure to comply, imminent danger, and other elevated enforcement actions. Commenters also stated that MSHA fell short by not requiring mines receiving a PPOV to make fundamental safety process changes as part of their corrective actions. Commenters recognized that long-term continuous safety improvement requires fundamental changes in an organization's culture,

performance processes, and safety leadership.

Some commenters stated that elimination of PPOV places a greater burden on small, remote mine operators that do not have computers or internet access. These operators will likely be unable to access the MSHA on-line databases on a timely basis to track their compliance performance. One commenter stated that MSHA should continue to provide written notification to mines in danger of establishing a pattern of violations unless a company requests that it not be sent.

MSHA's existing POV rule was developed before the widespread use of the Internet or even computers in many mines. Now, with MSHA's on-line Monthly Monitoring Tool, operators, including those that own multiple mines, can easily and frequently monitor their compliance performance. MSHA believes that the final rule is an improvement over the PPOV screening process in the existing regulation. The final rule encourages mine operators to continually evaluate their compliance performance and respond appropriately. Through MSHA's on-line Monthly Monitoring Tool, mine operators now have information readily available regarding each mine, the level of violations compared with the criteria, and an indication of whether the mine in question has triggered one of the POV criteria. This information eliminates uncertainty surrounding POV status and the need for MSHA to inform mine operators of a PPOV, since mine operators are able to access that information at any time. In addition, MSHA does not believe that eliminating the PPOV notice poses a burden on mine operators who may not have access to a computer or the internet. In the rare situations where mine operators do not have access to a computer or the internet, they may request periodic POV status updates from MSHA and the Agency will provide this information to them at no cost. Alternatively, MSHA can assist small or remote mine operators by providing them this information at the opening conference of each inspection visit.

Mine operators are responsible for operating their mines in compliance with all applicable standards and regulations. The on-line Monthly Monitoring Tool, which is currently available, will continue to provide mine operators, on a monthly basis, their performance status relative to the POV screening criteria posted on MSHA's Web site. MSHA developed the on-line Monthly Monitoring Tool based on feedback from the mining industry. MSHA conducted a stakeholder meeting prior to announcing the implementation of the ''Monthly Monitoring Tool for Pattern of Violations'' on April 6, 2011. At this meeting, MSHA demonstrated use of the on-line Monthly Monitoring Tool. The POV Single Source Page at *http://www.msha.gov/POV/POVsinglesource.asp* contains the Monthly Monitoring Tool; Pattern of Violations Screening Criteria; Pattern of Violations (POV) Procedures Summary; a copy of the applicable regulations; and contact information to request assistance. MSHA receives and responds to requests for information about the screening criteria, the procedures, and mine-specific data related to the POV procedures and will continue to do so.

Using the enforcement data and specific POV criteria on MSHA's Web site, mine operators can perform the same review of their compliance and accident data as MSHA. MSHA's on-line Monthly Monitoring Tool is self-effectuating, quick, and easy to use; it does not require extra skill or training, technical assistance, or interpretation. Indeed, MSHA data indicate that operators are already making frequent use of the tool—there are nearly 2,200 hits per month on the on-line Monthly Monitoring Tool on the POV single source page.

Elimination of PPOV underscores the mine operators' responsibility to monitor their own compliance records and encourages them to verify that the information on MSHA's Web site is accurate. This is consistent with the Mine Act's premise that the mine operator has the authority, control, and primary responsibility for the health and safety conditions at their mines.

As stated earlier, the OIG concluded, and MSHA agrees, that the existing PPOV and final order provisions are impediments to MSHA's POV authority that were not required by the Mine Act. Experience has shown that the existing PPOV provision created the unintended consequence of encouraging some mine operators to achieve short-term improvements instead of adopting systemic, long-term improvements in their health and safety management culture. MSHA believes that eliminating the initial screening and PPOV provisions will create an additional incentive for mine operators to address the root causes of recurrent S&S violations and will facilitate long-term compliance at mines with a repeated history of S&S violations. Based on the Agency's experience under the existing regulation, MSHA has concluded that incentivizing greater use of the on-line Monthly Monitoring Tool by mine operators facilitates a more proactive approach to health and safety.

2. § 104.2—Elimination of the Final Order Requirement

Final § 104.2 eliminates existing § 104.3(b), which provides that—

> Only citations and orders issued after October 1, 1990, and that have become final shall be used to identify mines with a potential pattern of violations under this section.

As discussed in the proposal, the final order requirement has proven itself to be an impediment to MSHA's use of section 104(e) of the Mine Act as contemplated by Congress. Given the number of cases pending before the Federal Mine Safety and Health Review Commission (Commission), the final order requirement limits MSHA's ability to consider a mine's recent compliance record when it evaluates mines for a POV. For example, at the end of CY 2005, there were approximately 1,000 cases containing just over 4,000 citations and orders in contest. Currently, the number of open contested cases is 10,730 containing close to 59,000 citations and orders. The amount of time required to litigate these cases increased in each year from CY 2006 through CY 2011, increasing from an average of 214 days (7 months) from contest to decision in CY 2005 to 601 days (20 months) in CY 2011. The final rule removes this impediment by eliminating the requirement to consider only final orders and aligns the POV provision with the intent of the Mine Act.

Several commenters supported MSHA's proposal to eliminate the final order requirement. Some agreed with MSHA's conclusion that the existing regulation impedes MSHA's ability to use the POV enforcement tool in the manner intended by Congress. Some commenters stated that the final order requirement makes it impossible to use the POV tool to address serious current health and safety problems at mines. They stated that by the time a citation becomes final, the health and safety conditions at the mine may bear no relationship to what they were when the hazard was originally identified and cited.

Commenters supporting elimination of the final order requirement stated that the plain language of the Mine Act and its legislative history do not require MSHA to rely on final orders when identifying a pattern of violations. These commenters stated that the language of the Mine Act and its legislative history support MSHA's decision to consider citations and orders as issued, rather

than final orders, when determining whether a mine has demonstrated a pattern of S&S violations. The commenters cited portions of the legislative history where Congress made clear that it intended MSHA to use the pattern sanction simultaneously with other provisions of the Act when it is necessary to bring a mine into compliance. The commenters agreed with MSHA's conclusion that the final order requirement interferes with MSHA's ability to use the pattern sanction in conjunction with the Mine Act's other enforcement provisions.

Based on Agency experience with the existing regulation, the final rule, like the proposal, includes all citations and orders issued by MSHA in the Agency's POV determination. This is consistent with the language, legislative history, and purpose of the Mine Act's POV provision. Section 104(e)(1) of the Mine Act states that an operator shall be given a POV notice—

> * * * if it has a pattern of violations of mandatory health or safety standards. * * * which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards. (30 U.S.C. 814(e)(1))

Nothing in section 104(e) of the Mine Act or the legislative history states that POV determinations may only be based on final citations and orders.

Not only does the language of section 104(e) contain nothing that prohibits the Secretary from basing POV determinations on non-final citations and orders, but section 104(e)(4) explicitly provides that the Secretary ''shall make such rules as [s]he deems necessary to establish criteria for determining when a pattern of violations of mandatory health or safety standards exists''.

Because Congress explicitly delegated to the Secretary the authority to establish POV criteria, and because nothing in the language of section 104(e) explicitly limits the Secretary's discretion to base POV determinations on non-final citations and orders, the Secretary's interpretation that she may do so must be given ''controlling weight'' (*Eagle Broadcasting Group LTC* v. *FCC,* 563 F.3d 543, 551–52 (D.C. Cir. 2009)).

The elimination of the final order provision in the final rule is also consistent with the legislative history. The Senate Report accompanying the Mine Act states that section 104(e) was enacted in response to the Scotia mine disaster, an accident that ''forcefully demonstrated'' the need for such a provision (S. Rep. No. 181, 95th Cong., 1st Sess. 32, reprinted in Legislative History of the Federal Mine Safety and Health Act of 1977). The Report noted that the Senate's investigation of that disaster revealed that—

> * * * the Scotia mine, as well as other mines, had an inspection history of recurrent violations, some of which were tragically related to the disasters, which the existing enforcement scheme was unable to address. (Id. at 32)

The Senate Report's use of the phrase ''inspection history'' rather than the phrase ''violation history'' indicates Congress' intent that POV determinations should be based on inspection histories, i.e., findings by the Secretary of violations during inspections, rather than only on adjudicated violations.

The Senate Report also specifically referenced the similarities between section 104(e) and 104(d) of the Mine Act and stated that the POV sequence parallels the existing unwarrantable failure sequence (Id. at 33). That statement reflects Congress' intent that POV determinations, like section 104(d)(1) and (2) withdrawal orders, should be based on non-final citations and orders.

In addition, the Senate Report stated that the Secretary have both section 104(d) and 104(e) enforcement tools available for use simultaneously if the situation warrants (Id. at 34). Congress specifically indicated its intent that the Secretary use the POV enforcement tool as a last resort when other enforcement tools (available to the Secretary) fail to bring an operator into compliance. This underscores Congress' intent that all enforcement tools be used together, and in the same manner, that is, use of issued citations and orders, as opposed to final orders.

Finally, the Senate Report emphasized Congress' intention that the Secretary have ''broad discretion'' in establishing criteria for determining when a pattern exists, and that the Secretary continually evaluate and modify the POV criteria as she deems necessary (Id. at 33). This specific grant of discretion to the Secretary supports the Agency's action in the final rule to eliminate the use of only final orders in making a POV determination. The final rule supports the enforcement structure in the Mine Act that the Secretary use non-final citations and orders as the basis for section 104(e) withdrawal orders.

Interpreting section 104(e) to permit the Secretary to rely on non-final citations and orders in determining POV status is consistent with the purpose of section 104(e)—protecting miners working in mines operated by habitual offenders whose chronic S&S violations have not been deterred by the Secretary's other enforcement tools. The Secretary has determined that the final order requirement in the existing rule has prevented the Secretary from using section 104(e) as the effective enforcement tool that Congress intended. Some S&S citations and orders do not reach the final order stage for years.

The average number of days from contest to disposal (the time it currently takes for a typical citation to make it all the way through the appeals process) was 534 days in calendar year 2011 (about 1.5 years). The number of citations disposed of in less than two years was 131,000 (or 82%). Fourteen percent were disposed of within two to three years, 3% were disposed of within three to four years, and 1% were disposed of in four or more years.

The contest rate for S&S violations increased greatly following MSHA's revision of its civil penalty regulations in 2007, pursuant to the Mine Improvement and New Emergency Response Act (MINER Act) of 2006. The backlog of contested cases at the FMSHRC has grown so large that even with an increase in the numbers of cases disposed of in 2011, final orders may not be issued for two or three years. As stated by one commenter, the delay caused by the backlog allows POV sanctions to be postponed or avoided altogether. This often leaves the Secretary unable to base POV determinations on mine operators' recent compliance history—no matter how egregious that history may be. Interpreting section 104(e) to permit the Secretary to base compliance determinations on non-final citations or orders will allow the Secretary to protect miners working in mines where there is a recent history of S&S violations and where the mine is operated by habitual offenders who have been undeterred by other enforcement sanctions—precisely the type of circumstances section 104(e) was intended to correct.

Many commenters opposed the Agency's proposal to eliminate the final order requirement. Some stated that the proposal violates mine operators' due process rights under the Fifth Amendment to the United States Constitution. Commenters stated that the use of violations issued to trigger punitive POV sanctions without a meaningful opportunity for prior independent review, together with the proposed rule's elimination of the PPOV provisions, denies mine operators the constitutional right to notice and the opportunity to be heard.

Commenters who opposed elimination of the final order requirement were concerned with the possibility of the erroneous deprivation of property that may occur without adequate procedural protections. They stated that the property interest at stake—the economic viability of a mine—is so jeopardized by the threat of the POV sanction that MSHA must provide maximum protection to mine operators before it exercises POV authority. Some commenters stated that the proposed rule, as written, does not provide adequate procedural protections. They cited cases from the U.S. Supreme Court and other federal courts to support their position that due process requires MSHA to provide notice and a hearing to mine operators before imposing the POV sanction.

MSHA does not agree with commenters who stated that elimination of the PPOV and final order provisions violate mine operators' due process rights under the U.S. Constitution. Citations and orders, together with notice of the POV criteria posted on the Web site, and the on-line Monthly Monitoring Tool, will provide sufficient notice to alert operators of the possibility that they may be subject to a POV. Under existing MSHA procedures, mine operators can discuss citations and orders with the inspector both during the inspection and at the closeout conference. They also can request a safety and health conference with the field office supervisor or the district manager to review citations and orders and present any additional relevant information. Additionally, mine operators who may be approaching POV status have the opportunity to implement a corrective action program, and MSHA considers a mine operator's effective implementation of an MSHA-approved corrective action program as a mitigating circumstance in its POV review.

The Supreme Court has held that adequate post-deprivation procedures are sufficient to satisfy due process where public health and safety are at stake. See *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594, 595–596 (1950) (affirming the FDA's seizure and destruction of mislabeled drugs as ''misleading to the injury or damage of the purchaser or consumer'' without the opportunity for a pre-deprivation hearing, even though the particular drugs seized were not hazardous); *Mackey* v. *Montrym,* 443 U.S. 1 (1979) (holding that a state law depriving drivers of their licenses on suspicion of operating under the influence of alcohol was constitutional without a pre-deprivation hearing, due to the compelling interest in highway safety). Where prompt post-deprivation review is available to correct any administrative error, generally no more is required than that the pre-deprivation procedures used be designed to provide a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible government official warrants them to be. *Mackey, supra,* at 13.

The Mine Act guarantees due process for mine operators subject to MSHA enforcement actions. A mine operator may seek expedited temporary relief under section 105(b)(2) of the Mine Act from a pattern designation provided a withdrawal order is issued under section 104(e). Operators must have at least one withdrawal order in order to contest the pattern designation. Requests for temporary relief are reviewed within 72 hours and assigned to a Commission Administrative Law Judge as a matter of procedure, provided the request raises issues that require expedited review. The Mine Act's expedited review procedure satisfies the Constitution's due process requirements. *United Mine Workers* v. *Andrus,* 581 F.2d 888 (D.C. Cir. 1978).

The on-line Monthly Monitoring Tool will allow operators to review their compliance information on a monthly basis and bring to MSHA's attention any data discrepancies in the POV database as it is updated each month. Mine operators will have an opportunity to meet with District Managers for the purpose of correcting any discrepancies after MSHA conducts its POV screenings and issues a POV. As with all citations and orders issued under the Mine Act, mine operators have the right to contest any citation or order before the FMSHRC and operators may seek expedited review of a POV closure order.

3. § 104.2(a)—POV Review at Least Annually

Final § 104.2(a), like the existing rule, provides that MSHA will review the compliance records of mines at least once each year to determine if any mines meet the specific POV criteria posted on MSHA's Web site at *http://www.msha.gov/POV/POVsinglesource.asp.* The proposed rule would have increased the frequency of MSHA's review to at least twice per year. Commenters stated that the proposed provision for at least two reviews per year was unnecessary; MSHA can conduct multiple reviews per year under the existing rule, which provided for a POV review at least once a year. Some commenters stated that the reviews should be automated and data adjusted essentially in real time so that MSHA could respond quickly, e.g., when an inspector issues an inordinately large number of citations during an inspection of a bad actor. Some commenters supported the proposed twice-a-year review, stating that more frequent reviews provide mine operators an incentive to monitor their compliance more closely.

After reviewing all comments, the final rule retains the once-a-year review in the existing rule. Under the final rule, the Agency could conduct more than one review a year if conditions warrant, as it has done under the existing rule.

4. § 104.2(a)(1) to (8)—General Pattern of Violations Criteria for MSHA Periodic Review

Final § 104.2(a), like the proposal, contains the criteria that MSHA will consider in evaluating whether a mine exhibits a POV. These criteria do not include numerical measures. MSHA will post the specific criteria, with numerical data, on the Agency's Web site at *http://www.msha.gov/POV/POVsinglesource.asp* for use by mine operators in evaluating their mine's performance. As stated during the proposed rulemaking, when MSHA revises the specific criteria, the Agency will post the revised specific criteria on the Agency's Web site for comment (see section III.B.7 of this preamble).

Multiple Violations

Commenters stated that MSHA seems to be basing POV determinations on multiple unrelated violations. They stated that a POV must be based on repeated violations of the same or related standards.

The Mine Act does not require that MSHA base POV decisions on repeated violations of the same or related standards. The pattern criteria in the existing regulation for a PPOV include repeated S&S violations of a particular standard or standards related to the same hazard that are final orders of the FMSHRC. Like the existing rule, under the final rule, MSHA will base POV decisions on a complete review of a mine's health and safety conditions, not only on repeated violations of the same or related standards as recommended by some commenters. MSHA believes that limiting the scope of the POV regulation to repeated violations of the same or related standards would unnecessarily hinder MSHA's ability to address chronic violators and would ignore the reality that, in dangerous safety situations there are often multiple contributing violations.

Length of Review Period

Some commenters stated that the review must be limited, e.g., to citations issued within the previous 2 years. Some commenters expressed concern that, because of the Commission's heavy case load, many citations could be adjudicated at the same time causing an unfair surge in citations in one review period. Some commenters stated that a mine's POV status can be threatened by a single inspection or a few inspections with few citations followed by one with a lot of citations. These commenters stated that MSHA should not be able to issue a POV notice based on only a few inspections, one of which had many citations. According to one commenter, in these situations, posting the specific criteria on a Web site does not warn a mine operator that the mine's compliance history is approaching a POV. In support of this position, the commenter provided an example of a mine operator undergoing one inspection and receiving a smaller number of S&S citations, followed by another inspection within the next several months with a much larger number of S&S citations.

MSHA will continue the existing policy of reviewing a mine's compliance history over a 12-month period of time. MSHA believes that this provides the best opportunity for the Agency to evaluate whether a mine has a POV. Under the final rule, mine operators have the responsibility to constantly monitor their compliance performance and to assure that health and safety conditions are addressed in a timely manner. MSHA suggests that mines receiving an inordinate number of S&S violations over a short period of time may need to develop a corrective action program designed to address the root causes of any recent increases in S&S citations.

Interpretation of Significant and Substantial (S&S)

Commenters also expressed concern about how MSHA interpreted S&S. Many commenters emphasized that the mine operator and MSHA inspector often disagree. Some stated that inexperienced or insufficiently trained inspectors mark many citations as S&S when there is no likelihood of an injury or illness, and no negligence. They stated that MSHA must clarify what constitutes an S&S violation.

MSHA's interpretation of what constitutes an S&S violation is posted on MSHA's Web site at *http://www.msha.gov/PROGRAMS/assess/citationsandorders.asp* and is consistent with the Federal Mine Safety and Health Review Commission's definition of S&S (*Mathies Coal Co.,* 6 FMSHRC 1 (January 1984)). With respect to inspector training, MSHA is constantly updating and improving new inspector training, journeymen training, and supervisor training to improve consistency in the application of S&S. In addition, MSHA has implemented an improved pre-assessment conferencing process to facilitate early resolution of enforcement disputes that relate to S&S and other issues.

5. § 104.2(a)(7)—Other Information

Final § 104.2(a)(7), like the proposal, provides that MSHA will consider other information that demonstrates a serious safety or health management problem at the mine. It includes the information addressed in existing §§ 104.2(b)(2)–(b)(3) and 104.3(a)(1)–(a)(2). Under the final rule, this other information may include, but is not limited to, the following:

- Evidence of the mine operator's lack of good faith in correcting the problem that results in repeated S&S violations;
- Repeated S&S violations of a particular standard or standards related to the same hazard;
- Knowing and willful S&S violations;
- Citations and orders issued in conjunction with an accident, including orders under sections 103(j) and (k) of the Mine Act; and
- S&S violations of health and safety standards that contribute to the cause of accidents and injuries.

Commenters were concerned that MSHA's consideration of other information in the POV review criteria gives the Agency almost limitless discretion to include anything the Agency wants to consider. Some stated that unless the basis for this determination is clearly defined, it is too broad and subjective.

Some commenters also stated that MSHA already possesses the authority to shut down a mine for a variety of reasons, such as an imminent danger or an unwarrantable failure to comply, and does not need the POV sanction to stop operations at dangerous mine sites. According to these commenters, in these situations, mine operators must immediately comply with the order and withdraw miners until the hazard is eliminated or the violation is abated, though the mine operator still has the right to challenge MSHA's issuance of the order. They stated that, in addition, MSHA can seek a restraining order in the appropriate federal district court under section 108(a)(2) of the Mine Act whenever the Agency believes that the mine operator is engaged in a pattern of violations that constitutes a continuing hazard to the health or safety of the miners. For these reasons, commenters stated that MSHA has no basis to dispense with the notice and comment process in a manner contrary to due process and the statutory enforcement scheme of the Mine Act in exercising the Agency's POV authority. (See discussion on the elimination of the PPOV and final order provisions above in sections III.B.1. and 2. of this preamble.)

Other commenters were concerned that MSHA's consideration of injuries and illness might cause some mine operators to not report them. These commenters stated that MSHA should not penalize mine operators for reporting accidents, injuries, and illnesses by considering them in the Agency's POV review. These commenters stated that a pattern of injuries does not mean a pattern of violations and that injuries and illnesses are not well correlated either quantitatively or qualitatively with violations. MSHA data do not reveal a direct statistical correlation between citations and injuries. However, as a general matter, since passage of the Mine Act and MSHA's enforcement of health and safety standards at mines, annual mining fatalities and injuries have steadily declined. In 1977, there were 273 mining fatalities and 40,000 injuries. In 2011, there were 37 fatalities and less than 9,000 injuries. Moreover, among mines that have been placed on PPOV status in prior years, data generally show both a reduction in violations and a corresponding decrease in injuries in the year after mines were placed on that status.

One commenter stated that including injuries in POV determinations can only diminish the value of the POV in identifying truly dangerous mine operations. Another commenter stated that MSHA's data are unreliable because of underreporting and suggested that MSHA conduct a part 50 audit as part of a POV review. This commenter recommended that MSHA weigh heavily any information that shows a mine operator failed to report or is trying to cover up underreporting or violations.

Consistent with MSHA's position that the Agency will consider a variety of sources of information bearing on a mine's health and safety record when it conducts POV evaluations, this provision of the final rule restates the other information that the Agency may consider in determining whether a mine has a POV. MSHA data and experience show that violations of approval,

training, or recordkeeping regulations, for example, can significantly and substantially contribute to health or safety hazards, and may be a contributing cause of an accident. This is especially true where the mine operator allows similar violations to occur repeatedly. Under the final rule, MSHA intends to exercise its enforcement authority consistent with Agency experience and statutory intent.

6. § 104.2(a)(8)—Mitigating Circumstances

In this final rule, MSHA states what it considers mitigating circumstances and, based on its experience, provides more explanation for how the Agency considers mitigating circumstances in its POV decisions.

Many commenters stated that MSHA should provide more information about the role that mitigating circumstances play in the POV review process. Some commenters responded as though MSHA will issue a POV notice automatically if the criteria on the MSHA Web site are met. These commenters stated that final § 104.3 requires the District Manager to issue a pattern of violations notice when a mine has a pattern of violations; however, the discussion of mitigating circumstances states that MSHA has discretion to consider other factors before determining whether a POV notice is necessary. One commenter stated that the mining community needs to know more about what mitigating factors MSHA will consider and how the presence of mitigating factors could remove an operation from POV status. This commenter urged MSHA to consider only objective measures that demonstrate significant improvements in mine health and safety for mitigation purposes. This commenter was concerned that MSHA may relieve a mine operator from a POV determination based on short-term improvements without an objective commitment to long-term change. Other commenters stated that the proposed rule did not prescribe a specific procedure for MSHA consideration of mitigating circumstances prior to issuance of the POV notice. They requested that MSHA provide more information about the means for presenting mitigating information to the Agency and include the mechanism for this approach in the rule.

Under the existing rule, MSHA considers mitigating circumstances before issuing a POV notice. Under the final rule, this will not change; however, MSHA will no longer provide a notice to mine operators that a mine's violation history is approaching a pattern of S&S violations. Under the final rule, the mine operator is responsible for knowing if the mine's violation history is approaching a pattern of S&S violations. As stated above, MSHA exercises caution and considers all relevant information, including any mitigating information, before it exercises its POV authority. There may be extraordinary occasions when a mine meets the POV criteria, but mitigating circumstances make a POV notice inappropriate. The mine operator will have to establish mitigating circumstances with MSHA before the Agency issues a POV notice. The types of mitigating circumstances that could justify a decision to not issue a POV notice, or to postpone the issuance of a POV notice to reevaluate conditions in the mine, may include, but are not limited to, the following:

- An approved and implemented corrective action program to address the repeated S&S violations accompanied by positive results in reducing S&S violations;
- A bona fide change in mine ownership that resulted in demonstrated improvements in compliance; and
- MSHA verification that the mine has become inactive.

MSHA will continue to consider only the enforcement record of the current operator of the mine in determining whether the mine meets the POV criteria. MSHA, in coordination with the Office of the Solicitor, when necessary, determines whether there has been a change in the mine operator that warrants the start of a new violation history at a mine. Mines that have undergone bona fide changes in ownership may have POV notices postponed while MSHA determines if the new owner is achieving measurable improvements in compliance. Mines at which POV enforcement actions have been postponed due to a change to inactive status will immediately be subject to further POV enforcement once the mines resume production.

Although the final rule does not establish a specific procedure for mine operators to present mitigating circumstances to MSHA prior to the issuance of a POV notice, mine operators can present information to support mitigating circumstances to the District Manager at any time. (See MSHA's discussion of its on-line Monthly Monitoring Tool, for monitoring a mine's compliance history, under section III.B.1. of this preamble.)

Corrective Action Program

Commenters misunderstood MSHA's use of the term ''safety and health program'' in the proposed rule. Several commenters suggested that MSHA use another term, such as remedial plan or targeted remedial plan, to avoid confusion. One commenter stated that including comprehensive safety and health management programs in the final rule, as these programs are typically understood, will establish a detrimental precedent that safety and health programs are merely compliance. This commenter offered to support the development of expertise in MSHA staff so that MSHA could work cooperatively with mine operators approaching POV status to enable them to develop safety and health programs, stating that anything short of such a measure demeans the value of a safety and health program.

In response to comments, MSHA clarified in its notices of public hearings and its opening statements at the public hearings that the Agency did not intend that these safety and health management programs be the same as those referenced in the Agency's rulemaking on comprehensive safety and health management programs (RIN 1219–AB71). The public hearing notice further stated that MSHA would consider a safety and health management program as a mitigating circumstance in the pattern of violations proposal when it: (1) Includes measurable benchmarks for abating specific violations that could lead to a pattern of violations at a specific mine; and (2) addresses hazardous conditions at that mine. MSHA's use of the term ''safety and health program'' in relation to mitigating circumstances in the POV proposal is related to corrective action programs focused on reducing S&S violations at a particular mine. Further, MSHA clarified that its rulemaking on safety and health programs is a totally separate action, unrelated to the POV rulemaking. MSHA also stated that these programs referenced in the POV rulemaking would have to be approved by the Agency prior to the issuance of a POV notice. To avoid any confusion, the final rule uses only the term ''corrective action program'', it does not address safety and health management programs at all.

MSHA will evaluate the mine operator's corrective action program to determine if it is structured so that MSHA can determine whether the program's parameters are likely to result in meaningful, measurable, and significant reductions in S&S violations. MSHA has guidelines for corrective action programs on the Agency's Web site at *http://www.msha.gov/POV/POVsinglesource.asp* under *Pattern of Violations (POV) Procedures*

Summary—2010, Appendix B—Guidelines for Corrective Action Programs. In general, programs must contain concrete, meaningful measures that can reasonably be expected to reduce the number of S&S violations at the mine; the measures should be specifically tailored to the compliance problems at the mine; and the measures should contain achievable benchmarks and milestones for implementation. More specific guidance is contained in the aforementioned document.

MSHA will consider an operator's effective implementation of an MSHA-approved corrective action program as a mitigating circumstance that may justify postponing a POV notice. Like the Agency's policy under the existing rule, the program must set measurable benchmarks for evaluating the program's effectiveness and show measurable improvements in compliance to warrant postponement of a POV notice.

Under the final rule, if a mine operator is close to meeting the POV criteria, the mine operator may submit to MSHA for approval a corrective action program to be implemented at the mine. If requested, MSHA will assist mine operators in developing an appropriate corrective action program.

7. § 104.2(b)—Specific Criteria

Final § 104.2(b), proposed as § 104.2(a), provides that MSHA will post, on its Web site at *http://www.msha.gov/POV/POVsinglesource.asp,* the specific criteria, with numerical data, that the Agency will use to identify mines with a pattern of S&S violations. MSHA has determined that posting the specific criteria on its Web site, together with each mine's compliance data, will allow mine operators to monitor their compliance records to determine if they are approaching POV status. In addition, mine operators, as well as other members of the public, can monitor the data to identify any inaccuracies and notify MSHA of such inaccuracies. As stated earlier, MSHA believes that it is the mine operator's responsibility to constantly monitor their compliance performance and to assure that health and safety conditions at their mines are proactively addressed. Access to the specific POV criteria and the compliance data provides mine operators the means to evaluate their own records and determine whether they are approaching the criteria levels for a POV. This access also enables mine operators to be proactive in implementing measures to improve health and safety conditions at their mines and to bring their mines into compliance, which will enhance the health and safety of miners.

As stated in the proposed rule and at the public hearings, to provide transparency and to put operators on notice of how the Agency will determine if a mine has a POV, MSHA will continue to post specific criteria on the Agency's Web site. The specific criteria can be found at *http://www.msha.gov/POV/POVScreeningCriteria2011.pdf.* Further, as stated during the rulemaking, MSHA will seek stakeholder input when revising POV criteria. To involve stakeholders in the process of revising the specific criteria, MSHA will publish proposed changes on the Agency's Web site and solicit public comment. MSHA also will notify those on the Agency's email subscription list that the criteria are posted for comment. MSHA will consider revising the criteria based on comments.

The specific criteria are an important element in MSHA's POV evaluation process. MSHA agrees with the commenters who stated that the Agency may from time to time need to modify thresholds and other factors to assure mine operators of fair and equitable criteria that take into account different mine sizes, mine types, and commodities. The final rule retains the Agency's longstanding practice of developing specific criteria through policy and provides the flexibility to adapt the specific criteria as changing conditions and factors dictate.

MSHA considers the specific POV criteria on its Web site to be a discretionary statement of Agency policy. Posting the specific POV criteria on MSHA's Web site promotes openness and transparency by encouraging mine operators to examine their own compliance records more closely and ascertain whether they have recurring S&S violations. Many mine operators are currently monitoring their compliance performance against the specific criteria posted on MSHA's Web site.

In the preamble to the proposed rule, MSHA requested comments on how the Agency should obtain input from stakeholders during the development and periodic revision of the Agency's specific POV criteria and the best methods for notifying mine operators of changes to the specific criteria. MSHA also stated that the Agency plans to provide any change to the specific criteria to the public, via posting on the Agency's Web site, for comment before MSHA uses it to review a mine for a pattern of violations.

Some commenters opposed MSHA's proposed approach to revise the specific criteria. Commenters stated that MSHA's POV screening criteria are not interpretive, are not a statement of policy, and do not constitute a logical outgrowth of the proposed rule. Instead, they stated that these criteria constitute rulemaking and require formal notice and comment under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Some stated that the specific criteria must be clearly defined and published in the **Federal Register** before the proposal becomes final so the public can provide meaningful comments. These commenters said that the proposal deprives mine operators of the opportunity to comment, stating that they had no basis to comment on the specific criteria because the criteria were not included in the proposal. Several commenters stated that MSHA should withdraw the proposed rule and re-propose it with the specific criteria. They stated that MSHA is not establishing any criteria in the proposal, but reserving discretion to change them from time to time in the future without notice and comment. Commenters stated that the proposed rule is unclear and confusing about how much discretion MSHA would retain in deciding whether a given mine is subject to POV sanctions, and wanted to know what, if any, objective factors would guide that discretion.

Commenters stated that the specific criteria should not be a moving target, but should be fixed in the final rule so that stakeholders will know what is expected of them to avoid a pattern notice. They stated further that promising to obtain public comment before establishing specific criteria is not the same as putting the criteria in the rule and going through the notice-and-comment rulemaking process. Commenters also stated that specific numerical criteria need to be included in the rule so that they can comment on the impact of the proposal, numbers of mines affected, or costs. They stated that the OIG specifically recommended that MSHA seek stakeholder input on POV screening criteria.

Some commenters requested that MSHA include specific numbers in the final rule for how the general criteria will be measured. Other commenters suggested that MSHA not use absolute numbers as the control for the criteria—large mines should not be compared with small mines and vice versa; they stated that inspection hours provides a better basis for comparison. Some commenters stated that there is a disproportionately large number of inspection hours at large unionized mines, where miners are encouraged to point out all violations to inspectors,

and that the inspection history, in this case, reflects a safer mine not a POV.

Some commenters agreed with MSHA's proposed approach to revise the specific criteria. They stated that MSHA has many years of experience with developing POV criteria and possesses the necessary expertise to determine what specific criteria should be used to identify problem mines. They recommended that MSHA post this information in a single location on the Agency's Web site so that mine operators and other interested parties are able to view all of the relevant information at once by entering the mine ID number.

After reviewing all comments, based on Agency experience, the final rule, like the proposal, does not include specific POV criteria. This provides the Agency with necessary flexibility in establishing criteria for POV evaluations. By retaining the specific pattern of violations criteria as a statement of Agency policy, as has always been the case under the existing regulation, the Agency has flexibility to adjust the specific criteria, as necessary, to accomplish its mission and to provide relief to mine operators. Such relief might be necessary if, for example, the results of the application of the specific criteria have unintended consequences on a particular mine sector or mine size. In this case, MSHA might determine that the existing specific criteria are not fairly or properly evaluating a mine's compliance record for a pattern of violations. The Agency might determine that the existing specific criteria are no longer an appropriate measure of elevated risk to miners. If this were to occur, mine operators and miners would be unfairly impacted by inappropriate criteria. This could also have an adverse or punitive impact on mine operators. MSHA understands the importance of getting input from all of its stakeholders whenever the Agency considers revision of the specific criteria, and would provide opportunity for stakeholder input (76 FR 35801).

This aspect of the final rule is consistent with the legislative history of section 104(e), which stated that a ''pattern does not necessarily mean a prescribed number of violations of predetermined standards'' (S. Rep. No. 181, supra at 32–33). MSHA recognizes that a certain number of violations that might constitute a pattern at one mine may be insufficient to trigger a pattern at another.

MSHA considers the specific POV criteria to be a statement of Agency policy that is designed to provide guidance to MSHA personnel when making POV decisions. A mine that meets the specific criteria's numerical thresholds is not automatically placed in POV status. Rather, MSHA retains the discretion to consider mitigating circumstances for each individual mine and may choose not to use the POV sanction even if a mine meets the specific criteria. Federal courts have consistently held that nonbinding statements of agency policy do not require notice and comment rulemaking (*See, e.g., Panhandle E. Pipe Line* v. *FERC,* 198 F.3d 266, 269 (DC Cir. 1999); see also *Center for Auto Safety, Inc.* v. *National Highway Traffic Safety Admin.,* 342 F.Supp.2d 1 (D.D.C. 2004)). As long as the agency remains free to consider the individual facts in the various cases that arise, then the agency in question has not established a legislative rule that is subject to notice and comment (*National Mining Association* v. *Secretary of Labor,* 589 F.3d 1368, 1371 (11th Cir. 2009)).

C. § 104.3 Issuance of Notice

Final § 104.3 simplifies the requirements for issuing a POV notice and is essentially unchanged from the proposal. MSHA believes that it allows the Agency to more effectively implement the POV provision in a manner consistent with legislative intent. As stated earlier, some mines made initial safety improvements, however, these improvements declined over time. MSHA's experience and data reveal that some mine operators who received PPOV letters temporarily reduced their S&S violations, but reverted back to allowing the same hazards to occur repeatedly without adequately addressing the underlying causes. MSHA believes that operators who greatly reduced violations after receiving a PPOV letter and maintained this improved level of compliance are likely to continue monitoring their own performance under the final rule.

1. § 104.3(a) and (b)—Issuance and Posting of POV Notice

Final § 104.3(a), like the proposal, provides that, when a mine has a POV, the District Manager will issue a POV notice to the mine operator that specifies the basis for the Agency's action. The District Manager will also provide a copy of the POV notice to the representative of miners. Final § 104.3(b) requires that the mine operator post the POV notice on the mine bulletin board and that it remain posted until MSHA terminates the POV. After the operator receives the POV notice, MSHA's web site Data Retrieval System will list the POV notice, along with other enforcement actions, for the affected mine.

Some commenters stated that some of the data MSHA uses to screen operators for PPOV (or POV) is inaccurate, and that mine operators should have an opportunity to meet with MSHA to question underlying data after being notified of a POV. As discussed earlier, commenters were concerned that, without procedural safeguards and mine operator input, MSHA could issue a POV notice based on inaccurate data; they thought data inaccuracies were a common occurrence in the overloaded MSHA database. Commenters were also concerned that MSHA would be less inclined to conference once the POV notice was issued. To relieve these concerns, some commenters suggested that MSHA provide mine operators an informal warning and a short period of time to review data and demonstrate that the underlying violations may be invalid or otherwise flawed for purposes of POV consideration. Commenters stated that removing this informal step would result in more inaccurate POV determinations and unnecessary expenditure of resources. Some commenters suggested that MSHA provide mine operators an opportunity to present their case to the District Manager that the mine operator (1) has, or can implement immediately, a corrective action program to address the Agency's concerns; or (2) can demonstrate that, unknown to MSHA, the mine operator has been taking steps to address violations. Other commenters opposed a warning step stating that the threat of closure must be real for it to be an effective deterrent.

MSHA will continue to adhere to its policy of holding informal closeout conferences following an inspection, when the mine operator and the MSHA inspector discuss citations and orders. The operator can also request a conference with the field office supervisor or district manager.

In addition, in response to comments, and to ensure that all data are accurate, MSHA will also provide mine operators an opportunity to meet with the district manager for the limited purpose of discussing discrepancies (e.g., citations that are entered incorrectly or have not yet been updated in MSHA's computer system, Commission decisions rendered, but not yet recorded, on contested citations, and citations issued in error to a mine operator instead of an independent contractor at the mine) in the data. A mine operator may request a meeting with the District Manager for the sole purpose of presenting discrepancies in MSHA data. At this meeting, mine operators will have an

opportunity to question the underlying data on which the POV is based, and provide documentation to support their position. MSHA will make changes, as appropriate, which could result in rescission of the POV notice if MSHA verifies data discrepancies and the mine no longer meets the criteria for a POV. The time to request, schedule, and hold this meeting does not affect the 90-day schedule for abatement of the POV. In addition, consistent with existing policy, field office supervisors and district managers will continue to review all violations. This would include S&S violations issued to mine operators with a POV.

As stated previously, mine operators have the responsibility to monitor their own compliance record. MSHA encourages mine operators and contractors to monitor their compliance records using the POV on-line Monthly Monitoring Tool and notify MSHA as soon as possible if they believe any information on the POV web database is inaccurate. MSHA anticipates that operators will constantly monitor their performance using the on-line Monthly Monitoring Tool and inform the Agency of any discrepancies between their data and data posted on MSHA's Web site. Like under the existing rule, MSHA will correct inaccurate information after verifying it. MSHA believes that ongoing operator monitoring of Agency compliance data will minimize the potential for inaccurate POV determinations. The District Manager will rescind a POV notice if the Agency determines that it was based on inaccurate data and that the mine did not meet the criteria for a POV.

One commenter stated that posting the POV notice on the mine bulletin board is necessary for informing those most affected that their workplace exhibits substandard health and safety conditions so they can be attentive in protecting themselves and their fellow miners.

Under the final rule, mine operators are required to post the POV notice on the mine bulletin board and to keep it posted until MSHA terminates the POV. Additionally, the operator is required to provide a copy of the POV notice to the representative of miners.

2. § 104.3(c) and (d)—Withdrawal of Persons From Area of Mine Affected by Subsequent S&S Violations After Issuance of POV Notice

Final § 104.3(c) and (d) are the same as proposed. They restate the requirements in the Mine Act for MSHA actions after a POV notice is issued. Final § 104.3(c) requires MSHA to issue an order withdrawing all persons from the affected area of the mine if the Agency finds any S&S violation within 90 days after the issuance of the POV notice. Final § 104.3(d) provides that if a withdrawal order is issued under § 104.3(c), any subsequent S&S violation will result in an order withdrawing all persons, except those responsible for correcting the cited condition, from the affected area of the mine until MSHA determines that the violation has been abated. Commenters stated that MSHA must clarify that a subsequent withdrawal order must apply only to persons in the specific area who are exposed to risk of harm from the cited violation.

As stated previously, MSHA considers 30 CFR part 104—Pattern of Violations—as a procedural regulation that promotes transparency. It informs mine operators and others about the steps MSHA will follow in implementing section 104(e) of the Mine Act. This final rule does not require additional compliance by mine operators. Rather, it places the primary responsibility on the mine operator and allows the mine operator to be more proactive in eliminating hazards. Through this more proactive approach, mine operators will monitor their compliance performance against MSHA records, reconcile discrepancies, and seek MSHA assistance in correcting ineffective procedures, practices, and policies. Likewise, as is existing MSHA practice, a withdrawal order usually will apply only to persons in the specific area who are exposed to risk of harm from the cited violation. MSHA, however, has the authority to withdraw miners whenever, in the judgement of the inspector at the mine, there is an imminent risk of harm to miners.

D. § 104.4 Termination of Notice

Final § 104.4 addresses the termination of a POV notice and is unchanged from the proposal. MSHA's POV Procedures Summary, posted on MSHA's Web site at *http://www.msha.gov/POV/POVsinglesource.asp,* includes provisions for MSHA to conduct a complete inspection of the entire mine within 90 days of issuing the POV notice.

Commenters expressed concern that, once a POV notice is issued, it is practically impossible to terminate, especially for large mines. Commenters said that it is highly unlikely that any operation could go 90 days without an S&S violation. One commenter pointed out that the seasonal nature of operations in Alaska makes it infeasible or impossible to conduct timely follow-up inspections.

Commenters also stated that MSHA must clarify how the Agency will handle POV status when citations or orders that form the basis for the POV status are vacated or reduced to non-S&S. Many commenters urged MSHA to set up an expedited process to review POV status if citations or orders on which the status is based are subsequently vacated or reduced in severity, in settlement or by litigation, so that the mine no longer meets the POV criteria. Many commenters stated that MSHA must terminate the POV status if the mine no longer meets the criteria for the POV status.

The requirements for termination of a POV notice are provided in section 104(e)(3) of the Mine Act. A POV notice will be terminated if MSHA finds no S&S violations during an inspection of the entire mine. Final § 104.4 merely restates the requirements at 30 U.S.C. 814(e)(3) for terminating a pattern notice. Final paragraph (b) is revised to make nonsubstantive changes to clarify that partial inspections of the mine, within 90 days, taken together constitute an inspection of the entire mine.

As previously mentioned, mine operators may challenge section 104(e) withdrawal orders, as well as the underlying POV designation, before the Commission. Section 105(b)(2) of the Mine Act provides for expedited Commission review of requests for temporary relief from the issuance of POV withdrawal orders. Under Commission procedural rules, and subject to judges' availability, it is possible for a hearing to occur as early as four days from the date of the request for an expedited hearing. For this reason, it is unnecessary for MSHA to establish a similar administrative process.

Under the statute, to be removed from POV status, a mine must receive a complete inspection with no S&S violations cited. In CY 2010, CY 2011, and the first quarter of CY 2012, MSHA conducted 48,397 regular, complete inspections. No S&S violations were cited during 26,124 (54%) of these inspections. 9,430 inspections resulted in no violations cited at all. (**Note:** for underground coal mines, for the same period, of the 5,192 regular inspections, 1,256 (24%) resulted in no S&S citations).

With respect to seasonal operations that operate on an intermittent basis, the Mine Act requires inspections for intermittent operations. As with mines that change to inactive status after receipt of a POV notice, MSHA would temporarily postpone enforcement while the mine is inactive, but would

resume POV enforcement once the seasonal operation restarts production.

E. Alternatives Suggested by Commenters

Many commenters urged MSHA to consider a mine's injury prevention effectiveness as well as enforcement performance, saying they should be given equal weight. These commenters stated that injury prevention is a core value that should be MSHA's primary focus—how well a mine prevents injuries—and that enforcement performance does not equal safety. Other commenters suggested that rates and measures must be normalized for mine size and type, stating that severity measures can skew injury rates for small mines. Some commenters suggested that MSHA use the Safety Performance Index (SPI), also known as the Grayson Model, as one viable POV model that uses injury prevention and enforcement criteria in equal measures. It normalizes the criteria and provides a holistic view (i.e., analysis of a whole system rather than only its individual components) of a mine's safety performance so that it is predictive in nature.

MSHA reviewed the SPI model when the Agency was considering changes to the specific criteria used in its POV procedures summary which provides the basis for the Agency's on-line Monthly Monitoring Tool. MSHA found that the model places a high degree of emphasis on accident and injury data reported by the mine operators, more than MSHA believed was appropriate. MSHA's existing POV criteria, however, contain elements similar to some of those in the SPI model (i.e., normalized S&S citations and orders and injury severity measures). As previously stated in this preamble, under this final rule, mine operators will have the opportunity to comment on any future POV criteria that MSHA posts for comment on its Web site at *http://www.msha.gov/POV/POVsinglesource.asp.*

IV. Regulatory Economic Analysis

MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

A. Executive Order 12866: Regulatory Planning and Review; and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (E.O.) 12866, the Agency must determine whether a regulatory action is ''significant'' and subject to review by the Office of Management and Budget (OMB).

MSHA has determined that this final rule will not have an annual effect of $100 million or more on the economy, and is not an economically ''significant regulatory action'' pursuant to section 3(f) of E.O. 12866. MSHA used a 10-year analysis period and a 7 percent discount rate to calculate $6.7 million in annualized net benefits ($12.6 million in annualized benefits minus $5.9 million in annualized costs). However, OMB has determined that the final rule is a ''significant'' regulatory action because it will likely raise novel legal or policy issues.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden. MSHA has determined that this rule does not add a significant cumulative effect. The rule imposes requirements only on mines that have not complied with existing MSHA standards. The analysis identifies costs for mine operators who voluntarily choose to routinely monitor their citation data and undertake corrective action programs to prevent being placed on a POV.

Commenters stated that the proposed rule failed to consider the interplay between the POV rule and other Agency rules as required by E.O. 13563, which requires agencies to regulate industry in the least burdensome manner and to take into account the costs of cumulative regulations. Commenters stated that the cumulative effect of changes to other rules, such as respirable dust, examinations, and rock dust, on the POV regulation, will likely cause an increase in the numbers of S&S citations and, consequently, could result in more mines meeting the criteria for a POV notice. In response to commenters' concerns, MSHA clarifies that this final rule will achieve the legislative intent and impact only those mines that show a disregard for miners' health and safety. This rule does not add to the number of S&S citations. Mines can avoid costs associated with POV status by complying with MSHA's health and safety standards.

B. Industry Profile and Population at Risk

The final rule applies to all mines in the United States. MSHA divides the mining industry into two major sectors based on commodity: (1) coal mines and (2) metal and nonmetal mines. Each sector is further divided by type of operation, e.g., underground mines or surface mines. The Agency maintains data on the number of mines and on mining employment by mine type and size. MSHA also collects data on the number of independent contractor firms and their employees providing mining related services. Each independent contractor is issued one MSHA contractor identification number, but may work at any mine.

In 2010, there were 14,283 mines with employees. Table 1 presents the number of mines in 2010 by type and size of mine.

TABLE 1—2010 NUMBER OF MINES, BY TYPE OF MINE AND EMPLOYMENT SIZE GROUP

Mine size	Employment size group			Total
	1–19	20–500	501+	
Underground Coal	168	383	15	566
Surface Coal	901	475	4	1,380
Underground M/NM	110	132	6	248
Surface M/NM	10,837	1,231	21	12,089
Total	12,016	2,221	46	14,283

The estimated value of coal produced in U.S. coal mines in 2010 was $36.2 billion: $18.8 billion from underground coal and $17.4 billion from surface coal. The estimated value of coal production was calculated from the amount of coal

produced and the average price per ton. MSHA obtained the coal production data from mine operator reports to MSHA under 30 CFR part 50 and the price per ton for coal from the U.S. Department of Energy (DOE), Energy Information Administration (EIA), *Annual Coal Report 2010,* November 2011, Table 28.

The value of the U.S. mining industry's metal and nonmetal (M/NM) output in 2010 was estimated to be approximately $64.0 billion. Metal mining contributed an estimated $29.1 billion to the total while the nonmetal mining sector contributed an estimated $34.9 billion. The values of production estimates are from the U.S. Department of the Interior (DOI), U.S. Geological Survey (USGS), *Mineral Commodity Summaries 2011,* January 2011, page 8.

The combined value of production from all U.S. mines in 2010 was $100.2 billion. Table 2 presents the estimated revenues for all mines by size of mine.

TABLE 2—2010 REVENUES AT ALL MINES BY EMPLOYMENT SIZE GROUP

Size of mine	Revenues—coal mines (millions)	Revenues—MNM mines (millions)	Total revenues (millions)
1–19 Employees	$224	$14,800	$15,000
20–500 Employees	15,100	43,300	58,400
501+ Employees	20,900	5,900	26,800
Total*	36,200	64,000	100,200

* Discrepancies are due to rounding.

C. Benefits

This final rule provides MSHA a more effective use of its POV tool to ensure that operators improve their compliance with existing health and safety standards. Based on 2010 mine employment data, effective use of this enforcement tool will provide improvement in the conditions for 319,247 miners. These workers are found in underground coal mines (51,228), surface coal mines (70,178), underground metal/nonmetal mines (22,930), and surface metal/nonmetal mines (174,911).

The Agency used its experience under the existing POV rule to estimate benefits under the final rule. Specifically, the Agency used safety results derived after PPOV notices were issued to mine operators. MSHA's data reveal that improvements declined over time at about a fifth of the mines that received PPOV notices, based on MSHA's data over the last four years.

Beginning in June 2007 through September 2009, MSHA conducted seven cycles of PPOV evaluations, on an average of every 6 to 9 months. In each cycle, eight to 20 of all mines met the criteria for issuance of a PPOV. During that period, MSHA sent 68 PPOV letters to 62 mine operators (six mine operators received more than one notification). After receiving the PPOV, 94 percent of the mines that remained in operation to the next evaluation reduced the rate of S&S citations and orders by at least 30 percent, and 77 percent of the mines reduced the rate of S&S citations and orders to levels at or below the national average for similar mines. These improvements declined over time at some mines. Compliance at 21 percent (13/62 = 0.21) of the 62 mines that received PPOV letters deteriorated enough over approximately a 24-month period to warrant a second PPOV letter. Six of these mines were actually sent a second PPOV letter, while the other seven (of the 13) could have received a second letter but did not, generally due to mitigating circumstances.

In the proposed rule, MSHA estimated that 50 mines would submit corrective action programs in the first year. After reviewing public comments on the proposed rule, the Agency performed a POV analysis to review the 12-month violation history of all active mines for each of the five months from September 2011 to January 2012. The analysis used the existing PPOV screening criteria except for the final order criteria. Of the over 14,000 mines under MSHA jurisdiction, MSHA identified 313 mines that either met all of the initial screening criteria or all but one of the initial screening criteria. MSHA believes that most mine operators in this situation will submit and implement corrective action programs. MSHA believes that almost 90 percent (or 275) of these mines will submit corrective action programs in the first year under the final rule. MSHA believes operators will improve compliance over time but lacks any historical basis for a data driven estimate. Rather, the Agency selected a 10-percent reduction each year as a reasonable assumption based on its data and experience with the issuance of PPOV notices under the existing regulation. The costs for the corrective action programs include this 10-percent reduction each year in operators submitting corrective action programs.

Under the final rule, operators can submit corrective action programs as evidence of mitigating circumstances to demonstrate their commitment to improve health and safety at their mines. Mines who submit effective corrective action programs will reduce the number of S&S violations, thereby reducing the probability of injuries and of being placed on a POV. MSHA reviewed the five 12-month periods ending on September 30, 2011; October 31, 2011; November 30, 2011; December 31, 2011; and January 31, 2012, which resulted in an average of 12 mines that met all of the POV screening criteria. Based on this data, MSHA projects that 12 mines will meet all of the POV criteria in the first year under the final rule. As previously stated, of the 90 percent or 11 mines that implement a corrective action program, MSHA estimates that 80 percent will successfully reduce S&S violations. Therefore, 20 percent or two of the mines that implement a corrective action program will be issued a POV notice, primarily because they did not successfully implement a corrective action program or the corrective action program did not achieve the results intended in reduced S&S citations to avoid a POV. MSHA further estimates that 10 percent or one mine will not have implemented a corrective action program and will be issued a POV notice. Therefore, MSHA estimates that a total of three mines will be issued POV notices annually.

MSHA estimated the impact that the final mitigating circumstances provision in the final rule (including the opportunity for mine operators to submit corrective action programs) will have on the number of nonfatal injuries at mines. MSHA determined that the 62 mines, which received PPOV letters from June 2007 through September

2009, experienced 11 total nonfatal injuries during the year prior to receiving the PPOV letter and eight total nonfatal injuries during the year after receiving the PPOV letter, for an overall reduction in nonfatal injuries of 30 percent per year.

One commenter stated that MSHA had provided no rational basis for its estimate that the proposed rule would reduce the number of nonfatal injuries per mine by an average of three per year. In response to the comment, MSHA's estimate for reduced non-fatal injuries per year in the proposed rule was based on Agency experience under the existing rule. However, MSHA has reduced the estimate of non-fatal injuries avoided per year from three in the proposed rule to one in the final rule.

MSHA reviewed 10 years of accident data for all mines using the Agency's Open Government Initiative Accident Injuries dataset at *http://www.msha.gov/OpenGovernmentData/DataSets/Accidents.zip.* MSHA examined data from 2002 to 2011. For the mines with accidents, MSHA found that the average number of nonfatal, non-permanently disabling injuries with lost time was 3.7 annually per mine. Using an average of 3.7 injuries per mine annually and MSHA's experience with PPOV (roughly a 30 percent reduction in non-fatal injuries), MSHA reduced its estimate for nonfatal injuries avoided at mines that successfully implement an effective, MSHA-approved, corrective action program, from three to one per year. MSHA has included a more conservative value in the final rule. It is likely that operators who include measurable benchmarks for abating specific violations to address hazardous conditions in the MSHA-approved corrective action programs will achieve more effective systemic results than those achieved under the existing rule. As mentioned previously in the preamble, MSHA believes that the POV will be a more effective deterrent to operators by encouraging them to continually evaluate their compliance performance and respond appropriately.

MSHA does not believe that it has a reliable basis on which to quantify a reduction in fatalities or disabling injuries. MSHA believes, however, that the implementation of an MSHA-approved corrective action program will reduce fatalities and disabling injuries. Although MSHA has not quantified a reduction in injuries at the three mines estimated to be placed on a POV each year, the Agency believes that there will likely be injury reductions at these mines.

In the first year following receipt of the PPOV, mines receiving PPOV letters showed reductions in S&S violations and injuries. Unfortunately, some mines failed to sustain these improvements in the second year. Of the 62 mines receiving PPOV letters from June 2007 through September 2009, 49 mines had two full years of data following receipt of the PPOV letter. Of these 49 mines, 19 (39%) experienced an increase in the number of injuries in the second year following receipt of the PPOV letter compared to the first.

MSHA expects that, under the final rule, more mines will sustain improvements in health and safety. MSHA expects that operators that proactively implement effective MSHA-approved corrective action programs will have health and safety systems that allow them to continuously monitor hazardous conditions and sustain improvements. Mines that meet the conditions for termination of a POV will have increased incentive to remain off (see the cost analysis) and will likely implement continuing, proactive measures to prevent S&S violations.

MSHA based its estimates of the monetary values for the benefits associated with the final rule on the work of Viscusi and Aldy (2003). Viscusi and Aldy's work on willingness-to-pay is widely recognized and accepted by the Department of Labor and other federal agencies. Viscusi and Aldy conducted an analysis of studies that use a willingness-to-pay methodology to estimate the value of life-saving programs (i.e., meta-analysis) and found that each fatality avoided was valued at approximately $7 million and each lost work-day injury was approximately $50,000 in 2000 dollars. Using the Gross Domestic Product (GDP) Deflator (U.S. Bureau of Economic Analysis, 2010), this yields an estimate of $8.7 million for each fatality avoided and $62,000 for each lost work-day injury avoided in 2009 dollars. As a conservative estimate, MSHA has used the lost work-day injury value for all nonfatal injuries as there is insufficient data to separately estimate permanently disabling injuries.

MSHA recognizes that willingness-to-pay estimates involve some uncertainty and imprecision. Although MSHA is using the Viscusi and Aldy (2003) study as the basis for monetizing the expected benefits of the final rule, the Agency does so with several reservations, given the methodological difficulties in estimating the compensating wage differentials (see Hintermann, Alberini, and Markandya, 2008). Furthermore, these estimates pooled across different industries may not capture the unique circumstances faced by miners. For example, some have suggested that the models be disaggregated to account for different levels of risk, as might occur in coal mining (see Sunstein, 2004). In addition, miners may have few options of alternative employers and, in some cases, only one employer (near-monopsony or monopsony) that may depress wages below those in a more competitive labor market.

MSHA estimates a reduction of 1,796 injuries over the 10-year period. This value is based on the estimated prevention of 275 nonfatal injuries in year one (first year 275 mines with corrective action programs times 1 injury reduction per mine) and a 10 percent reduction in mines submitting programs and corresponding reduction in non-fatal injuries in each successive year. This reduction results in an estimated 107 mine operators submitting programs in the 10th year. The monetized benefits are calculated by multiplying the reduction in each year by $62,000 per lost work-day injury. This reduction in injuries, due to this final rule, will result in a 10-year monetary benefit of $111.4 million which when annualized at 7 percent equals $12.6 million. MSHA believes that this is a low estimate for the total benefits of the final rule as no monetary benefit for potential avoided fatalities was included and avoided injuries were all assumed to be less serious than a disabling injury.

D. Compliance Costs

MSHA estimates this rule will result in total compliance costs of $54.4 million over 10 years. The total 10-year estimated costs are comprised of costs for monitoring compliance or enforcement data ($11.6 million), costs for developing and submitting corrective action programs ($20.1 million), and lost production when a POV and withdrawal order are issued ($22.7 million). The costs, when annualized at 7 percent, are $5.9 million. These costs are described below. MSHA's estimates do not include the cost of compliance with MSHA's health or safety standards. Although these costs can be substantial, they are addressed in rulemakings related to MSHA's existing health and safety standards, and are not included in this analysis.

The final rule mirrors the statutory provision in section 104(e) of the Mine Act for issuing a POV notice. Final § 104.3(c) provides that MSHA will issue an order withdrawing all persons from the affected area of the mine if any S&S violation is found within 90 days after the issuance of a POV notice. No

one will be allowed to enter the area affected by the violation until the condition has been abated, except for those persons who must enter the affected area to correct the violation. Under final rule § 104.3(d), any subsequent S&S violation will also result in a withdrawal order.

The Congress intended that the POV tool be used to cause operators of unsafe mines to bring them into compliance, even if this meant shutting down production. Withdrawal orders issued under the final rule can stop production until the condition has been abated. The threat of a withdrawal order provides a strong incentive for mine operators to ensure that S&S violations do not recur. MSHA expects that, rather than risking a POV and the possibility of a closure, mine operators will monitor their compliance record against the POV criteria using the on-line Monthly Monitoring Tool on the Agency's Web site. MSHA estimates that it will take a supervisor an average of 0.08 hour (5 minutes) each month to monitor a mine's performance using the Agency's on-line Monthly Monitoring Tool.

Commenters both supported and disagreed with the time, ease of use, and frequency associated with monitoring the on-line Monthly Monitoring Tool referenced in the proposed rule. Commenters stated that MSHA's estimate of 5 minutes to monitor the Web data was too low. Besides the time required for monitoring, commenters also stated concern about the ease of use of MSHA's on-line Monthly Monitoring Tool.

After reviewing the comments, MSHA has determined that, due to the broad range in mine sizes and types affected by this rule, an average of 5 minutes per month is an appropriate time for an operator to monitor a mine's compliance performance. Some large mines may take much longer; many mine operators may monitor the on-line Monthly Monitoring Tool only a few times a year and incur lower costs. Mine operators may also request this information directly from MSHA. As support for its estimates, MSHA believes that its on-line Monthly Monitoring Tool can be easily used by mine operators and without the need for special skills or training.

MSHA calculated the average supervisory wage, including benefits, for all mining in 2010 at $81.27 per hour. MSHA estimates that the yearly cost for all mine operators to monitor their performance will be approximately $1.1 million (14,283 mines × 0.08 hours (5 minutes) per month × 12 months per year × $81.27 per hour).

With respect to compliance performance, MSHA's experience reveals that the vast majority of mines operate substantially in compliance with the Mine Act. As mentioned above, MSHA identified 313 mines that either met all or all but one of the initial screening criteria. MSHA projects that almost 90 percent of these 313 mines (or 275) will submit corrective action programs in the first year under the final rule. Under the final rule, MSHA projects that these 275 operators, after monitoring their compliance performance, will submit corrective action programs to MSHA as evidence of mitigating circumstances to demonstrate their commitment to improve their compliance performance. MSHA estimates that mine operators will improve their compliance performance and the number of corrective action programs will gradually decrease. After the final rule becomes effective, MSHA projects increased compliance and applied a 10 percent reduction per year to the number of mines submitting corrective action programs. This results in an estimated 107 submissions in year 10.

MSHA estimates that, on average, it will take a total of 128 hours of a supervisor's time to develop an effective corrective action program with meaningful and measurable benchmarks, obtain the Agency's approval of the program, and implement the program. The 128 hours of supervisory time is comprised of 80 hours for development of the program, 8 hours for submittal and approval, and 40 hours for implementation. MSHA estimates that 8 hours of miners' time will be associated with implementation of the program. MSHA re-evaluated and reduced the estimated hours based on public comments. The cost for any copying and mailing of the corrective action program documents and revisions will be about $100.

The final rule applies to all mines. Because underground coal mines generally receive more S&S violations (50% of all S&S violations in 2011) than other types of mines, MSHA projects that the final rule will affect underground coal mines more than any other mining sector. From June 2007 through November 2011, underground coal mine operators received nearly 80 percent of the PPOV letters. MSHA used the 2010 underground coal mine hourly wage rates, including benefits, of $84.69 for a supervisor and $36.92 for a miner to estimate the corrective action program costs.

MSHA received a public comment that individual mines had different wage rates. MSHA recognizes that wages, and therefore costs, will vary across mines, with some higher and some lower than the average. This evaluation uses average underground coal mine wage rates to estimate the overall costs. Since hourly wage rates in underground coal mining are higher than those in surface coal and metal/nonmetal mining, MSHA believes this approach may overestimate the costs.

In the final rule, MSHA clarified that the corrective action programs that mine operators may submit to MSHA for consideration as mitigating circumstances will not need to be comprehensive in nature. The corrective action programs referenced in the final rule need to cover only health and safety issues reflected in the citations and orders that result in a POV. The costs related to the proposed rule were based on a comprehensive safety and health program, which would be more extensive and address all health and safety issues at the mine and involve more extensive miner participation to develop. With this clarification, MSHA estimates that the costs to develop the corrective action program will be $11,200, as opposed to $22,100 in the proposed rule. The revised average cost to develop and implement an approved corrective action program at a mine will be approximately $11,200 ((128 hours of a supervisor's time × $84.69 per hour) + (8 hours of miners' time × $36.92 per hour) + $100). MSHA anticipates that the cost to mine operators developing and implementing an MSHA-approved corrective action program will be approximately $20.1 million over 10 years (1,796 mines develop and implement program × $11,200 per mine).

Several commenters provided estimates of $14,000–$44,000 per hour of shutdown at large mines. These commenters suggested that shutdowns would be from 4 hours to 2 days and the number of citations could raise costs by between $3.5 and $7 million per year. MSHA does not have an historical basis from which to estimate the potential costs that will be incurred by a mine on POV. MSHA believes that a reasonable estimate of shutdown costs is the potential production lost when miners are withdrawn while the mine operator takes the necessary actions to correct the health and safety violations. Lost revenue due to the withdrawal orders will vary considerably.

As noted above, MSHA expects that the final rule will affect underground coal mining more than any other mining sector. MSHA, therefore, used underground coal mine revenue to estimate potential production losses. In 2010, 566 underground coal mines

generated an estimated $18.8 billion in revenue resulting in an average of approximately $33.2 million per mine. Average underground coal mine revenue per day is estimated at $151,000 ($33.2 million/220 work days).

The majority of the S&S violations issued in underground coal mines are abated immediately, or within hours, and have no impact on production. A smaller percentage of violations may take an extended period of time and will impact production. Based on MSHA experience, the Agency estimates an average of 5 days lost production for a mine on POV. MSHA estimates the cost of lost production at $755,000 ($151,000 lost revenue per day × 5 days). Based on the 3 mines per year that MSHA estimates will be placed on a POV, the total annual lost revenue is estimated at $2.3 million. Some mines may incur greater than average losses while others may incur less than average losses. The small number of large mines relative to the number of small mines would result in a lower overall cost than those suggested by commenters.

The rule does not require that every S&S violation result in a shutdown of the entire mine. Only miners from the affected area are withdrawn. Withdrawal of miners does not always result in a loss of production.

Since the average revenue per underground coal mine ($33.2 million) is significantly higher than the average revenue produced by all mines ($7.0 million), MSHA believes this approach may overstate the estimated costs.

E. Net Benefits

Under the Mine Act, MSHA is not required to use estimated net benefits as the basis for its decision to promulgate a rule. Based on the estimated prevention of 1,796 nonfatal injuries over 10 years, MSHA estimates that the final rule will result in annualized (7%) monetized benefits of $12.6 million. The 10-year annualized (7%) costs are $5.9 million. The net benefit is approximately $6.7 million per year.

V. Feasibility

MSHA has concluded that the requirements of the pattern of violations final rule are technologically and economically feasible.

A. Technological Feasibility

MSHA concludes that this final rule is technologically feasible because it is not technology-forcing. In order to avoid a POV, mine operators will have to comply with existing MSHA health and safety standards, which have previously been determined to be technologically feasible.

B. Economic Feasibility

MSHA also concludes that this final rule is economically feasible because mine operators can avoid the expenses of being placed on a POV by complying with MSHA's existing health and safety standards, all of which have previously been found to be economically feasible. For those mine operators who are in danger of a POV, MSHA will consider the implementation of an approved corrective action program, among other factors, as a mitigating circumstance. MSHA expects about three mines per year will incur the potential expenses associated with closures while on a POV.

MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than one percent of revenues—to establish presumptively that compliance with the regulation is economically feasible for the mining community. Based on this test, MSHA has concluded that the requirements of the final rule are economically feasible. The first year compliance cost to mine operators is the highest year at $6.5 million. This is insignificant compared to total annual revenue of $100.2 billion for the mining industry (i.e., costs are significantly less than one percent). Each year beyond the first year has lower total costs and, therefore, even less economic impact. Even if all of the costs were borne by the underground coal industry, the estimated $6.5 million first year cost of the final rule is about 0.03 percent of the underground coal industry's 2010 revenue of $18.8 billion. MSHA, therefore, concludes that compliance with the provisions of the final rule will be economically feasible for the mining industry.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small businesses. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and made the certification under the RFA at 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the final rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this final rule on mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as small mines. These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. The costs of complying with the final rule and the impact of the final rule on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

MSHA concludes that it can certify that the final rule will not have a significant economic impact on a substantial number of small entities that will be covered by this final rule. The Agency has determined that this is the case both for mines with fewer than 20 employees and for mines with 500 or fewer employees.

B. Factual Basis for Certification

Mine operators can avoid the expenses of being placed on a POV by complying with existing MSHA health and safety standards. Under the final rule, MSHA may consider the implementation of a corrective action program, coupled with improved compliance levels, as a mitigating circumstance for those mine operators who are subject to being placed on a POV. MSHA expects few mines, if any, will choose to incur the potential expenses associated with closures under a POV.

MSHA initially evaluates the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether a further analysis

is required. Since it was not possible to accurately project the distribution of mines that will incur the estimated $6.5 million to comply with the final rule by commodity and size, MSHA examined the impact using several alternative assumptions as a sensitivity or threshold analysis.

If the total estimated compliance cost of $6.5 million were incurred by small mines, the impact would be as summarized below.

Small mine group	Number of mines	Revenue (millions)	Cost as percent of revenue
MSHA Definition (1–19 employees)	12,016	$15,000	0.04
SBA Definition (≤ 500 employees)	14,237	73,400	0.01

The final rule, therefore, will not have a significant economic impact on a substantial number of small mining operations.

One commenter stated that the average cost of the rule, as calculated by MSHA for the typical mine, would likely put some small mines, especially placer gold mines, out of business. The cost for such small mines, which typically employ one to three miners, is likely to be less than the average cost that MSHA calculated for an average-sized small mine. For example, a corrective action program would require fewer hours to develop and implement.

Accordingly, MSHA has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

A. Summary

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

MSHA estimates that under the final rule approximately 275 mines will develop and implement MSHA-approved corrective action programs in the first year. MSHA believes this number will decrease by 10 percent in each subsequent year. The average number of mines that will develop and implement MSHA-approved corrective action programs per year over 3 years is 249 ((275 + 248 + 223)/3). The development and MSHA approval of a corrective action program will impose information collection requirements related to mitigating circumstances under final § 104.2(a)(8).

MSHA expects that developing such a program with meaningful and measurable benchmarks will take about 128 hours of a supervisor's time and 8 hours of miners' time. Costs for copying and mailing the program and revisions are estimated to be $100 per program.

The burden of developing and implementing an approved corrective action program is 136 hours per mine (128 + 8) plus an additional cost of $100 per mine for copying and mailing.

Burden Hours:

- Supervisors: 249 mines × 128 hr/mine = 31,872 hr
- Miners: 249 mines × 8 hr/mine = 1,992 hr

Burden Hour Costs:

- 31,872 hr × $84.69/hr = $2,699,240
- 1,992 hr × $36.92/hr = $73,545

Copying and Mailing Costs:

- 249 mines × $100/mine = $24,900

Total Burden Cost: $2,797,685.

B. Procedural Details

The information collection package for this final rule has been submitted to OMB for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501 et seq.).

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 Department has submitted the information collections contained in this final rule for review under the PRA to the OMB. The Department will publish an additional Notice to announce OMB's action on the request and when the information collection requirements will take effect. The regulated community is not required to respond to any collection of information unless it displays a current, valid, OMB control number. MSHA displays the OMB control numbers for the information collection requirements in its regulations in 30 CFR part 3.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.). MSHA has determined that this final rule will not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further Agency action or analysis.

B. Executive Order 13132: Federalism

This final rule will not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, under E.O. 13132, no further Agency action or analysis is required.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This final rule impacts only the mining industry. Accordingly, MSHA certifies that this final rule will not impact family well-being.

One commenter stated that if mines are put out of business because they cannot pay MSHA fines, then lack of jobs would put families and children into poverty. As explained above, MSHA has concluded that compliance with the provisions of the final rule will be economically feasible for the mining industry. This final rule will not impose additional compliance costs on the mining industry, thus, it will not put mines out of business.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The final rule will not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

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

This final rule will not have tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, under E.O. 13175, no further Agency action or analysis is required.

One commenter asserted that the rule could have impacts on Alaska Regional and Village Corporations that have royalty agreements with mining companies. Within E.O. 13175 guidelines, effects on royalties are not considered a direct effect of the rule and, therefore, they are not included.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action (i.e., it adversely affects energy supply, distribution, or use). MSHA has reviewed this final rule for its energy effects because the final rule applies to the coal mining sector. Even if the entire annualized cost of this final rule of approximately $5.9 million were incurred by the coal mining industry, MSHA has concluded that, relative to annual coal mining industry revenues of $36.2 billion in 2010, it is not a significant energy action because it is not likely to have a significant adverse affect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule will not have a significant economic impact on a substantial number of small entities.

IX. References

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List of Subjects in 30 CFR Part 104

Administrative practice and procedure, Law enforcement, Mine safety and health, Reporting and recordkeeping requirements.

Dated: January 17, 2013.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is amending chapter I of title 30 of the Code of Federal Regulations by revising part 104 to read as follows:

PART 104—PATTERN OF VIOLATIONS

Sec.
104.1 Purpose and scope.
104.2 Pattern criteria.
104.3 Issuance of notice.
104.4 Termination of notice.

Authority: 30 U.S.C. 814(e), 957.

§ 104.1 Purpose and scope.

This part establishes the criteria and procedures for determining whether a mine operator has established a pattern of significant and substantial (S&S) violations at a mine. It implements section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) by addressing mines with an inspection history of recurrent S&S violations of mandatory safety or health standards that demonstrate a mine operator's disregard for the health and safety of miners. The purpose of the procedures in this part is the restoration of effective safe and healthful conditions at such mines.

§ 104.2 Pattern criteria.

(a) At least once each year, MSHA will review the compliance and accident, injury, and illness records of mines to determine if any mines meet the pattern of violations criteria. MSHA's review to identify mines with a pattern of S&S violations will include:

(1) Citations for S&S violations;

(2) Orders under section 104(b) of the Mine Act for not abating S&S violations;

(3) Citations and withdrawal orders under section 104(d) of the Mine Act, resulting from the mine operator's unwarrantable failure to comply;

(4) Imminent danger orders under section 107(a) of the Mine Act;

(5) Orders under section 104(g) of the Mine Act requiring withdrawal of miners who have not received training and who MSHA declares to be a hazard to themselves and others;

(6) Enforcement measures, other than section 104(e) of the Mine Act, that have been applied at the mine;

(7) Other information that demonstrates a serious safety or health management problem at the mine, such as accident, injury, and illness records; and

(8) Mitigating circumstances.

(b) MSHA will post the specific pattern criteria on its Web site.

§ 104.3 Issuance of notice.

(a) When a mine has a pattern of violations, the District Manager will issue a pattern of violations notice to the mine operator that specifies the basis for the Agency's action. The District Manager will also provide a copy of this notice to the representative of miners.

(b) The mine operator shall post the pattern of violations notice issued under this part on the mine bulletin board. The pattern of violations notice shall remain posted at the mine until MSHA terminates it under § 104.4 of this part.

(c) If MSHA finds any S&S violation within 90 days after issuance of the pattern notice, MSHA will issue an order for the withdrawal of all persons from the affected area, except those persons referred to in section 104(c) of the Mine Act, until the violation has been abated.

(d) If a withdrawal order is issued under paragraph (c) of this section, any subsequent S&S violation will result in a withdrawal order that will remain in effect until MSHA determines that the violation has been abated.

§ 104.4 Termination of notice.

(a) Termination of a section 104(e)(1) pattern of violations notice shall occur when an MSHA inspection of the entire mine finds no S&S violations or if MSHA does not issue a withdrawal order in accordance with section 104(e)(1) of the Mine Act within 90 days after the issuance of the pattern of violations notice.

(b) The mine operator may request an inspection of the entire mine or portion of the mine. MSHA will not provide advance notice of the inspection and will determine the scope of the inspection. Inspections of portions of the mine, within 90 days, that together cover the entire mine shall constitute an inspection of the entire mine for the purposes of this part.

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Part V

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Set-Top Boxes; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2012–BT–TP–0046]

RIN 1904–AC52

Energy Conservation Program: Test Procedure for Set-Top Boxes

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish a new test procedure for set-top boxes (STBs). The proposed test procedure describes the methods for measuring the power consumption of STBs in the on, sleep (commonly known as standby mode), and off modes. Further, an annual energy consumption (AEC) metric is proposed to calculate the annualized energy consumption of the STB based on its power consumption in the different modes of operation. DOE has tentatively identified that the test methods described in the draft Consumer Electronics Association (CEA) standard, CEA–2043, ''Set-top Box (STB) Power Measurement'' are appropriate to use as a basis for developing the test procedure for STBs. The draft CEA–2043 standard specifies the test methods for determining the power consumption of a STB in the on, sleep, and off modes. The proposed test procedure in this rulemaking is primarily based on the draft CEA–2043 standard, which was issued as an email ballot to the members of the CEA working group developing the standard for a vote on November 27, 2012.

DATES: DOE will hold a public meeting on Wednesday, February 27, 2013, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than April 8, 2013. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the NOPR for the Test Procedure for Set-top Boxes, and provide docket number EERE–2012–BT–TP–0046 and/or regulatory information number (RIN) number 1904–AC52. Comments may be submitted using any of the following methods:

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

2. *Email: SetTopBox2012TP0046@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

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

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/33.* This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part A of Title III of EPCA (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and certain commercial products (hereafter referred to as ''covered products'').[1] In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) For a given product to be classified as a covered product, the Secretary must determine that:

Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and

The average annual per-household energy use by products of such type is likely to exceed 100kWh per year. (42 U.S.C. 6292(b)(1))

Under this authority, DOE published a notice of proposed determination (the 2011 proposed determination), that tentatively determined that STBs and network equipment qualify as a covered product because classifying products of such type as a covered product is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for STBs and network equipment is likely to exceed 100 kilowatt-hours (kWh) per year. 76 FR at 34914 (June 15, 2011).

DOE may prescribe test procedures for any product it classifies as a ''covered product.'' (42 U.S.C. 6293(b)) Under EPCA, the ''Energy Conservation Program for Consumer Products Other Than Automobiles'' consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending a test procedure for covered products. EPCA provides in relevant part that any test procedure prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish a proposed test procedure and offer the public an opportunity to present oral and written comments on it. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

EPCA specifies that if the Secretary determines that a test procedure should be prescribed for a covered product, a proposed test procedure should be published in the **Federal Register** and interested persons should be provided an opportunity to present oral and written data, views, and arguments with respect to the proposed procedure. (42 U.S.C. 6293(b)(2)) Since DOE has tentatively determined that STBs are a covered product and a test procedure is required to determine the energy conservation standard for this product, a test procedure rulemaking is being undertaken to provide a test procedure to measure the energy consumption of STBs.

In addition to proposing a test procedure to measure the energy consumption of STBs in on mode, DOE is proposing test procedures to measure the energy consumption of STBs in sleep mode (an industry term that refers to standby mode) and off mode. This is consistent with EISA 2007, which amended EPCA to require DOE to implement a standby and off mode energy consumption measurement, if technically feasible, in new or existing test procedures that do not have this measurement. Otherwise, DOE must prescribe a separate standby and off mode energy test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) EISA 2007 also requires any final rule establishing or revising energy conservation standards for a covered product, adopted after July 1, 2010, to incorporate standby mode and off mode energy use into a single amended or new standard, if feasible. (42 U.S.C. 6295(gg)(3)(A)) DOE recognizes that the standby and off mode conditions of operation apply to STBs, the product covered by this proposed rule. Therefore, in response to this requirement, DOE proposes to adopt provisions in the test procedure to measure the energy use in standby and off mode for STBs. Because 'sleep' is the term used by industry for indicating that a STB is in standby mode, DOE is using the term 'sleep mode' to refer to standby mode in today's NOPR. The proposed approach for measuring the power consumption in sleep and off modes is discussed in sections III.G.6 and III.G.7, respectively.

In June 2011, DOE published the 2011 proposed determination that tentatively determined that STBs and network equipment meet the criteria for covered products. 76 FR at 34914 (June 15, 2011). If DOE issues a final determination that STBs are a covered product, it may establish a test procedure and energy conservation standard for STBs. To initiate this rulemaking process, DOE published a request for information (RFI) document on December 16, 2011 (the 2011 RFI), requesting stakeholders to provide technical information regarding various test procedures used by industry to measure the energy consumption of

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

STBs and network equipment. 76 FR at 78174. Such industry test procedures included the ENERGY STAR® program's specification, ENERGY STAR Program Requirements for Set-top Boxes, Version 3.0 (ENERGY STAR specification),[2] Consumer Electronics Association's (CEA) standards ANSI[3]/CEA–2013–A[4] and ANSI/CEA–2022,[5] Canadian Standards Association's (CSA) test procedure C380–08,[6] as well as International Electrochemical Commission's (IEC) standard IEC 62087.[7]. *Id.* In the 2011 RFI, DOE also solicited comments on the key issues affecting the development of a new test procedure. Today's NOPR has been developed based on DOE's research and analysis of existing and draft versions of industry standards, that prescribe test procedures for testing STBs, as well as stakeholder responses to the key issues discussed in the 2011 RFI.

In this NOPR, DOE proposes measurement tests to determine the power consumption of STBs in the on, sleep, and off modes. Pursuant to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), which directs Federal agencies to use voluntary consensus standards in lieu of Government standards whenever possible, DOE proposes a STB test procedure that has primarily been developed from the draft CEA–2043[8] standard, currently under development by a CEA working group that includes representatives of the STB industry. This draft standard provides the definitions, measurement criteria, and test procedures for testing the specific modes of STBs. DOE also proposes a method for determining the ratings of power consumption in the on, sleep, and off modes for a given basic model of STB, which includes the number of units that must be tested and the statistical tolerances. Finally, DOE proposes a metric to calculate the annual energy consumption (AEC) of the STB. DOE's proposed metric combines the rated values of STB power consumption in each mode of operation with the expected time spent in the respective mode. The time weightings used to calculate the typical energy consumption (TEC) in the ENERGY STAR specification were used as a starting point to develop the time weightings for the AEC metric proposed in today's NOPR.

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes: (1) A test procedure for determining the energy consumption of STBs in the on, sleep, and off modes; (2) a method for determining the ratings of power consumption in the on, sleep, and off modes for a given basic model of STB; and, (3) a metric to calculate the AEC of the STB. DOE also proposes to exclude network equipment from the scope of this rulemaking, which is discussed in further detail in section III.B of this NOPR.

DOE's proposed test procedure for determining the energy consumption of the STB is largely developed from the draft CEA–2043 standard. The draft CEA–2043 standard was issued as an email ballot to CEA's working group members for vote on November 27, 2012. The standard specifies the definitions, measurement criteria, and the test methods for determining the power consumption of the STB in different modes of operation. DOE reviewed several approaches for testing the power consumption of STBs and determined that the test procedure specified in the draft CEA–2043 standard is representative and generates repeatable power consumption values. This determination was made based on discussions with industry experts as well as through DOE's internal research and analysis. Additionally, DOE has proposed some modifications to the test procedure specified in the draft CEA–2043 standard as discussed in sections III.D through III.G.

DOE's proposed test procedure for determining the power consumption of a STB in on mode is comprised of two main tests: (1) An on (watch television (TV)) test that records the power consumption when a channel is viewed; and, (2) a multi-stream test that evaluates different functions of multi-streaming STBs depending on its capabilities, such as channel viewing, recording, and playback. The proposed tests for on mode are discussed in further detail in section III.G.5 of the NOPR. For testing the power consumption of the STB in sleep mode, DOE developed the test procedure from the sleep mode test procedure specified in the draft CEA–2043 standard. Sleep mode as defined in the CEA standard meets the definition of standby mode as outlined in EISA 2007. (42 U.S.C. 6295(gg)) As discussed in Authority and Background, section I of this NOPR, DOE proposes to use the industry term 'sleep' mode in place of standby for this test. For the sleep mode test, DOE proposes two tests: (1) a manual sleep test in which the STB enters sleep mode through a user action on the remote control; and, (2) an auto power down (APD) test in which the STB automatically enters sleep mode after a period of user inaction. For both sleep mode tests, an average power measurement over a period of at least 4 hours and up to a maximum of 8 hours is recorded as discussed in section III.G.6. For testing the power consumption of the STB in off mode, DOE proposes an average measurement over 2 minutes after the STB has been placed in off mode. The proposed off mode measurement test is discussed in further detail in section III.G.7.

In addition to proposing measurement tests to measure the power consumption of the STB in the different modes of operation, DOE is proposing a sampling plan that requires testing of at least two STBs for each basic model, to determine the power consumption in each mode of operation and the application of tolerances for determining the rating of a given basic model, as discussed in further detail in section III.H.

Finally, DOE is proposing a metric to calculate the AEC of the STB from the rated power consumption in the on, sleep, and off modes of operation. The proposed metric combines the rated power consumption values of the STB in the different modes of operation into a single metric based on the expected time spent in each mode of operation such that it is representative of the STB's annual energy use. The time weightings used to calculate TEC in the ENERGY STAR specification were used as the starting point to develop the time weightings that are proposed for the AEC metric. DOE believes that the proposed test procedure will accurately represent the energy consumption of STBs by capturing the AEC in on, sleep, and off modes. The AEC metric is discussed in further detail in section III.I.

[2] ENERGY STAR® Program Requirements for Set-top Box Service Providers. Version 3.0. *www.energystar.gov/ia/partners/product_specs/program_reqs/STB_Version_3_Program_Requirements_Service_Providers.pdf?38d7-750d.*

[3] American National Standards Institute.

[4] ANSI/CEA Standard. ''Digital STB Background Power Consumption.'' ANSI/CEA–2013–A. July 2007.

[5] ANSI/CEA Standard. ''Digital STB Active Power Consumption Measurement.'' ANSI/CEA–2022. July 2007.

[6] Canadian Standards Association. ''Test Procedure for the Measurement of Energy Consumption of Set-top Boxes (STBs).'' C380–08. August 2008.

[7] International Standard. ''Methods of measurement for the power consumption of audio, video and related equipment.'' Edition 3.0 2011–04. Section 8.

[8] Draft CEA–2043. ''Set-top Box (STB) Power Measurement.'' The version referenced in today's NOPR was issued as an email ballot, for vote, to the R04WG13 working group on November 27, 2012.

III. Discussion

A. Effective Date and Compliance Date of Test Procedure

If adopted, the effective date for this test procedure would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, the new metrics and any other measure of energy consumption which depends on these metrics may be represented pursuant to the final rule. Compliance with the new test procedure and sampling plans for representation purposes would be required 180 days after the date of publication of the test procedure final rule. On or after that date, any such representations, including those made on marketing materials, Web sites (including qualification with a voluntary or State program), and product labels shall be based upon results generated under the final test procedure proposed to be included in Appendix AA to Subpart B of 10 CFR Part 430 as well as the sampling plan in 10 CFR Part 429.

The final DOE test procedure shall be utilized or referenced by all other organizations, such as U.S. Environmental Protection Agency (EPA) for its ENERGY STAR specification for STBs, the California Energy Commission (CEC) and any other state regulation providing for the disclosure of information with respect to any measure of STB energy consumption once the test procedure becomes effective 30 days after the test procedure final rule publication. The final rule will supersede any existing state test procedure for STBs to the extent the state regulation requires testing in a manner other than that required by the final DOE test procedure. (42 U.S.C. 6297(a)(1))

B. Products Covered by This Rulemaking

In the 2011 RFI, DOE requested comment on the scope of the STB and network equipment test procedure rulemaking. DOE received some comments that network equipment should not be included in the scope of the rulemaking, and received some comments in favor of developing a Federal test procedure for STBs. Verizon commented that DOE should not identify network equipment as a covered product and should clarify that only ''traditional, dedicated'' STBs would be subject to any test procedure or energy conservation standard. (Verizon, No. 0032 at p. 5) [9] The Consortium for Energy Efficiency (CEE) commented that they support the development of a test procedure for STBs that accurately measures STB energy consumption by simulating actual usage by consumers. (CEE, No. 0028 at p. 1) Further, the joint response of DISH Network L.L.C. (DISH), EchoStar Technologies L.L.C. (EchoStar), and DIRECTV L.L.C. (DIRECTV), commented that this rulemaking should be limited to STBs and should not include network equipment. (DISH, EchoStar, DIRECTV, No. 0030 at p. 1) The National Cable & Telecommunications Association (NCTA) commented that if DOE proceeded with a rulemaking, the scope of this rulemaking should include STBs that are defined as any non-gateway devices. (NCTA, No. 0034 at p. 43) DOE also received a comment in support of a test procedure for network equipment. The joint comment response of Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), and Consumer Federation of America (CFA) encouraged DOE to continue investigating both network equipment and STBs in order to realize energy savings for consumers as well as other economic and environmental benefits. (ASAP, ACEEE, CFA, No. 0025 at p. 1–5) These commenters did not recommend any specific test method for testing network equipment but suggested that DOE should look into existing test methods that were identified during the development of the ENERGY STAR specification for small network equipment.[10] (ASAP, ACEEE, CFA, No. 0025 at p. 3)

Based on stakeholder feedback, DOE proposes to exclude network equipment from the scope of this NOPR and focus exclusively on STBs. DOE proposes that the scope of today's proposed rulemaking is to capture the energy consumption of STBs that primarily receive and output video content. DOE proposes to define STBs as described in section III.D.1 below. DOE will continue to evaluate the need for a test procedure for network equipment.

In addition to receiving comments on the overall scope of coverage of today's NOPR, DOE received comments about the exclusion of specific models of STBs. Sidley Austin LLP (Sidley Austin) commented that during a meeting between DOE, AT&T, and Sidley Austin on March 7, 2012, AT&T representatives suggested that AT&T's U-verse® receivers should not be covered under any test procedure or energy conversation standard rulemaking because the product already uses less power than other STBs and does not meet the annual 100 kWh statutory threshold set by EPCA for covered products to be regulated. (Sidley Austin LLP, No. 0024 at p. 2) Sidley Austin further commented that AT&T's U-verse® is one of the most energy efficient STBs on the market and is continuing to improve its efficiency. (Sidley Austin LLP, No. 0024 at p. 2) Next, AT&T commented that DOE should refrain from promulgating a test procedure or energy efficiency standard for Internet Protocol TV (IPTV) receivers because the energy use of IPTV STBs does not meet the statutory threshold for these boxes to be regulated. (AT&T, No. 0032 at p. 5) DOE considers that today's test procedure NOPR is applicable to any STB, including IPTV, as defined in section III.D.1 and will address the scope of coverage for any energy conservation standard during that rulemaking, if required.

DOE also received several comments on the coverage of low noise block-downconverters (LNBs), auxiliary boxes, optical network terminals (ONTs), and standalone digital video recorders (DVRs). The Natural Resources Defense Council (NRDC) recommended including all of these products in the scope of this rulemaking. (NRDC, No. 0017 at p. 2) NRDC further commented that once ONTs are installed, they are not removed when service is terminated. If a customer switches to a service provider that does not require an ONT, this unit could continue drawing power without being used. (NRDC, No. 0017 at p. 2) Conversely, DISH, EchoStar, and DIRECTV commented that LNBs should not be included in the scope of this rulemaking. They commented that LNBs can consume varied power in different configurations. (DISH, EchoStar, DIRECTV, No. 0030 at p. 5) Further, the outdoor unit (ODU) that consists of a receiving dish, LNB, and radio frequency (RF) switch would need to be specified in detail to test these units in a repeatable fashion. Finally, the power consumption of the ODU devices varies with weather and location. (DISH, EchoStar, DIRECTV, No. 0030 at p. 11)

Because of the complexity associated with these equipment and the

[9] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop a test procedure for STBs (Docket No. EERE–2011–BT–NOA–0067), which is maintained at *www.regulations.gov*. This notation indicates that the statement preceding the reference is document number [0032 as assigned in regulations.gov] in the docket for the STB test procedure rulemaking, and appears at page 5 of that document.

[10] ENERGY STAR Small Network Equipment. ''Draft Specification Framework Document.'' October 2009. *www.energystar.gov/ia/partners/prod_development/new_specs/downloads/small_network_equip/SNE_Draft_Framework_V1_0.pdf?ecf4-2f7e.*

significant operational differences from STBs, DOE does not propose to include LNBs, ONTs, ODUs, or other infrastructure devices that do not directly deliver TV signals to a consumer display to be in the scope of this rulemaking.

DOE requests comment on focusing the scope of today's rulemaking to STBs and excluding network equipment. Further, DOE seeks additional information and comment related to the development of a test procedure for LNBs, ONTs, ODUs, or other infrastructure devices and the standard configuration in which these products should be tested.

C. Industry Set-Top Box Test Procedures

While developing the proposed test procedure for STBs, DOE researched existing and draft test procedures that measure STB energy consumption, as discussed in the 2011 RFI. DOE received a comment from CEA stating that it should not duplicate the private sector's development of a consensus standard test procedure for measuring the power consumption of STBs. (CEA, No. 0031 at p. 3) DOE agrees with CEA and is proposing a test procedure for STBs that is largely based on standards accepted and developed by industry. The standards that were reviewed to develop this test procedure NOPR include the ENERGY STAR specification, CEA standards ANSI/CEA–2013A, ANSI/CEA–2022, the draft CEA–2043 standard, CSA test procedure C380–08, as well as IEC standard IEC 62087.

The ENERGY STAR specification includes a test method for determining the power consumption of the STB in different modes of operation. The ENERGY STAR test method provides the test setup, test conduct, initialization requirements, and test procedures for testing the STB in many different modes of operation. These include, in the on mode: watching TV, recording to a DVR and removable media, and playing back recorded content from a DVR and removable media. In the sleep mode, the test procedures include: sleep mode, APD, and deep sleep. Finally, the ENERGY STAR test method also includes a method for testing a STB that has multi-room capability. The ENERGY STAR test method was developed based on the CSA test procedure, C380–08. DOE referred to some sections of the ENERGY STAR specification to develop today's NOPR, which are discussed in detail in sections III.D to III.I.

The ANSI/CEA–2022 and ANSI/CEA–2013A provide an overview to determine the power consumption of STBs in the on, sleep and off modes, respectively. The standards do not contain detailed information about testing and setup for the different modes of operation. As discussed, CEA is also developing a new standard, CEA–2043, that is currently in draft form but will supersede CEA standards ANSI/CEA–2013A and ANSI/CEA–2022 once it is published. Therefore, DOE did not refer to ANSI/CEA–2013A and ANSI/CEA–2022 to develop today's proposed rule; instead it refers to the draft CEA–2043 standard.

The CSA test procedure, C380–08, specifies test conditions and setup requirements that are also referenced in the ENERGY STAR specification and are the same as those specified in the draft CEA–2043 standard. The C380–08 standard specifies test procedures for determining energy consumption in the on and sleep modes of operation, from which the ENERGY STAR specification was developed. Therefore, DOE does not reference this CSA test procedure in the NOPR because the information specified in the CSA test procedure is also included in the ENERGY STAR specification.

IEC 62087 provides specification for testing the STB at different input signal levels and different input terminals depending on the type of the STB. The standard provides test procedures for determining power consumption in the on and sleep modes. In the on mode, IEC 62087 specifies tests in the play, record, and multi-function (with single and multiple tuners) modes. In sleep mode, it specifies tests at the active high, active low, and passive modes. DOE refers to IEC 62087 to support some of its proposed requirements.

DOE primarily focused on the draft CEA–2043 standard to develop the test procedure for STBs that is proposed in this NOPR. The draft CEA–2043 standard specifies the test conditions and test setup at which power consumption of the STB should be measured. These include the modes of operation of the STB, test room and equipment requirements, and measurement tests for determining the power consumption in each mode of operation. DOE also referred to the ENERGY STAR specification to develop some of the proposed requirements, such as the AEC metric, that are not specified in the draft CEA–2043 standard. In review of CEA–2043, DOE found that CEA is a leading organization that connects consumer electronics manufacturers, retailers, and other interested parties to develop industry accepted electronics test procedures. The CEA Technology & Standards program is CEA's standards making body that is accredited by ANSI.[11] CEA–2043 is being developed under the CEA R04 WG13 STB Energy Consumption working group, which falls under the CEA Technology & Standards program. DOE representatives have observed the development of CEA–2043, attended conference call meetings between STB manufacturers and energy advocates during draft revisions, and have been included on all notes and documentation from the CEA R04 WG13 STB Energy Consumption working group. Today's NOPR has primarily been developed using the draft version of the CEA–2043 standard that was issued as an email ballot to members of the working group for a vote on November 27, 2012. However, DOE is proposing some modifications, which are discussed in sections III.D through III.G.

The draft version of the CEA–2043 standard was in a 30 day voting period that ended on December 28, 2012. Once the final CEA–2043 standard is published, it will be available on CEA's Web site at *http://www.ce.org/Standards/Standard-Listings.aspx.* DOE requests comment on using the draft CEA–2043 standard as the basis for today's proposed test procedure for STBs.

D. Definitions

1. Definition of Set-Top Boxes

Because there are no statutory definitions for STBs under EPCA currently, DOE proposes to develop a definition for STBs. Cisco commented that defining STBs as traditional STBs would capture only some of the ways in which video program is delivered and a broader definition that is designed to encompass all means by which a consumer could receive video signals from multichannel video programming distributors (MVPD) could inadvertently bring tablet computers, computers, gaming consoles, and smartphones under this regulation. (Cisco Systems, Inc., No. 0027 at p. 11) DOE understands these concerns and is proposing a definition that captures more than just traditional STBs, while mitigating the issues associated with a broader definition of STBs. The proposed definition would be included in 10 CFR Part 430.2 and would define STBs as ''a device combining hardware components with software programming designed for the primary purpose of receiving television and related services from terrestrial, cable, satellite, broadband, or local networks, providing

[11] ''ANSI-Accredited Standard Developers.'' *www.ansi.org/about_ansi/accredited_programs/overview.aspx?menuid=1.*

video output using at least one direct video connection.''

DOE also proposes to include a definition for direct video connection, in 10 CFR Part 430.2, as ''any connection type that is one of the following: High-Definition Multimedia Interface (HDMI), Component Video, S-Video, Composite Video, or any other video interface that may be used to output video content.''

DOE's proposed definition of STBs is different from the definition specified in section 4 of the draft CEA–2043 standard. That standard defines a STB as ''a device that receives video content which is then delivered to a display device, recording device, or client''. DOE did not adopt CEA's definition in the NOPR because DOE believes the definition is vague and can include such devices in the scope of this rulemaking that are not, in fact, STBs. According to the definition specified in the draft CEA–2043 standard, any device that can receive video content and can deliver it to display device, recording device, or client is a STB. Under this definition, devices such as a smartphone could potentially be included under the scope. DOE believes these devices should not be included because the scope of today's rulemaking is to capture the energy use for those devices that primarily receive and output video content. Because the primary use of a device such as a smartphone or gaming console is not to output video content, today's test procedure would not make adequate energy representations of these products. DOE believes that smartphones do not meet the definition of a STB under today's proposed definition.

DOE does not propose to use the definition specified in the draft CEA–2043 standard. Instead, DOE developed a definition for STBs that includes specific detail about the types of networks the device can receive video content from and the allowable output connections for delivering the video content. The types of networks from which content could be received—terrestrial, cable, satellite, broadband, or local networks—are all networks that are commonly used for STBs. In fact, STBs are often defined by their base type functionality, which generally includes the network type used. This information was also included in the definition for STBs in an older draft of the CEA–2043 standard and DOE proposes to include it to add specificity to the STB definition. Additionally, DOE's proposed definition refers to a device that is manufactured when both the hardware components and the software is loaded on the device such that its primary purpose is receiving and outputting video. DOE believes it is important for the definition of a STB to include both software and hardware because the underlying hardware for a STB could look much like a general purpose computer, but the software added to such hardware distinguishes the unit allowing it to function as a STB. Further, the proposed DOE definition does not include specific devices to which the content is delivered, while the draft CEA–2043 definition specifies that the content is delivered to a display device, recording device, or client. In lieu of specifying the types of devices to which the content may be delivered, DOE's proposal specifies the types of video connections that may be used, since, at a minimum, a STB must deliver content to a video device. Including detail about the direct video connections that are permissible ensures that devices that do not primarily deliver content to a video device do not meet the proposed definition. For example, devices that receive and transmit information solely through a network interface and do not have a video output would not be considered a STB under DOE's proposed regulatory definition, but would be considered a STB if the draft CEA–2043 standard's definition were adopted. DOE believes that today's proposed test procedure would not make appropriate representations of energy consumption for devices that do not provide a direct video output, and therefore, has proposed this definition to narrow the scope compared to the CEA–2043 standard.

Finally, to further aid in defining the scope of coverage of this rulemaking, DOE proposes to include definitions for Component Video, Composite Video, HDMI, and S-Video in the test procedure. These terms are all used in the definition for direct video connection, which is used to define STBs. DOE proposes to define these terms in section 430.2 of subpart A of 10 CFR part 430 as follows:

Component Video: Component Video is a video display interface that meets the specification in CEA–770.3–D.

Composite Video: Composite Video is a video display interface that uses a Radio Corporation of America (RCA) connection to transmit National Television System Committee (NTSC) analog video.

HDMI: High-Definition Multimedia Interface or HDMI is an audio/video interface that meets the specification in HDMI Specification Version 1.0.

S-Video: S-Video is a video display interface that transmits analog video over two channels: luminance and color.

For the definitions of Component Video and HDMI, DOE proposes to incorporate by reference two industry standards that are used to define these terms. Specifically, DOE proposes to define Component Video as a connection that meets the requirements found in CEA–770.3–D.[12] For HDMI, DOE is proposing to define it as a connection that meets the requirements found in the HDMI Specification Version 1.0.[13] DOE believes these industry standards provide the appropriate information for defining the Component Video and HDMI connections and has therefore incorporated these standards by reference in section 430.3 of Subpart A of 10 CFR Part 430.

In the 2011 proposed determination, DOE proposed a definition for STBs and network equipment as ''a device whose principal function(s) are to receive television signals (including, but not limited to, over-the-air, cable distribution system, and satellite signals) and deliver them to another consumer device, or to pass Internet Protocol traffic among various network interfaces.'' 76 FR at 34915 (June 15, 2011). DOE received several comments about this definition from stakeholders. The Northwest Energy Efficiency Alliance (NEEA) suggested a new definition for STBs that accounts for the fact that these devices serve a broader function than to simply relay TV signals. (EERE–2010–BT–DET–0040, NEEA, No. 0006 at p. 2) AT&T and the California Investor Owned Utilities (CA IOUs) commented that DOE should adopt the definition of STB that has been developed by the ENERGY STAR program because it is well known by industry. (EERE–2010–BT–DET–0040, AT&T, No. 0008 at p. 9) (EERE–2010–BT–DET–0040, CA IOUs, No. 0011 at p. 2) Further, the Northeast Energy Efficiency Partnerships (NEEP) commented that STBs and network equipment should have a single definition because they perform similar functions. (EERE–2010–BT–DET–0040, NEEP, No. 0010 at p. 2) In contrast, the CA IOUs commented that separated definitions should be adopted for STBs and network equipment to explicitly describe the products covered. (EERE–2010–BT–DET–0040, CA IOUs, No. 0011 at p. 2) NCTA commented that STBs and network equipment vary too

[12] CEA Standard. ''High Definition TV Analog Component Video Interface.'' CEA–770.3–D. Approved February 2008.

[13] ''High-Definition Multimedia Interface Specification.'' Informational Version 1.0. Approved September 4, 2003.

much to fit under one definition and that network equipment should be dropped from the rulemaking. (EERE–2010–BT–DET–0040, NCTA, No. 0017 at p. 8, 22) NRDC commented that the part of the definition that states ''the principal function(s) are to receive TV signals'' should be expanded because STBs receive more types of signals than TV signals. (EERE–2010–BT–DET–0040, NRDC, No. 0012 at p. 5) CEA commented that DOE should adopt the definition that will be specified in the new CEA standard and should compare the proposed STB definition to the Federal Communications Commission's (FCC) definition of ''navigation device'' to avoid defining the same product category differently. (EERE–2010–BT–DET–0040, CEA, No. 0014 at p. 3) CEA also commented that the definition of STBs should not include a device with gateway functionality, such as devices that terminate the service provider or IP network for multiple devices in a home, because such a definition would combine video and non-video related devices and would include many different products such as networking switch, hub, Wireless-Fidelity (Wi-Fi) [14] access point, Ethernet extending devices, and possibly the entire category of home automation, security and smart grid products. (EERE–2010–BT–DET–0040, CEA, No. 0014 at p. 4) Finally, CEA, Verizon, and the Telecommunications Industry Association (TIA) commented that the phrase ''to pass Internet Protocol traffic among various network interfaces'' should be excluded from the proposed definition as they believe the scope of the rulemaking is to only cover video related devices. (EERE–2010–BT–DET–0040, Verizon, No. 0015 at p. 4) (EERE–2010–BT–DET–0040, TIA, No. 0040 at p. 4)

DOE reviewed the comments it received on the 2011 proposed determination and preliminarily concluded that it will not continue with the definition proposed for STBs and network equipment in the 2011 proposed determination, for the following reasons. First, the intent of the proposed definition in the 2011 proposed determination was that it be broad enough so that it covered both STBs and network equipment. However, as discussed in section III.B, today's proposed rule narrows the scope of the rulemaking to cover only STBs and not network equipment. Second, DOE believes that the definition in the 2011 proposed determination may be too broad for the purposes of the STB test procedure rulemaking. The definition of ''principal function'' could be ambiguous; it is not explicit whether the principal function is based on how the device is used by the consumer or how the manufacturer intends the device to be used. Further, the definition in the 2011 proposed determination does not explicitly state that video content should be delivered using a direct video connection, which is included in the definition proposed in today's NOPR. As discussed previously, specifying that the device should deliver video content using a direct video connection ensures that devices that do not use this connection are excluded from the proposed definition of STB. Therefore, DOE has proposed a new definition solely for STBs as discussed in the above paragraph.

DOE also considered defining a STB using the base types included in the ENERGY STAR specification. However, the ENERGY STAR definition is more suited to differentiating product types for the purposes of efficiency levels, which is not necessary when it comes to defining scope of coverage for DOE's regulatory program.

In conclusion, DOE proposes to define STBs as ''a device combining hardware components with software programming designed for the primary purpose of receiving television and related services from terrestrial, cable, satellite, broadband, or local networks, providing video output using at least one direct video connection.'' DOE invites comment on this proposed definition of STBs. In particular, DOE requests comment about whether the proposed definition is specific enough to exclude non-STB devices such as gaming consoles and smartphones, yet broad enough to cover traditional STBs as well as newer STBs. DOE also requests comment on the proposed definitions for direct video connection, Component Video, Composite Video, HDMI, and S-Video.

2. Basic Model of an STB

In March 2011, DOE published a final rule for 'Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment'. 76 FR at 12422 (March 7, 2011). In this rule, DOE codified a definition for basic model in 10 CFR Part 430.2 as follows:

''Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; and

(1) With respect to general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps: Lamps that have essentially identical light output and electrical characteristics—including lumens per watt (lm/W) and color rendering index (CRI).

(2) With respect to faucets and showerheads: Have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest flow mode.''

For today's NOPR, DOE reviewed this definition of a basic model and has determined that the definition of basic model codified in 10 CFR Part 430.2 is applicable to STBs. For STBs, the 'identical electrical, physical, and functional characteristics' that identify two units as being the same basic model would also cover software download or hardware integration. This is because hardware components and software programming can change the functional or physical characteristics of the box that affect energy consumption and/or energy efficiency. Thus, in order for multiple STBs to be in the same basic model they must have essentially the same software downloads and hardware integration. Additionally, for today's proposed rule, DOE also believes that two STB units are considered to be the same basic model if they have the same multi-streaming and DVR functionality as described in section III.D.4.

DOE invites comment on the discussion of basic model as it pertains to the STB rulemaking.

3. Manufacturer of a Set-Top Box

DOE considers today's proposed test procedure applicable to any person that meets the definition of manufacturer under EPCA as it relates to STBs. EPCA defines the term ''manufacture'' as ''to manufacture, produce, assemble, or import.'' (42 U.S.C. 6291(10)) The proposed definition of a STB itself is discussed in section III.D.1 of the NOPR.

4. Other Definitions

For the STB test procedure NOPR, DOE proposes to define terms that are relevant for the test procedure based on the definitions specified in section 4 of the draft CEA–2043 standard. Of these definitions, DOE proposes clarifying information, beyond what is provided in the draft CEA–2043 standard, for the definitions of DVR, display device, and home network interface (HNI). Additionally, DOE is including new

[14] Wi-Fi technology allows electronic devices to use radio waves to exchange data wirelessly over a computer network using the Institute of Electrical and Electronics Engineers (IEEE) 802.11 standards.

definitions for content provider and multi-stream. The proposed definitions are included in section 2 (Definitions) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. All proposed definitions are listed below, followed by a discussion of any differences from the draft CEA–2043 standard.

Auto power down (APD): A STB feature that monitors parameters correlated with user activity or viewing. If the parameters collectively indicate that no user activity or viewing is occurring, the APD feature enables the STB to transition to sleep or off mode.

Client: Any device (example: STB, thin-client STB, smart TV,[15] mobile phone, tablet, or personal computer) that can receive content over a home network interface (HNI).

Content provider: An entity that provides video programming content.

Crest factor: The ratio of the peak current to the root-mean-square (rms)[16] current.

Digital video recorder (DVR): A STB feature that records TV signals on a hard disk drive (HDD) or other non-volatile storage device integrated into the STB. A DVR often includes features such as: Play, Record, Pause, Fast Forward (FF), and Fast Rewind (FR). STBs that support a service provider delivery network based ''DVR'' service are not considered DVR STBs for the purposes of this test procedure. The presence of DVR functionality does not mean the device is defined to be a STB.

Display device: A device (example: TV, Computer Monitor, or Portable TV) that receives its content directly from a STB through a video interface (example: HDMI, Component Video, Composite Video, or S-Video), not through a home network interface (HNI), and displays it for viewing.

Harmonic: A component of order n of the Fourier series[17] that describes the periodic current or voltage (where n is an integer greater than 1).

High definition test stream (HD): Video content delivered to the STB by the content provider to produce a minimum output resolution of 1280 × 720 pixels in progressive scan mode[18] at a minimum frame rate of 59.94 frames per second (fps) (abbreviated 720p60) or a minimum output resolution of 1920 × 1080 pixels in interlaced scan mode at 29.97 fps (abbreviated 1080i30).

Home network interface (HNI): An interface with external devices over a local area network (example: IEEE 802.11 (Wi-Fi), Multimedia over Coax Alliance (MoCA)[19], HomePNA Alliance (HPNA),[20] IEEE 802.3,[21] or HomePlug AV[22]) that is capable of transmitting video content.

Low noise block-downconverter (LNB): A combination of low-noise amplifier, block-downconverter and intermediate frequencies (IF) amplifier. It takes the received microwave transmission, amplifies it, down-converts the block of frequencies to a lower block of IF where the signal can be amplified and fed to the indoor satellite TV STB using coaxial cable.

Multi-stream: A STB feature that may provide independent video content to one or more clients, one or more directly connected TVs, or a DVR.

Outdoor unit (ODU): Satellite signal reception components including: a receiving dish, one or more LNBs, and imbedded or independent radio frequency (RF) switches, used to distribute a satellite service provider network to consumer satellite STBs.

Point of deployment (POD) module: A plug-in card that complies with the ANSI/SCTE[23] 28[24] interface and is inserted into a digital-cable-ready device to enable the decryption of services and provide other network control functions.

Power mode: A condition or state of a device that broadly characterizes its capabilities, power consumption, power indicator coding, and responsiveness to input.

Principal STB function: Functions necessary for selecting, receiving, decoding, decompressing, or delivering video content to a display device, DVR, or client. Monitoring for user or network requests is not considered a principal STB function.

Satellite STB: a STB that receives and decodes video content as delivered from a service provider satellite network.

Service provider: A business entity that provides video content, a delivery network, and associated installation and support services to subscribers with whom it has an ongoing contractual relationship.

Smart Card: A plug-in card that complies with ISO[25]/IEC 7816–12[26] and is inserted into a satellite STB to enable the decryption of services and provide other network control functions.

Standard definition test stream (SD): Video content delivered to the STB by the content provider to produce an output resolution of 640 × 480 pixels in interlaced scan mode at minimum frame rate of 29.97 fps (abbreviated 480i30).

Thin-client STB: A STB that can receive content over an HNI from another STB, but is unable to interface directly to the service provider network.

DOE proposes to incorporate by reference the industry standards that are used in the definitions of POD and smart card. These standards are: ANSI/SCTE 28 for the definition of POD and ISO/IEC 7816–12 for the definition of Smart Card. These industry standards are part of the definition provided in the draft CEA–2043 standard, and DOE believes the standards provide necessary information to define the POD and Smart Card plug-in cards.

The definition of DVR in the draft CEA–2043 standard is, ''a STB feature that records TV signals on a hard disk drive (HDD) or other non-volatile storage device. A DVR often includes features such as: Play, Record, Pause, Fast Forward (FF), and Fast Rewind (FR). STBs that support a service provider delivery network based ''DVR'' service are not considered DVR STBs for the purposes of this test procedure. The presence of DVR functionality does not mean the device is defined to be a STB.'' The definition of DVR in the draft CEA–2043 standard does not explicitly state that the HDD should be integrated into the STB, while DOE's proposed definition adds the specification that the HDD or other non-volatile storage

[15] A smart TV is a hybrid TV that combines internet features into modern TVs and STBs.

[16] Rms current is a statistical measure of the magnitude of a current signal. Rms current is equal to the square root of the mean of all squared instantaneous currents over one complete cycle of the current signal.

[17] A Fourier series decomposes period functions or period signals in terms of an infinite sum of simple oscillating functions, such as sines and cosines.

[18] Progressive scan mode is a method of displaying, storing, or transmitting moving images such that all lines in each frame are drawn in sequence.

[19] MoCA is a trade group that promotes a standard that uses coaxial cables to connect consumer electronic products and home networking devices. The connection allows both data communication and the transfer of audio and video streams. It is the only home entertainment networking standard used by all three pay TV segments, such as, cable, satellite, and IPTV.

[20] HPNA is an incorporated non-profit industry association of companies that develops home networking specifications for distributing entertainment and data over existing coaxial cables and telephone wiring within homes.

[21] IEEE 802.3 is a working group that develops standards for Ethernet based local area networks.

[22] HomePlug is an industry alliance that provides specifications that support networking over existing home electrical wiring. HomePlug AV is a specification that provides sufficient bandwidth for applications such as high definition TV (HDTV) and voice over IP (VoIP).

[23] The Society of Cable Telecommunications Engineers, Inc.

[24] Society of Cable Telecommunications Engineers. Engineering Committee. Digital Video Subcommittee. ''HOST–POD Interface Standard.'' American National Standard.

[25] International Organization for Standardization.

[26] International Standard. ''Identification cards—Integrated circuit cards—Part 12: Cards with contacts—USB electrical interface and operating procedures.''

device shall be integrated into the STB. DOE has included this information to explicitly state that this proposed rule does not consider STBs with an external HDD as STBs with DVR capability. This requirement is similar to the ENERGY STAR specification and has been included in today's proposed DVR definition because external storage devices are usually optional, and existing test procedures do not address how to test STBs with the external HDD attached.

In today's NOPR, DOE is proposing only to test STBs with integrated storage as a DVR. For STBs that support DVR only through an external storage device, DOE is proposing to test these basic models as a STB without DVR. There are currently a wide selection of external storage devices that can be paired with a STB to support DVR functionality, and DOE believes the choice of external storage device paired with the unit could impact the energy consumption of the STB itself. While DOE's preferred approach is to test the STB without DVR capabilities if they use an external storage device, DOE did consider an alternative that would capture this use. For testing purposes, DOE could specify the external storage device such as the storage device that is shipped with the STB or specifying a standard storage device that is for testing all applicable STBs across the board. DOE requests comment on the proposed approach of not testing STBs with external storage as a DVR. If DOE does consider testing the STB with an external storage device as a DVR in response to comments, DOE specifically requests comments on the proper external storage device to use.

The definition of display device in the draft CEA–2043 standard is, ''a display device (example: TV, Computer Monitor, or Portable TV) receives its content directly from a STB through a video interface (example: HDMI, Component Video, Composite Video, or S-Video), and not through a home network interface (HNI).'' DOE's proposed definition of a display device adds clarification that the content that is received from the STB through a video interface is displayed for viewing. DOE proposes to include this clarification to the definition of display device, because the definition specified in the draft CEA–2043 standard explains the functionality of a display device but does not explicitly define the device itself.

The definition of HNI in the draft CEA–2043 standard is, ''the interface with external devices over a local area network (example: IEEE 802.11 (Wi-Fi), MoCA, HPNA, IEEE 802.3, or HomePlug AV).'' DOE proposes to include clarifying information in the definition of HNI to explain that the interface is capable of transmitting video content. DOE believes that the definition in the draft CEA–2043 standard, which specifies that HNI is the interface with external devices over a local area network, is vague and could potentially include other interfaces that may not be capable of transmitting video content, and therefore, not applicable for connecting with a STB. Therefore, DOE is proposing to clarify that the HNI connection should be such that is capable of transmitting video content.

Finally, DOE proposes to include a definition for content provider and multi-stream that is not included in the draft CEA–2043 standard. DOE is proposing a definition for content provider because the term is used in today's proposed test procedure to explain the type of content that should be streamed to a connected display device or client. DOE's proposed definition for multi-stream was adopted from an older version of the draft CEA standard, which included this definition. While CEA has removed the definition for multi-stream from the most recent version of the draft, DOE proposes to include it in this NOPR because DOE uses the definition to describe STBs that have multi-streaming capability and also proposes a multi-stream test to determine the power consumption of such STBs (section III.G.5.b).

In addition to the definitions adopted from the draft CEA–2043 standard, DOE proposes to include the terms ANSI, IEC, ISO, and SCTE in the definition section of the proposed Appendix AA to Subpart B of 10 CFR Part 430. These terms are used in the definitions of POD and Smart Card and therefore, DOE has included the full forms of these terms.

DOE invites interested parties to comment on the proposed definitions for the STB test procedure NOPR, and, in particular, the clarifying information included for the definitions of DVR, display device, HNI, and the definitions included for content provider and multi-stream.

5. Definitions of Power Modes

While power mode is defined in section III.D.4 above, DOE proposes to define the different modes of operation for the STB in further detail similar to those provided in section 6 of the draft CEA–2043 standard. The draft CEA–2043 standard describes the on, sleep, and off modes of STB operation, which are defined and discussed below. The proposed power mode definitions would be included in section 2.25 (Definition of Power Modes) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. DOE invites interested parties to comment on the proposed definitions for each mode of operation of the STB.

On mode: The STB is connected to a mains power source. At least one principal STB function is activated and all principal STB functions are provisioned for use. The power consumption in on mode may vary based on specific use and configuration.

DOE's view is that a STB has ''all principal STB functions provisioned for use'' if all principal STB functions are prepared or equipped for use by the consumer. This description of on mode aligns with the consumer's expectation of what a STB should do when it is turned on, or when it is ''in-use''. The proposed definition also aligns with the definition in the ENERGY STAR specification for on mode operation.

Sleep mode: A range of reduced power states where the STB is connected to a mains power source and is not providing any principal STB function. The STB may transition to on or off mode due to user action, internal signal, or external signal. The power consumed in this mode may vary based on specific use or configuration. If any principal STB function is activated while operating in this mode, the STB is assumed to transition to on mode. Monitoring for user or network requests is not considered a principal STB function. The STB shall be able to transition from this mode to on mode within 30 seconds, to be considered in sleep mode.

The proposed definition for sleep mode is similar to the definition for sleep mode in the draft CEA–2043 standard with one key addition. The proposal that the STB should transition to on mode within 30 seconds has been included to ensure that a valid sleep mode includes the ability to resume full functionality in a timely manner. DOE received a comment from AT&T in response to the 2011 RFI that referenced consumer studies to indicate strong consumer resistance to any recovery time from ''minimum power'' mode longer than 1 minute. (AT&T, No. 0032 at p. 16) AT&T further indicated that this was true even when the consumer was prompted that longer recovery times would have environmental and energy saving benefits. (AT&T, No. 0032 at p. 16) Additionally, CA IOUs indicated that long wake times are a significant barrier to consumer adoption. (CA IOUs, No. 0033 at p. 6) NCTA also commented that a STB could take much longer than 2 to 5 minutes if the STB were to shut off power

completely, which would negatively impact the user's experience. (NCTA, No. 0034 at p.14)

Because the overall energy consumption of a STB is dependent on consumer adoption of sleep modes that can resume functionality quickly, DOE proposes to set a maximum allowable transition time of 30 seconds from sleep mode to on mode, which is half the acceptable duration referenced in AT&T's studies. If the STB cannot transition from sleep mode to on mode in 30 seconds or less, it is not considered to have sleep mode capability and shall not be tested for the energy consumption in sleep mode, which is discussed in section III.G.6. That is, if the STB does not transition from sleep mode to on mode within 30 seconds, the value of the power consumption in sleep mode for the AEC metric (discussed in detail in section III.I of the NOPR) would be set equal to the power consumption in on (watch TV) mode for such STBs. It is DOE's view that market forces will drive STBs to utilize a shorter transition period; however, DOE adds this limit as an upper bound to facilitate consumer adoption of sleep mode. If a STB takes very long to resume functionality from sleep mode, it is DOE's assumption that consumers are less likely to place the STB in sleep mode. The 30 second upper limit may mitigate some of these consumer concerns of resuming functionality quickly from sleep mode. DOE also considered other allowable transition times less than 30 seconds or more than 30 seconds. However, its view is that a transition time shorter than 30 seconds may be too restrictive for certain STB designs. Conversely, DOE believes a transition time greater than 30 seconds may discourage consumers from using sleep mode and would affect DOE's estimated usage profile for the calculation of AEC as discussed in section III.I.

DOE recognizes that imposing the 30 second requirement would not measure any sleep power saving techniques that may take longer than 30 seconds to resume functionality and may subsequently discourage power saving techniques in that area. On the other hand, excluding this requirement would essentially treat all low power sleep modes the same for the purposes of power measurement, regardless of whether or not the STB resumed functionality quickly. STBs that resume functionality more quickly could have higher consumer adoption and thus, more overall energy savings, which would not be captured if there were no requirement for resuming functionality. This is because, as indicated by AT&T's consumer studies and other public commenters, consumers are less likely to use the various sleep modes if it takes too long to resume functionality,, which would result in more STBs staying in on mode all day. Therefore, DOE is proposing the requirement that the STB shall transition to on mode within 30 seconds and requests stakeholders to comment on the proposed requirement.

DOE invites interested parties to comment, and provide data if available, on the proposed requirement of transitioning from sleep mode to on mode within 30 seconds or whether a different maximum allowable transition time should be considered.

Off mode: The STB is connected to a mains power source, has been de-activated, and is not providing any function. The STB requires a user action to transition from this mode to on or sleep mode.

The proposed definition for off mode is exactly as specified in the draft CEA–2043 standard. A STB that is de-activated does not provide any functions and a user action is required for the STB to provide any function. A user action means an action that would require the consumer to interact with the STB using either a single or a series of keystrokes or button presses, either on a remote control or on the STB unit. DOE understands that this is the generally accepted definition by industry for off mode.

E. Test Conditions

1. Set-Top Box Settings

DOE received comments regarding the configuration in which the STB should be setup for testing. NCTA stated that STBs should be tested in ''as-shipped'' condition and as normally installed for an end-user. (NCTA, No. 0034 at p. 19) AT&T and CEA commented that in order to reduce the risk of stifling innovation, the STB test procedure rulemaking should require that newly introduced features be turned off to the extent possible. CEA commented similarly but further stated that turning off newly introduced features during testing could reduce the accuracy and utility of the test procedure. (AT&T, No. 0032 at p. 22) (CEA, No. 0031 at p. 5)

DOE proposes the following requirements for setting up the STB for testing. There are different requirements depending on whether the STB can be installed by the consumer using the user manual shipped with the unit or whether a technician is required to install the STB per the manufacturer's instructions. These proposed requirements are included in section 3.1 (Set-top Box Settings) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

For all STBs that require subscription to a service, the simplest available video subscription that supports all functionality proposed in today's test procedure shall be selected for operating the STB. That is, subscriptions with TV services only shall be selected and packages with non-video capability, such as telephony, shall not be selected.

If the STB can be installed by the consumer per the manufacturer's instructions without the service of a technician, then it shall be installed and setup according to the user manual shipped with the unit. Only those instructions in the user manual should be used for setting up the STB and setup should be considered complete once they are followed.

If the STB must be installed by a technician per the manufacturer's instructions, then the unit shall be setup as installed by the technician for testing. All steps that a technician would follow when installing a STB for use in a consumer residence should be followed. DOE recognizes that for testing a STB in the setup in which it is installed in a consumer's home, a third-party test lab would require this setup information. Therefore, information about each of the steps that were performed to setup the STB by a technician shall be recorded and maintained by the manufacturer pursuant to 10 CFR Part 429.71 as part of the test data underlying the ratings.

The goal of DOE's proposed requirements for the STB settings is to ensure that the STB is tested under the same settings as it would be when installed in a consumer's home. This proposal is similar to an older draft version of the CEA–2043 standard, which required STBs to be tested in the configuration in which it is supplied to consumers. DOE proposes to use the simplest available video subscription that supports all functionality proposed in today's test procedure for testing because, at a minimum, all STBs will provide these services. Testing all STBs with the simplest subscription ensures consistency across testing of the different STB models. Further, DOE believes that setting up the STB in the same configuration that the consumer would use the STB, ensures that the test is representative.

DOE requests comment on the proposed requirements for setting up the STB as installed in a consumer's home for testing.

In regards to comments made by AT&T and CEA about newly introduced features on STBs, DOE disagrees with commenters and is not proposing to turn off or disable any such features.

DOE believes that turning off newly introduced features that are enabled as part of the typical set-up process would not be representative of the energy use the consumer would see once installed. Instead, it is more representative of the consumer's use to keep these features in the setting in which they are when first installed in a consumer's home per the manufacturer's instructions. DOE expects that most consumers typically do not change the settings of the STB after it is installed. That is, DOE believes the configuration in which the STB is installed by a technician is the configuration in which the STB is operated most commonly and, therefore, keeping non-tested features in these initial settings would capture the most representative energy consumption of the STB. This proposed requirement is consistent with requirement specified in section 8.1.9 of the draft CEA–2043 standard, which optionally specifies that non-tested product features may be left in the default condition.

2. Test Room

DOE proposes to specify ambient conditions for testing STBs that are similar to the requirements specified in section 7.3 of the draft CEA–2043 standard. DOE recognizes that the power consumption of the STB could vary with the ambient conditions of the room in which the STB is tested. Therefore, the ambient conditions shall be controlled to ensure that the power measurements are repeatable and reproducible. The test conditions specified in the draft CEA–2043 standard, proposed in this NOPR, ensure that the test results are repeatable, reliable, and consistent without significant test burden. These conditions are discussed in further detail below and are included in section 3.2 (Test Room) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

DOE proposes that testing shall be carried out in a test room where the ambient temperature is maintained at 23 degrees Celsius (°C) ± 5 °C. DOE's believes that 23 °C represents the temperature of a typical room in which a STB may be used; it is DOE's understanding that this is the temperature range in which most household appliances are typically tested. Further, a tolerance of 5 °C for the ambient temperature is achievable because temperature measurement instruments generally provide for a greater accuracy than 5 °C and DOE expects it would not be burdensome for test labs to climate control the test room to meet these requirements. Finally, the temperature requirement of 23 °C ± 5 °C is the same as that specified in the ENERGY STAR specification, which requires that the ambient temperature should remain between 18 °C and 28 °C, inclusive, throughout testing.

DOE further proposes that the test room shall be such that the air movement surrounding the STB shall be less than or equal to 0.5 meters per second (m/s), as required in the draft CEA–2043 standard. However, DOE understands that it may be difficult to maintain the required ambient temperature range at such a low air speed. This is because the heat generated from the STB may heat up the surrounding air, and at such a low air speed, the ambient temperature may exceed the required range. Since it is likely that the power consumption of a STB does not change significantly at moderately higher air speeds, the requirement specified in the draft CEA–2043 standard may be stringent in conjunction with the temperature requirements. DOE therefore requests comments and data, if available, on the proposed 0.5 m/s air movement requirement and whether this value should be relaxed to a higher value or removed altogether.

Finally, DOE proposes that the STB shall be tested on a thermally non-conductive surface, which is a requirement specified in the draft CEA–2043 standard. This requirement ensures that the internal temperature of the STB is maintained at a level consistent with a typical consumer setup, which usually does not have a thermally conductive surface. DOE requests comment on the proposed test room conditions for testing STBs, including the air temperature, air speed, and thermally non-conductive test surface requirements.

F. Test Setup

1. Test Voltage

DOE proposes that the input power requirements for testing STBs shall be as specified in section 7.4 of the draft CEA–2043 standard and are included in section 4.1 (Test Voltage) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. These requirements state that an alternating current (AC) power source shall be used to power the STB with an input voltage of 115 volts (V) ± 1 percent. Further, the frequency of the power source shall be 60 hertz (Hz) ± 1 percent. The total harmonic distortion of the supply voltage when supplying power to the STB in the specified mode shall not exceed 2 percent, up to and including the 13th harmonic. Finally, the peak value of the test voltage shall be between 1.34 and 1.49 times its rms value; that is, the value of the crest factor shall be between 1.34 and 1.49. DOE's understanding is that the proposed requirements for input power are typical for testing consumer electronics and notes that this aligns with the requirements specified in the ENERGY STAR specification for qualifying STBs in the North American market. DOE invites interested parties to comment on the proposed input power requirements.

2. Measurement Accuracy

DOE proposes to specify the accuracy of power measurements similar to those required in section 7.2 of the draft CEA–2043 standard. These requirements are included in section 4.2 (Measurement Accuracy) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. The draft CEA–2043 standard specifies that power measurements of 0.5 watt (W) or greater shall be made such that the uncertainty of the measurement is less than or equal to 2 percent at the 95 percent confidence level. For power measurements of less than 0.5 W, the uncertainty of the measurement shall be less than or equal to 0.01 W at the 95 percent confidence level. The resolution of the instrument used to measure power shall be 0.01 W or better for power measurements of 10 W or less, 0.1 W or better for power measurements greater than 10 W and up to 100 W, and 1 W or better for power measurements greater than 100 W. For equipment connected to more than one phase, the power measurement instrument shall be equipped to measure the total power of all phases that are connected. DOE's view is that these requirements are reasonable and generally accepted by industry for the accuracy of power measurements. The uncertainty requirements are specified in IEC–62301,[27] which is referenced by IEC–62087, and also match the requirements listed in the ENERGY STAR specification for testing STBs. DOE invites interested parties to comment on the proposed requirements for measurement accuracy.

3. Test Equipment

Section 7.5 of the draft CEA–2043 standard provides recommendations for equipment that may be used to monitor AC line current, voltage, and frequency. DOE proposes to include this recommended equipment that is optional for testing. The following recommended equipment are included in section 4.3 (Test Equipment) of the

[27] International Standard. ''Household electrical appliances—Measurement of standby power.'' Edition 2.0 2011–01.

proposed Appendix AA to Subpart B of 10 CFR Part 430:

(1) An oscilloscope with a current probe to monitor the AC line current waveform, amplitude, and frequency.

(2) A true rms voltmeter to verify the voltage at the input of the STB; and

(3) A frequency counter to verify the frequency at the input of the STB.

DOE's view is that these instruments would be appropriate to ensure that the current, voltage, and frequency measurements are accurate. DOE invites interested parties to comment on the recommended test equipment to measure the AC line current, voltage, and frequency.

4. True Power Wattmeter

DOE proposes that the power meter attributes shall be as specified in section 7.5.2 of the draft CEA–2043 standard, which provides the crest factor, bandwidth, frequency response, and sampling interval requirements for the power wattmeter. Each of these attributes is discussed in section III.F.4.a through III.F.4.d below and are included in section 4.4 (True Power Wattmeter) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. These requirements are necessary because electronic equipment can cause harmonics that lead to inaccurate power measurements. The proposed requirements are standard specifications for measuring power using a power wattmeter and are listed as the characteristics of approved meters in IEC–62301. Additionally, these requirements are specified in the ENERGY STAR specification for testing STBs. Due to widespread industry acceptance, DOE's view is that these requirements are reasonable and it should not be burdensome for stakeholders to meet these conditions. DOE invites interested parties to comment on the proposed power meter instrumentation requirements, such as the crest factor, bandwidth, frequency response requirements, and sampling interval.

a. Crest Factor

DOE proposes that the crest factor attributes shall be as specified in the draft CEA–2043 standard, which requires that the power wattmeter shall have an accuracy and resolution in accordance with that proposed in section III.F.2 of this NOPR and sufficient bandwidth. Additionally, the crest factor rating shall be appropriate for the waveforms that are measured, and it shall be capable of reading the available current waveform without clipping the waveform. Consistent with the draft CEA–2043 standard, DOE also proposes that the peak of the current waveform that is measured during the on and sleep modes of the STB shall be used to determine the crest factor rating and the current range setting. The full-scale value of the selected current range multiplied by the crest factor for that range shall be at least 15 percent greater than the peak current to prevent measurement error.

b. Bandwidth

DOE proposes the following requirements as specified in the draft CEA–2043 standard. The current and voltage signal shall be analyzed to determine the highest frequency component (that is, harmonic) with a magnitude greater than 1 percent of the fundamental frequency under the test conditions. Additionally the minimum bandwidth of the test instruments shall be determined by the highest frequency component of the signal.

c. Frequency Response

As specified in the draft CEA–2043 standard, DOE proposes that a wattmeter with a frequency response of at least 3 kilo-hertz (kHz) shall be used in order to account for harmonics up to the 50th harmonic.

d. Sampling Interval

DOE proposes to adopt the sampling interval requirement as specified in the draft CEA–2043 standard. This requirement specifies that the wattmeter shall be capable of sampling at intervals less than or equal to 1 second.

5. Calibration

DOE proposes to specify test instrument calibration requirements that are identical to those required in section 7.5.1 the draft CEA–2043 standard. The draft CEA–2043 standard specifies that the testing equipment shall be calibrated annually to traceable national standards to ensure that the limits of error in measurement are not greater than ± 0.5 percent of the measured value over the required bandwidth of the output. The annual calibration requirement proposed by DOE is typical for the equipment required for testing of all electrical products. The proposed calibration requirements are included in section 4.5 (Calibration) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. DOE invites interested parties to comment on the proposed calibration requirements for testing STBs.

6. Network Setup

a. Home Network Connection

As specified in section 8.1.4 of the draft CEA–2043 standard, DOE proposes that for STBs that require the use of a home network, such as thin-client STBs, an HNI connection shall be used. Further, DOE proposes that the HNI connection shall be used in the following order of preference: MoCA, HPNA, Wi-Fi, or any other HNI connection. That is, if MoCA connection is available, the STB shall be tested using MoCA. If MoCA is not available, HPNA shall be used followed by Wi-Fi as the last option. These proposed requirements are consistent with the requirements listed in the ENERGY STAR specification and are sequenced based on most commonly used HNI connections to least commonly used HNI connections. These requirements are included in section 4.6.1 (Home Network Connection) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. DOE invites interested parties to comment on the proposed requirements for testing STBs that require an HNI connection. DOE also requests comment about whether there are any additional HNI connections that should be included and the order of preference in which they should be included.

b. Broadband Service

DOE proposes to specify setup requirements for STBs requiring broadband service connections that are similar to the requirements stated in section 8.1.5 of the draft CEA–2043 standard. These requirements are included in section 4.6.2 (Broadband Service) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. The draft CEA–2043 standard specifies that if the STB includes an HNI and the HNI shall be connected to broadband service for operation of a principal STB function, then it shall be tested while connected to a broadband network. Broadband performance criteria, such as download speed, upload speed, and latency shall meet the specific requirements of the STB to fulfill the principal STB functions. DOE understands that certain STBs, such as IPTV STBs, require a broadband connection to provide the principal STB functions and is therefore proposing this requirement. DOE also proposes to include clarification that for STBs designed to operate both with a broadband connection and service provider network connection (as discussed in section III.F.6.e), the service provider connection takes precedence, and a broadband connection shall only be made if the STB requires it for operating a principal STB function. This clarification has been included because there may be some STBs that are able to provide service on both a broadband network as

well as a service provider network. DOE's understanding is that STBs typically operate on the service provider network connection rather than the broadband connection, and thus, proposes to test with only the service provider connection unless a broadband connection is required. DOE requests comment on the proposed setup requirements for STBs requiring broadband service as well as the clarification that a service provider network connection takes precedence over a broadband connection for STBs that are designed to operate on either connection.

c. Service Provider Network Distribution Equipment

As specified in section 8.1.6 of the draft CEA–2043 standard, DOE proposes that for STBs that require the use of external equipment to connect the service provider network to the STB, the power consumption of the external equipment shall not be included with the power consumption of the STB itself. If such equipment is integrated into the STB in the future, the power consumption of the equipment shall be included in the power consumption of the STB. Such external equipment may include network gateways, network routers, network bridges, ONTs, wireless access points, media extenders, or any other device that is required for the distribution of a service provider network to the STB. DOE is excluding the power consumption of the external equipment because network distribution equipment does not meet the proposed definition of the STB. As discussed in section III.B of this NOPR, if DOE initiates a rulemaking for network equipment in the future, the external equipment required to connect the service provider network to the STB would likely be under the scope of that rulemaking. DOE invites interested parties to comment on the proposed exclusion of external equipment power consumption from the power consumption of the STB itself. These requirements are included in section 4.6.3 (Service Provider Network Distribution Equipment) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. If stakeholders indicate that the power consumption of such external equipment should be included with the power consumption of the STB, DOE requests input on the test method and standard configuration that could be used to measure the power consumed.

d. Input Signal Equipment

As discussed in section III.B of this NOPR, DOE received several comments from stakeholders regarding the inclusion of specific types of input signal equipment, such as LNB equipment, in the scope of this proposed rule. However, as explained in section III.B, DOE does not believe input signal equipment meets the definition of STB as proposed in this NOPR because of significant operational differences from STBs. There is no standard configuration for the number of STBs that can be connected to any single input signal equipment. For example, for a certain household an LNB may be connected to three STBs and a different household may require two LNBs to connect three STBs. This lack of standardization does not allow a direct comparison between the different STBs that are connected to these equipment and therefore DOE does not propose to test input signal equipment while testing STBs.

Instead, DOE proposes to adopt the specifications stated in section 8.1.7 of the draft CEA–2043 standard with some modification. DOE proposes that when an ODU, over the air (OTA) antenna amplifier, cable TV (CATV) distribution amplifier, or similar signal equipment is required to operate the STB, the measurement shall not include the power consumption of this equipment, if it can be powered from a source other than the STB. If the signal equipment cannot be powered from a different source, then the power for these equipment shall be included in the STB power consumption measurement, and the signal equipment should be configured in its lowest power consuming mode. However, if the equipment is powered from a source other than the STB, it shall be powered from another source, and the signal equipment shall not deliver any power to the connected STB.

DOE's proposed specification is slightly different from that in the draft CEA–2043 standard. DOE proposes to include the requirement that if the input signal equipment cannot be powered from a source other than the STB, then it shall be powered from the STB and the power supplied to these equipment shall be included in the STB power consumption measurement. Further, DOE proposes to include the additional clarification that the signal equipment should not deliver any power to the STB, if the equipment is powered from a different source, to avoid the possibility of circumvention. This would occur if the power consumption of the STB is rated lower than the actual consumption of the STB because a separately powered device, the input signal equipment, provides the additional power required to operate the STB. DOE also considered requiring the use of a direct current (DC) block in order to prevent power transfer to and from any such input signal equipment; however, DOE has not proposed this requirement because the DC block could potentially impact the functionality of such input signal equipment. These requirements are included in section 4.6.4 (Input Signal Equipment) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

DOE requests comment on the proposed exclusion of the power consumption of the input signal equipment from the power consumption of the STB and the additional clarification that such equipment should not supply power to the STB. DOE also requests feedback on the potential use of a DC block to prevent power transfer to and from any input signal equipment. Further, if stakeholders indicate that such equipment should be tested and the power consumption be measured as part of this proposed rule, DOE requests comment on the test method and standard configuration that could be used to test this equipment.

e. Service Provider Network Connection

DOE received some comments from NRDC and CA IOUs about testing STBs on a live network or closed network. NRDC commented that STBs should be tested as they are deployed in the field with ''live'' head-end equipment. (NRDC, No. 0017 at p. 4) Further the CA IOUs commented that while testing performed on a live network would result in real power consumption, it also may be impractical. They further stated that if testing was performed during a period of a large software update, the power consumption of the STB may be elevated and atypical. Additionally, it may take longer measurement periods to yield repeatable results on the live network. (CA IOUs, No. 0033 at p. 7) Finally, DISH, EchoStar, and DIRECTV commented that the energy consumption of a satellite STB on a live network is generally not affected by geography, location, time of day, or subscription package, which are possible sources of variation when using a live network. (DISH, EchoStar, DIRECTV, No. 0030 at p. 11)

Based on its review of the comments received, the practicality of testing a STB on a live network compared to a closed network, and a review of CEA's requirements in the draft CEA–2043 standard, DOE proposes to adopt the same requirements listed in section 8.1.8 of the draft CEA–2043 standard. These requirements allow either a live network or closed network to be used for testing and provide specific

requirements for both. The draft CEA–2043 standard specifies that the STB shall be tested with a specific service provider network or a simulated environment that is verified by the service provider, and the STB shall be configured to simulate a subscriber operating environment. This shall include the ability to access the full services of the service provider network required by the STB. These services include content, program guides, software updates, and other STB features that require network services to function completely. If the STB requires a POD or Smart Card, then it shall be connected, authorized, and operational. Essential peripheral devices that are required for the normal operation of the STB, such as a Universal Serial Bus (USB) powered external HDD, a USB powered Wi-Fi dongle, or a USB powered OTA receiver, shall be connected and operational during testing. Optional peripheral devices shall not be connected to the STB.

For testing the STB in a laboratory environment, DOE proposes to adopt the specification in the draft CEA–2043 standard, which states that the STB may be tested in a laboratory environment containing control equipment comparable to a live service provider system. For a cable STB, this would require a laboratory that contains a conditional access system, the appropriate equipment to communicate with the STB (such as ANSI/SCTE 55–1 [28] or ANSI/SCTE 55–2 [29] forward and reverse data channel hardware or data-over-cable service interface specification (DOCSIS) infrastructure), and the appropriate interconnections (such as diplexers, splitters, and coaxial cables). DOE proposes to incorporate by reference, in 10 CFR Part 430.3, the industry standards ANSI/SCTE 55–1 and ANSI/SCTE 55–2 to describe the equipment required to communicate with the STB when testing in a laboratory environment.

[28] Society of Cable Telecommunications Engineers. Engineering Committee. Digital Video Subcommittee. ''Digital Broadband Delivery System: Out of Band Transport Part 1: Mode A.'' American National Standard.

[29] Society of Cable Telecommunications Engineers. Engineering Committee. Digital Video Subcommittee. ''Digital Broadband Delivery System: Out of Band Transport Part 2: Mode B.'' American National Standard.

These requirements are included in section 4.6.5 (Service Provider Network Connection) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. DOE invites interested parties to comment on the proposed requirements for service provider network connection. Particularly, DOE requests comment and data, if available, about whether the power consumption of a given STB is similar when it is operated on a live network versus a closed network.

G. Test Method and Measurements

1. Set-Top Box Warm-Up

The first step in measuring the power consumption of the STB after setting up the test room and equipment is to connect the STB and operate it for a certain period of time until it reaches a stable condition. It is important to warm-up, or stabilize, the STB so that the measured values of power consumption are not fluctuating dramatically, and a repeatable measurement can be taken. To stabilize the STB, DOE proposes to adopt the requirement specified in section 8.1.1(e) of the draft CEA–2043 standard. The standard requires the STB be operated in on mode (as discussed in section III.G.5 of this NOPR) while receiving and decoding video for at least 15 minutes for the STB to achieve stable condition. DOE expects that 15 minutes should be sufficient to warm-up the STB. This warm-up is also consistent with the ENERGY STAR test method. The STB warm-up requirements are specified in section 5.1 (Set-top Box Warm-up) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. DOE invites interested parties to comment on the proposed warm-up time for stabilizing the STB.

2. Test Configuration Information

To test the STB in on, sleep, and off modes, DOE proposes to specify the configuration in which the STB shall be connected with one or more display devices and clients. This information is not specified in the draft CEA–2043 standard; instead section 8.1.11 of the standard states that the entity specifying the use of the CEA standard is expected to provide this information. Because DOE is proposing to adopt the requirements specified in the draft CEA–2043 standard, DOE qualifies as the entity specifying the use of the CEA standard. Accordingly, DOE proposes to specify this information, as discussed in the following paragraphs. The proposed test configuration information is included in section 5.2 (Test Configuration Information) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

The draft CEA–2043 standard requires the following information to be specified: a configuration diagram of the STBs, clients, display devices, and any other devices required for testing; the specific network technology to be used for each test, if applicable; the maximum number of connected display devices and clients for each test, if applicable; devices in the network configuration that cannot be tested; required tests to be run on each device; and, test parameters for each required test.

Accordingly, DOE proposes to specify that the test configuration described in Table 1 shall be used to configure all STBs and connected devices. Because it is possible to configure STBs in several different ways, DOE is proposing a table that lists the priority in which STBs shall be configured rather than providing several different configuration diagrams to cover the various possibilities. For multi-streaming STBs, the proposed configuration in Table 1 describes the number of display devices and clients that shall be connected to the STB depending on its capabilities. If a STB is not capable of multi-streaming, that is, if the STB cannot connect to multiple display devices and does not support DVR and clients, then it shall be connected to only one display device according to the proposed configuration in the last row of Table 1. Each STB type is expected to fall in one of the rows of Table 1 only. For example, a STB with DVR capability that supports connections to multiple display devices and clients shall be connected to one display device and one client according to the configuration proposed in the first row of Table 1. DOE developed the proposed configuration table such that a maximum of three different content streams are enabled for multi-streaming STBs for the multi-stream test, which is discussed in section III.G.5.b.

TABLE 1—DISPLAY DEVICE AND CLIENT CONNECTION SETUP

Supports multiple display devices?	Supports DVR?	Supports clients?	Number of connected display devices	Number of connected clients
X	X	X	1	1
X	X		2	0
X		X	2	1
	X	X	1	1
X			2 or 3*	0
	X		1	0
		X	1	1 or 2*
			1	0

*The highest number of connections supported by the STB shall be used.

DOE further proposes that the same test configuration shall be used throughout testing in the on, sleep, and off modes of operation for all STBs. The draft CEA–2043 standard also requires DOE to propose the maximum number of display devices and clients that shall be connected to the STB. Because the number of connections depends on the configuration that is feasible from Table 1, DOE is not proposing the maximum number of connections. Instead, DOE proposes to use as many connections as required for the configuration that is feasible from Table 1. For example, a STB that can be connected to multiple display devices and a client, but does not have DVR capability, shall be connected to two display devices and one client throughout testing.

DOE proposes that the connection type that is used to connect the display device to the STB shall be selected in the following order of preference. The first preference shall be to connect a display device to the STB using an HDMI connection, followed by Component Video, S-Video, and Composite Video, respectively. If none of these connections are available or feasible, then any other video interface that is feasible shall be used. The order of preference for connecting display devices to the STB is adopted from the comments received from stakeholders in response to the TVs test procedure rulemaking. 77 FR 2830, 2839–2840 (January 19, 2012). Sharp commented that video input to a TV should be selected in the following order: HDMI, Component Video, S-Video, and Composite Video. (EERE–2010–BT–TP–0026, Sharp, No. 45 at p. 6) Mitsubishi Electric Visual Solutions America (MEVSA) suggested the following input hierarchy definition: ''Testing shall be performed using a HDMI input. If the TV does not have an HDMI input, the following inputs shall be used in the following order: component, S-Video, and composite. If the TV has none of these inputs, an appropriate interface shall be used.'' (EERE–2010–BT–TP–0026, MEVSA, No. 44 at p. 3)

Additionally, DOE proposes that the connection type that is used to connect the client to the STB shall be an HNI connection. The order of preference in which an HNI connection shall be selected is discussed in section III.F.6.a of this NOPR.

Finally, the draft CEA–2043 standard provides that the entity specifying the use of the CEA–2043 standard (which is DOE in this case) is expected to specify the required tests to be run on each device and the test parameters for each required test. DOE proposes these test specifications in the on, sleep, and off modes in sections III.G.5 to III.G.7 of the NOPR.

DOE invites interested parties to comment on all aspects of the proposed configuration for testing STBs in the on, sleep, and off modes of operation. DOE is especially interested in receiving comments on the proposed connections for the test configuration. DOE also invites comments on the proposed order of preference for connecting a display device to the STB.

3. Test Conduct

DOE proposes to specify the type of content that shall be streamed to each device that is connected to the STB according to the configuration discussed in section III.G.2 above. The information about the streaming content is included in section 5.3 (Test Conduct) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. While the connections required for the STB configuration during testing shall remain the same throughout testing, the number and type of test streams that shall be enabled for the various tests are proposed to be different. This is similar to the usage expected in a typical household that has all display devices and clients connected to the STB at all times, but the number of streams enabled to each connected device is different depending on the number of active viewers on different display devices at a given point of time. When multiple streams are enabled to output connect to a display device, record on a DVR that is integrated into the STB, or stream content to a connected client, DOE proposes that the content streamed to each shall be different. That is, the content outputted to a display device for viewing a channel shall be different from the content recorded on a DVR, which shall also be different from the content streamed to a connected client. DOE is proposing this requirement because DOE believes consumers generally view and record different content simultaneously. Further, DOE proposes the following specifications for the content stream that is used for streaming to a display device, DVR, and client.

a. Output to a Display Device

For tests requiring output to be sent to a display device(s), DOE proposes that a channel shall be selected and viewed on the connected display device(s) as required by the test configuration. If the STB does not support channels, an appropriate SD or HD test stream shall be selected and viewed on the display device(s). If more than one display device is connected to the STB based on the test configuration that is feasible, then the content outputted on each display device shall be different.

DOE's proposed requirements for providing video output to a display device have been adopted from the draft CEA–2043 standard, which specifies that a channel, if supported, or other appropriate content, shall be sent to a connected display device. DOE additionally proposes that if multiple display devices are connected to the STB, then the content on each display device shall be different. This requirement has been specified because DOE believes it mirrors typical user operation wherein if two TVs are operating in a household at the same time, most of the time the content being viewed would be different. DOE requests comment on the proposed

requirements for providing video output to a display device.

b. Recording for a STB With DVR Capability

For tests that require recording on a STB with DVR capability, DOE proposes that a channel shall be selected using a connected display device or a client and the program shall be recorded. If more than one recording is required on a DVR that is integrated into the STB, the content for each recording shall be different.

DOE is proposing to test the record functionality of STBs with DVR capability because it believes that this is one of the most commonly used features of such a STB. The proposed method to record the content on a DVR that is integrated into the STB is adopted from the draft CEA–2043 standard's on (record)—DVR STB test. Similar to its proposal in section III.G.3.a above for outputting content to a display device, DOE is proposing that different content be recorded on a DVR integrated into the STB if more than one recording is enabled. This is because it is unlikely that users would record the same programming simultaneously. DOE invites comment on the proposed requirements to record on a DVR integrated into the STB.

c. Streaming to a Connected Client

DOE proposes that the content streamed to a client shall be selected in the following order of preference depending on the number of streams enabled. The first available stream that is supported by each connected client shall be enabled and the content on each stream shall be different. The first preference shall be to use a stream with recorded content to stream to the client. That is, content that has been recorded previously shall be streamed to the client and viewed on a display device connected to the client. If the client does not support streaming of recorded content, then a stream with channel content shall be used. That is, a channel shall be viewed on the display device connected to the client. An SD test stream shall be viewed if it is an SD client and an HD test stream shall be viewed if it is an HD client. For clients that do not support channels, an appropriate SD or HD test stream shall be selected and viewed. Finally, if the client does not support either a recorded stream or a channel stream, then any other stream that is supported by the client shall be used.

DOE believes that by proposing a hierarchy for the selection of streams for the connected client(s), there will be consistency and repeatability between tests without imposing an undue burden on manufacturers. DOE selected the proposed hierarchy based on the most power consumptive option to the least power consumption option. The power consumed by a STB when streaming recorded content, which requires the HDD to operate as well, is expected to be higher compared to when streaming a channel. This proposed hierarchy would ensure consistency in the results by accounting for the power differences.

DOE's proposed specification for playing back recorded content or streaming a channel to the connected client is adopted from the requirements specified in the draft CEA–2043 standard's on (play)—DVR STB test and on (watch TV) test, respectively. DOE requests comment on the proposed requirements to stream to a connected client. Specifically, DOE requests comment on the proposed hierarchy of content to stream to a connected client.

4. Calculation of Average Power Consumption

For all tests in the on, sleep, and off modes (NOPR sections III.G.5, III.G.6, and III.G.7, respectively), DOE proposes that the average power consumption shall be calculated using one of two methods. The two proposed methods are included in section 5.4 (Calculation of Average and Rated Power Consumption) of the proposed Appendix AA to Subpart B of 10 CFR part 430.

The first method is as specified in section 8.2.1 and 8.3.1 of the draft CEA–2043 standard. The standard specifies that the accumulated energy (E_i) in kWh consumed over a period of time (T_i) shall be recorded and the average power consumption (P_i) is calculated as the quotient of the accumulated energy over the time period, that is, $P_i = E_i/T_i$. DOE proposes to adopt this specification from the draft CEA–2043 standard to determine the average power consumption and, in addition, proposes a second method to calculate average power.

The second method proposed by DOE allows for the average of multiple power samples at a rate of at least 1 sample per second. The average power value is calculated by taking the arithmetic mean of all the power samples over a period of time. This type of measurement is typical of many laboratory setups that perform AC power measurements and therefore DOE is proposing to allow this method in addition to the accumulated energy consumption method above.

For both methods, DOE is proposing an average power measurement rather than an instantaneous measurement. This is consistent with comments from CA IOUs, who are in favor of using an average power consumption value rather than an instantaneous one. Specifically, the CA IOUs commented that if testing is performed during a period of a large software update, the power consumption of the STB could be elevated and atypical. (CA IOUs, No. 0033 at p. 7) DOE believes an average measurement would average out any elevated power consumption.

DOE is proposing an average measurement of power consumption based on comments received from CA IOUs and DOE's internal testing results. DOE tested eight STB models during internal testing using both HD and SD test streams, for a total of 16 tests in the on, sleep, and off modes of operation. The STBs that were tested included two STBs with DVR functionality, two STBs without DVR functionality, and four over-the-top (OTT) STBs. DOE also performed one repeatability test each on three STBs using the HD test stream. The power meter that was used during internal testing provided the accumulated energy consumption over time (the first proposed method) as well as the average power consumption values sampled over time (the second proposed method). The average power consumption using both methods was the same. DOE sampled the power consumption values over a duration of 10 minutes at the rate of one sample per second. That is, DOE collected data that provided the instantaneous power consumption at any point of time over the 10 minute duration as well as the average power consumption over different time periods (example: 2 minutes, 5 minutes, etc.). Figure 1 below compares the instantaneous power versus the 2 minute and 5 minute average power in the on mode for a STB that DOE tested internally. The power consumption values have been normalized to the total average power over the 10 minute test duration.

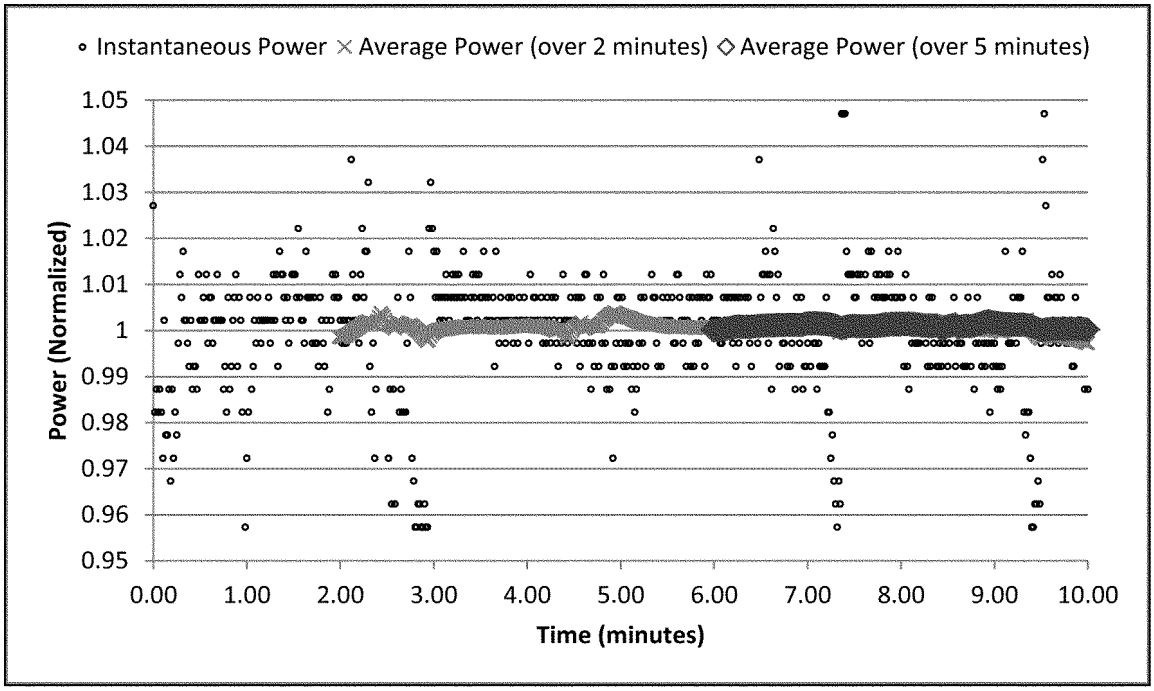

Figure 1: Data from DOE's Internal Testing for Average versus Instantaneous Power Consumption for a STB

Figure 1 indicates that an average value over 2 minutes and 5 minutes for the on mode test provided a more stable and repeatable measurement compared to the instantaneous measurement. This result is expected for STBs given the different activities that are performed from time to time, such as maintenance or software updates. If the power is measured at a particular instant, there is a possibility that the recorded value may be too high or too low depending on the content being streamed at that time. Further, for the sleep mode tests which require the power consumption to be determined over 4 to 8 hours, an average measurement could capture the potential decrease in power consumption if the STB powered down into lower power modes, depending on the time when the measurement is taken. DOE's proposed average power measurement is consistent with the requirements specified in section 8.6.5 of the IEC 62087 standard as well.

DOE requests comment on the proposed methods to determine the average power consumption of the STB in each mode of operation.

5. On Mode Power Measurement

For on mode testing, DOE proposes two tests: An on (watch TV) test and a multi-stream test, which combines the multiple principal STB functions into a single test. Rather than testing each individual principal STB function separately, which may be burdensome to test, DOE is proposing to use these two tests to best represent typical STB usage. This would simplify testing as well as allow for different STBs to be operated under different conditions. The on (watch TV) test evaluates the power consumption of the STB when utilizing the most basic function that all STBs share in common, watching a channel outputted on a display device from a STB. The multi-stream test evaluates the power consumption of the STB when multiple principal STB functions are used simultaneously.

DOE further proposes that the time period for each test in the on mode, T_{ON}, shall be 2 minutes. The draft CEA–2043 standard from which DOE's proposed on mode test procedure is derived, does not specify the duration of time the STB shall be operated for the on mode test; instead, in section 8.1.11 it states that the entity specifying the use of the CEA–2043 standard (which is DOE in this case) shall specify the time period. Therefore, DOE is proposing that the duration of the test shall be 2 minutes, which is consistent with the time period specified in section 8.6.5 of IEC 62087 for the on mode tests. Additionally, as shown in Figure 1 in section III.G.4 of the NOPR, results from internal testing conducted by DOE indicated that the average power consumption over 2 minutes was sufficient to provide repeatable results. That is, the 2 minute moving average over a 10 minute test duration showed less variability compared to the instantaneous power measurements. Additionally, the average power consumption of the STB over 2 minutes was similar to the average power consumption of the STB over 5 minutes during internal testing as seen in Figure 1 in section III.G.4 of the NOPR.

DOE invites comment on all aspects of the proposed approach for testing the STB in the on mode of operation.

a. On (Watch TV) Testing

DOE proposes to adopt the on (watch TV) test procedure specified in section 8.2.2.1 of the draft CEA–2043 standard with some modification. First, the STB shall be configured as proposed in Table 1 in section III.G.2 of the NOPR. The STB shall be configured such that all devices for the feasible configuration are connected to the STB. Of all the connections to the STB, only one stream shall be enabled and shall stream to a connected display device. All other connected display devices and clients shall not have any content streamed to them. Next, an SD channel shall be selected and viewed on the connected display device. If the STB uses a content provider that does not support channels, an appropriate SD test stream shall be selected and viewed on the display device. Finally, the power consumption measurement shall be started and the average power consumption shall be recorded for 2 minutes as P_{WATCH_SD}. For STBs that support HD streaming, the

test shall be repeated using HD content and the average power shall be recorded for 2 minutes as P_{WATCH_HD}. The average power consumed in the on (watch TV) mode, P_{WATCH}, shall be calculated using the following equation:

$$P_{WATCH} = \begin{cases} \frac{P_{WATCH_{SD}} + P_{WATCH_{HD}}}{2}, & STB\ supports\ HD \\ P_{WATCH_{SD}}, & STB\ doesn't\ support\ HD \end{cases}$$

DOE's proposed method for testing in the on (watch TV) mode is included in section 5.5.2 (On (Watch TV)) of the proposed Appendix AA to Subpart B of 10 CFR part 430. DOE's proposed test method is different from that specified in the draft CEA–2043 standard in one key area. The draft CEA–2043 standard tests an HD STB using an HD test stream only; DOE's proposed approach tests an HD STB for 2 minutes using an SD test stream, followed by 2 minutes of testing using an HD test stream. DOE proposes to use both the SD and HD test streams to test HD STBs because it does not expect all content to be available on an HD stream in the near future. That is, DOE's expectation is that HD STBs may continue to stream some content using an SD stream because the content would not be available in an HD broadcast stream. Therefore, testing an HD STB using both an SD and HD test stream would represent the typical use of an HD STB better than testing it on an HD stream only. This requirement is also specified in the ENERGY STAR specification, and it allows stakeholders the opportunity to represent energy savings if a STB can be designed to consume less energy while streaming SD content compared to streaming HD content. DOE expects this additional test will have minimal impact on testing burden.

Further, DOE proposes that for HD enabled STBs, the average power in on (watch TV) mode shall be the average of the average power consumed using an SD stream and HD stream. DOE also considered whether different weights, other than the average, should be used to combine the power consumption using SD and HD streams for an HD STB that is representative of consumers' usage of each of these streams. However, DOE does not have any data that indicates the percentage of streams that are available only in SD for HD STBs.

DOE requests comment on the proposed method to test the on (watch TV) principal STB function. DOE also requests interested parties to comment, and provide data if available, on the percentage of streams that are available in SD and HD for HD STBs, and whether the proposed equation for calculating P_{WATCH} should be changed.

b. Multi-Stream Testing

To test other principal STB functions that are capable of multi-streaming as defined in section III.D.4 of the NOPR, DOE proposes a multi-stream test that simultaneously tests the most common STB functions such as, viewing a channel, recording, and playback. The proposed multi-stream test is included in section 5.5.3 (Multi-stream) of the proposed Appendix AA to Subpart B of 10 CFR part 430. DOE proposes to test the power consumption of STBs that are capable of multi-streaming as follows: First, the STB shall be configured as proposed in Table 1 in section III.G.2 of the NOPR. The STB shall be configured such that all devices required for the feasible configuration are connected to the STB. Next, the number of streams that shall be enabled and the type of content that shall be streamed using the STB shall be as specified in Table 2 of the NOPR. The highest priority (smallest number in column 1 of Table 2) of streaming content that is supported by the STB shall be selected. All streams required for the supported priority shall be enabled using appropriate content as described in section III.G.3 of the NOPR. As an example, if the STB does not have DVR capability but can connect to multiple display devices and clients, priority 3 shall be selected and the STB shall output different content to two display devices and shall playback previously recorded content on a connected client.

TABLE 2—PRIORITY LIST FOR THE MULTI-STREAM TEST

Priority for Enabling Multi-streaming – 1 is highest priority – 9 is lowest priority	Number of streams enabled		
	To display devices	To record on DVR	To connect to clients
1	1	1	1
2	2	1	
3	2		1
4	1	2	
5	1		2
6	3		
7	1	1	
8	1		1
9	2		

If the STB or connected client supports HD streaming, an HD test stream shall be used, otherwise an SD stream shall be used. Finally, the multi-stream mode power consumption measurement shall be started and the average power consumed by the STB shall be recorded for 2 minutes as P_{MULTI_STREAM}.

The multi-stream test proposed by DOE to test multiple functionalities of the STB simultaneously, is not explicitly specified in the draft CEA–2043 standard, but the standard contains most of the information that DOE has combined for the multi-stream test. The standard specifies the methods to test the play (section 8.2.2.2 of the standard) and record (section 8.2.2.3 of the standard) functionality of STBs with DVR capability, it provides recommendations for concurrent testing of networked STBs, and the different

tests that may be performed on different types of STBs. However, the draft CEA–2043 standard does not require any of these tests and states that the entity specifying the use of the draft CEA–2043 standard (which is DOE in this case) shall provide the specific configuration and type of tests to be performed. Therefore, DOE is proposing the multi-stream test, which specifies that: (1) The STB shall be set up according to the configuration in Table 1 in section III.G.2 of the NOPR; and, (2) different functionalities that are to be tested shall be enabled using the priority listed in Table 2. Once the STB is set up and the different functionalities are enabled, the power consumption of the STB in multi-stream shall be measured. To develop this proposed multi-stream test for power consumption measurement, DOE has adopted the draft CEA–2043 standard's play and record tests.

DOE's view is that the proposed multi-stream test is representative of typical consumer usage of a STB compared to individually testing the different STB features. That is, DOE expects that users would operate multiple, different functions of the STB at the same time rather than operate each function in sequence.

Further, for STBs that are capable of multi-streaming, DOE is proposing that a maximum of three streams shall be enabled, if feasible. If the STB supports only two streams, then two streams shall be enabled. DOE is proposing to enable a maximum of three streams because, according to data published by The Nielsen Company in January 2011, the average number of TVs per U.S. household is 2.5.[30] Based on this data, DOE approximated that a typical household in the U.S. has up to three TVs and DOE assumed that a STB would typically be performing up to three functions at a time. Therefore, DOE is proposing that a maximum of three streams are enabled. While there may be STBs that are capable of streaming more than three different content streams at a time, attempting to test all available streams would result in testing the STB at an extreme condition and would not be representative of typical STB usage. DOE, however, is considering implementing a maximum power test in which the STB is tested at maximum functionality where the maximum number of streams is exercised simultaneously. DOE is not currently proposing such a test, but requests feedback on including a maximum streaming test, and if included, also requests comment on the weightings that should be applied to the AEC calculation (discussed in further detail in section III.I).

DOE invites interested parties to comment on the proposed test procedure for testing STBs with multi-streaming capability. DOE is especially interested in receiving comments on the proposed priority list for enabling streams for testing STBs with multi-streaming capability. DOE also seeks feedback on whether the number of additional streams that should be enabled should be other than three and the reasons for enabling a different number of streams. DOE requests comment on the possibility of including a maximum power test, which would test the STB such that the maximum number of streams are enabled. If included, DOE requests comment on the weighting that should be applied for the maximum streaming test in the calculation of the AEC.

6. Sleep Mode Power Measurement

For sleep mode testing, DOE proposes two tests only for those STBs that are capable of transitioning from sleep mode to on mode within 30 seconds as defined in section III.D.5 of this NOPR. If the STB cannot be placed in sleep mode, DOE proposes that this test be skipped. For manufacturers that wish to determine whether a given basic model contains a sleep mode that meets the 30 second transition time requirement, DOE is proposing that the sleep to on mode transition time test should be performed as described in section III.G.8 of the NOPR. While this test is not necessary for determining the power consumption values in the three modes, DOE would perform this test to determine how the sleep mode consumption should be determined.

The two sleep mode tests are: A manual sleep test in which the STB enters sleep mode through a user action, and an APD test in which the STB automatically enters sleep mode after a period of user inaction. The proposed sleep mode test is included in section 5.6 (Sleep Mode Power Measurement) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

DOE further proposes that the time period for each test in the sleep mode, T_{SLEEP}, shall be at least 4 hours and up to a maximum of 8 hours. The time period shall be extended beyond 8 hours if a network initiated action occurs which requires the sleep mode test to be performed for a longer duration (discussed below in further detail). Similar to the on mode test, section 8.1.11 of the draft CEA–2043 standard specifies that the entity specifying the use of the CEA–2043 standard (which is DOE in this case) shall provide the time period. Therefore, DOE is proposing that the power consumption be determined over 4 to 8 hours. The proposed time duration for the sleep mode tests is much longer than the 2 minutes proposed for the on mode tests because DOE expects that many STBs may transition to lower power consumption modes after being in sleep mode for a couple of hours. Testing over a duration of 4 to 8 hours shall capture the decreased power consumption if it occurs within the 4 to 8 hour time period.

DOE considered other options for the time period over which the average power of the STB in sleep mode should be measured, such as more than 8 hours, only 8 hours, only 4 hours, or less than 4 hours. DOE did not pursue the option of testing sleep mode over a period greater than 8 hours because of the large testing burden associated with such a long duration. DOE also considered a value less than 4 hours but is concerned that a STB may not power down to the lowest possible energy consumption mode in less than 4 hours. DOE is proposing between 4 to 8 hours for testing the STB because it is the half (4 hours) to full (8 hours) duration of an expected over-night sleep mode of a STB, assuming an 8 hour over-night duration during which most consumers are not using the STB. Further, DOE expects that if a STB has the capability to power down to lower sleep modes, it would do so within 4 to 8 hours.

For both, the manual sleep test and APD test, DOE proposes that certain conditions be ensured while the STB is in sleep mode. That is, it shall be ensured that no recording events are scheduled over the entire duration of the test, including the time the STB is in on mode prior to transitioning to sleep mode. Further, if a STB is capable of scheduling a recording, a recording shall be scheduled 24 or more hours into the future.

Next, no service provider network initiated action (such as, content downloads or software updates) requiring a transition to on mode shall occur over the 4 to 8 hours that the STB is in sleep mode. If a service provider network initiated activity cannot be disabled, then this requirement shall be monitored by sampling the power consumption at a rate of at least 1 sample per second over the entire duration of the test and observing the changes to the power consumption over time. If the input power is less than or equal to 1 W, then a linear regression through all power readings shall have a

[30] Nielsen Wire. ''Factsheet: The U.S. Media Universe''. *http://blog.nielsen.com/nielsenwire/online_mobile/factsheet-the-u-s-media-universe/.*

slope of less than 10 mill-watts per hour (mW/h). If the slope of the linear regression is equal to or greater than 10 mW/h, it is assumed that a network activity has occurred and the test shall either be restarted or extended until the slope is less than 10 mW/h. For input powers greater than 1 W, a linear regression through all power readings shall have a slope of less than 1 percent of the measured input power per hour. If the slope is equal to or greater than 1 percent, it is assumed a network activity has occurred and the test shall either be restarted or extended until the slope is less than 1 percent. In addition, if the test is extended beyond 8 hours to meet the required conditions, the average power consumption over the entire test duration shall be used to calculated the rated power consumption in sleep mode.

Finally, no local area network initiated actions requiring a transition to on mode shall be scheduled over the 4 to 8 hours that the STB is in sleep mode (example: mobile applications or other network devices requesting service).

The above requirements for sleep mode testing have been adopted from the draft CEA–2043 specification with some differences. For example, section 8.3.1 of the draft CEA–2043 standard specifies that no recording shall be scheduled while the STB is in sleep mode. However, DOE proposes that no recording shall be scheduled for the entire duration that the STB is tested for the sleep mode test, including the time the STB is in on mode prior to transitioning to sleep mode. For the manual sleep test, the time period in on mode is 5 minutes (as discussed in section III.G.6.a of the NOPR) and for the APD test, this time period is a maximum of 4 hours (as discussed in section III.G.6.b of the NOPR). This proposed requirement enables the STB to transition to sleep mode as desired, without any scheduled recordings keeping the STB in on mode.

DOE is also proposing, for sleep mode testing, that a recording be scheduled 24 or more hours into the future on STBs that are capable of scheduling a recording. This proposed requirement is not part of the draft CEA–2043 standard. DOE has included the recording requirement because it understands that the power consumption of the STB may be different when a recording is scheduled compared to when it is not. When a recording is scheduled, the STB performs some non-primary functions in the background to keep track of time and ensure that it transitions to on mode once it is time to initiate recording. On the other hand, if the STB does not have any recording or other functions scheduled for the future, it may not perform any function until the user transitions it back to the on mode using a remote control. DOE expects that a STB in a consumer's home typically keeps track of some command that requires it to initiate an action in the future while it is still in sleep mode. For example, while the STB is in sleep mode it may have to transition to on mode because the user had scheduled a recording prior to placing it in sleep mode. Therefore, DOE proposes that a recording shall be initiated 24 or more hours into the future from test time.

Another difference between DOE's proposed test method and the requirements specified in the draft CEA–2043 standard is that section 8.3.1 of the standard specifies that it shall be ensured that no service provider network initiated actions occur while the STB is in sleep mode. However, for STBs that may not be tested by a manufacturer and are tested at a third-party laboratory, it might not be possible to know when a service provider network initiated action occurs. Because it is not possible to control the initiation of this activity, DOE is proposing that the power readings recorded at a rate of at least 1 sample per second shall be observed for changes in power consumption and a linear regression shall be performed to determine whether a service provider initiated activity has occurred. As discussed above, if the slope of the linear regression is greater than 1 percent, for input powers greater than 1 W, then it is assumed a network initiated action occurs and the test shall be restarted or extended until the slope is less than 1 percent. The proposed requirements for analyzing the power consumption readings have been adopted from the IEC 62301 standard with some modification. IEC 62301 specifies similar requirements for determining the power consumption within a mode that is not cyclic. A potential drawback of DOE's proposed method to check for a network initiated action is that if the slope of the linear regression is analyzed and used to gauge for network initiated activities, it is possible that the slope may vary even when the STB transitions to lower power consumption modes through the sleep mode. That is, if a STB enters sleep mode when the ''Power'' button on the remote is pressed, and then continues to transition to lower power consumption modes over the 4 to 8 hour time period of the sleep mode test, then the slope of the linear regression may not be less than 1 percent of the measured input power per hour as specified in the requirements. In such a scenario, the test duration for the sleep mode may be extended until the power consumption of the STB stabilizes around a particular value. While this would increase the test burden for manufacturers and third-party laboratory testing, an advantage would be that the lowest power consumption modes of the STB would be captured and included in the sleep mode power consumption measurements. Alternatively, DOE is concerned that if the time period of the sleep mode test is extended to be much longer than 8 hours, the test may increase test burden.

DOE also considered other options to monitor for network initiated activities, which it has not proposed in today's rulemaking. One of these options would be to sample the power consumption at a rate of at least 1 sample per second and determine if the power samples continuously exceed the median power consumption by more than 10 percent of the median power for more than 15 minutes over the 4 to 8 hour sleep mode duration. However, DOE did not propose this approach for several reasons. First, any value that is selected for comparing the power samples to the median power (such as 10 percent in the setup discussed here) as well as the duration of time (15 minutes) may not encompass all possible scenarios of a transition from sleep to on mode during the sleep mode test. For example, if a network event increases power by 5 percent over a duration of 2 hours, this approach would not capture the transition from sleep to on mode even though the increase in power consumption would be significant. Another disadvantage of this approach is that periodic events that may be intended to occur during sleep mode would be falsely captured as a network initiated activity. For example, if a STB wakes up for 15 minutes every 2 hours while in sleep mode, this approach would capture it as a network event, while in fact it is a scheduled activity that should be part of the sleep mode power consumption measurement.

Another approach that DOE considered but has not proposed would be to test the STB in sleep mode for a very long period of time, such as 24 hours, so that the effect of a network initiated activity is mitigated over the long time period. However, DOE determined not to propose this approach because of the significant test burden to testing laboratories.

Finally, once all the conditions for performing the sleep mode test are met, DOE proposes that the STB shall be configured as proposed in Table 1 in section III.G.2 of the NOPR. The STB

shall be configured such that all devices required for the feasible configuration are connected to the STB. Once the STB is configured it shall be placed into sleep mode as described in section III.G.6.a for the manual sleep test and as described in section III.G.6.b for the APD test.

DOE invites comment on all aspects of the proposed specification for setting up STBs for testing in the sleep mode of operation. In particular, DOE is interested in receiving comments on the proposed time duration of 4 to 8 hours over which the power consumption shall be measured and whether this duration should be increased or decreased to better represent STB power consumption in sleep mode. DOE also requests comment on the proposed scheduled recording requirement prior to placing the STB in sleep mode to measure its power consumption. DOE requests interested parties to provide data, if available, on the variation in power consumption of a STB when a recording is scheduled versus when it is not. Finally, DOE invites interested parties to comment on all aspects of the proposed method to address network initiated actions. DOE requests comment and data, if available, on the approach proposed in today's NOPR, the approaches that were considered but have not been proposed, as well as any other approach that stakeholders believe would best capture the transition of the STB from sleep mode to on mode due to network initiated activities.

a. Manual Sleep Testing

DOE proposes to measure the STB power consumption in the manual sleep mode only for STBs that can transition from sleep mode to on mode within 30 seconds as defined in section III.D.5 of the NOPR. For STBs that cannot support sleep mode, DOE proposes that the power consumption in manual sleep mode, P_{SLEEP_MANUAL}, shall be set equal to P_{WATCH}. For STBs that support sleep mode, DOE proposes to measure the STB power consumption in manual sleep mode as follows. Once the STB is configured it shall be operated in the multi-stream test configuration (section III.G.5.b of the NOPR) for at least 5 minutes, if the STB supports multi-streaming. If the STB does not support multi-streaming, it shall be operated in the on (watch TV) configuration (section III.G.5.a of the NOPR) for at least 5 minutes. Next, the ''Power'' button on the remote for the STB and each locally connected display device and client shall be pressed momentarily (for less than 1 second) to place the STB and each locally connected display device and client into sleep mode, as defined in section III.D.5 of the NOPR. The STB remote control shall not be used (or moved) after the STB has been placed in sleep mode. It must be ensured that the STB and each locally connected client has entered sleep mode. This shall be done by ensuring no channel viewing or recording is supported on the STB and clients. That is, there shall be no video output on the connected display device(s) from the STB and any locally connected clients. The manual sleep mode power consumption measurement shall be started and the average power consumed by the STB shall be recorded as P_{SLEEP_MANUAL} over the time period as determined in section III.G.6 of the NOPR. DOE's proposed test for the manual sleep mode is included in section 5.6.7 (Manual Sleep Test) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

DOE is proposing to set P_{SLEEP_MANUAL} equal to P_{WATCH} for STBs that may not necessarily support the manual sleep mode test. This is because assigning a value of 0 kWh for the power consumption in manual sleep mode for such STBs would be misleading. A 0 kWh power consumption value in manual sleep mode may indicate that the STB does not consume any energy when it is placed in sleep mode, which is inaccurate. Further, for the purposes of the calculation of the AEC metric (discussed in detail in section III.I of the NOPR), setting P_{SLEEP_MANUAL} equal to P_{WATCH} would count the STB as being in the on mode if it does not support the manual sleep mode test. This would ensure that the AEC metric is a representation of STB operation that is consistent with the definition of sleep mode proposed in this NOPR.

DOE's proposed test procedure for determining the average power consumed by the STB in manual sleep mode is similar to the requirements specified in section 8.3.4 of the draft CEA–2043 standard for the sleep mode test procedure, with some minor differences. While DOE proposes that the STB shall operate in on mode for at least 5 minutes prior to placing the STB in sleep mode, the draft CEA–2043 standard does not specify any time requirement. DOE is proposing this requirement to ensure that all STBs that are tested are operated for the same duration of time prior to transitioning to sleep mode. DOE selected 5 minutes as the minimum proposed duration to operate the STB in on mode prior to placing it in sleep mode to ensure that the STB is fully functional before sleep mode is initiated, without increasing the test burden significantly. During internal testing (described in section III.G.4 of the NOPR), DOE observed that none of the tested STBs took longer than 5 minutes to turn on and enable functionality. DOE believes this requirement will ensure that there is consistency and repeatability between tests without imposing an undue burden on manufacturers.

Another difference between DOE's proposed test and the draft CEA–2043 standard is that the standard provides three different methods to verify that the STB has entered sleep mode and specifies that any of the three methods can be used for verification. These are: ensuring that no channel viewing or recording is supported on the STB; observing a sleep mode indicator on the STB, which may be found from the user manual; or, waiting for a predetermined period of time that is provided by the entity specifying the use of the CEA–2043 standard. Of these methods, DOE is proposing to use the first approach, which requires ensuring that no channel viewing or recording is supported on the STB. DOE expects this method to be the most common way for determining whether or not a STB has entered sleep mode. Not all STBs have a sleep mode indicator on the box and a standard predetermined wait time for all STBs could potentially be long or short for at least some of the STBs. An individual check on each STB guarantees that the STB has transitioned to sleep and that the measurement may be taken.

DOE invites interested parties to comment on the proposed requirements for testing STBs in manual sleep mode.

b. Auto Power Down Testing

DOE proposes to perform an APD test as a second sleep mode test. The APD test is included in section 5.6.8 (Auto Power Down (APD) Test) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. To measure the power consumption of a STB that is capable of APD, DOE proposes the following test. Similar to the manual sleep test, once the STB is configured it shall be operated in the multi-stream test configuration (section III.G.5.b of the NOPR) for at least 5 minutes, if the STB supports multi-streaming. If the STB does not support multi-streaming, it shall be operated in the on (watch TV) configuration (section III.G.5.a of the NPR) for at least 5 minutes. Next, the ''Power'' button on the remote shall be pressed momentarily (for less than 1 second) only for any locally connected clients to place the connected clients into sleep mode, as defined in section III.D.5 of the NOPR. Additionally, if more than one display device is locally connected to the STB, the ''Power'' button on the remote for the additional

locally connected display devices shall be pressed and the STB shall stream content to one connected display device only. Once all but one connected display device are ''off'', the STB remote control shall not be used. The STB shall be operated until it enters sleep mode or until 4 hours elapse, whichever occurs first. If the STB does not transition into sleep mode at the end of 4 hours, then the STB is not considered to support APD and P_{SLEEP_APD} shall be set equal to P_{WATCH}. Once the STB is in APD, the power consumption measurement in APD shall be started and the average power shall be recorded as P_{SLEEP_APD} over the time period as determined in section III.G.6 of the NOPR.

DOE's proposed test is similar to the manual sleep test discussed in section III.G.6.a of the NOPR; the only difference is that in the manual sleep mode test the STB is placed into sleep mode manually, while in the APD test the STB transitions to sleep mode because no user activity occurs over a certain time period. DOE's proposed test for APD also has some differences from the power mode transition—''on to APD'' transition test described in section 8.5.1 of the draft CEA–2043 standard. First, the test specified in the draft CEA–2043 standard records both the power consumption to transition from on mode to APD and the time it takes to transition from on mode to APD. In DOE's proposed test procedure, however, DOE proposes a maximum time of 4 hours for the STB to transition to sleep mode through APD. DOE proposes that the STB should transition to sleep mode within 4 hours, or else the STB is not considered to support APD. DOE's proposed 4 hour time limit to transition to APD is adopted from the ENERGY STAR specification, which states that products that offer the APD feature should be shipped with APD enabled by default and with the APD timing set to engage after a period of inactivity less than or equal to 4 hours.

DOE considers the 4 hour time limit to be reasonable because it assumes that TV programming typically does not exceed 4 hours in duration. Therefore, if a viewer is watching such programming without sending any other commands to the STB over the duration of the program, the STB may transition to APD at the end of 4 hours without shutting off the viewer's program of interest. DOE also considered allowing the STB configuration to be changed from its default APD behavior to a shorter period for the purposes of testing APD as long as the default behavior was to power down within 4 hours. This would shorten the test time for the APD test; however, DOE does not propose this approach at this time as it may not be clear as to whether or not the default behavior meets the required 4 hour limit without exercising the test. DOE also considered a period less than 4 hours for the APD test, but preliminarily determined that any mandated time period that is shorter may have a negative impact on the consumer, because it may transition the STB to sleep mode while the consumer may still be viewing the programming.

DOE also considered scaling the APD, wherein the power consumption in APD would be dependent on the duration required for the STB to transition from on mode to sleep mode using the APD feature. For example, DOE currently proposes to assign 7 hours to the APD power consumption value while calculating the AEC metric as discussed in detail in section III.I of the NOPR. The proposed method to calculate AEC allocates these 7 hours to APD assuming it would require 4 hours to transition from on mode to sleep mode using the APD feature. DOE also considered allowing for a higher daily hour allocation for STBs that entered APD within 1 or 2 hours. However, DOE is concerned that proposing scaling of power consumption in APD in the test procedure may encourage manufacturers to use a very short default APD time period that might be intrusive to the consumer experience. This would hamper consumer adoption of APD because the STB may transition to sleep mode while a consumer is still viewing content. In such a situation, if the consumer disables the APD feature, the potential energy savings for APD enabled STBs may not be realized in the field. While DOE is not proposing a scaled APD power consumption value in today's NOPR, it requests stakeholders to comment on potential methods to scale APD and the advantages and disadvantages of scaling the power consumption in APD. DOE also requests comment on the impact of a scaling APD power consumption value on the proposed AEC metric (discussed in section III.I of the NOPR) and potential methods to account for a scaling APD value in the AEC metric.

Another difference between DOE's proposed test for APD and the test specified in the draft CEA–2043 standard is that DOE proposes the same configuration of connections for the STB as is used for all other tests. In contrast, the test specified in the draft CEA–2043 standard tests on an individual STB only. As discussed in section III.G.3 of the NOPR, DOE's proposed method matches the usage expected in a typical household. That is, all connected devices will be connected to the STB at all times, but the STB will be performing different functions at different times. Therefore, DOE has not changed the configuration in which the STB is tested for the APD test.

DOE invites interested parties to comment on the proposed test for determining the STB power consumption in APD. Particularly, DOE requests comment and data, if available, on the time required to transition to sleep mode and whether this time period should be set at a default value of 4 hours or adjusted during testing.

7. Off Mode Power Measurement

DOE's proposed test procedure for determining the power consumption of a STB in off mode is similar to the test procedure specified in section 8.4.1 of the draft CEA–2043 standard. The proposed off mode test is included in section 5.7 (Off Mode Power Measurement) of the proposed Appendix AA to Subpart B of 10 CFR Part 430. DOE proposes the following test to determine the off mode power consumption of the STB. If the STB supports off mode as defined in section III.D.5 of the NOPR, it shall be placed in off mode. If it does not support off mode as defined in section III.D.5, this test shall be skipped. Next, wait until the STB enters off mode and record the average power consumed by the STB for 2 minutes as P_{OFF}.

DOE invites interested parties to comment on the proposed requirements for testing STBs in off mode.

8. Sleep to On Mode Transition Time Measurement

DOE proposes to include a test to verify the time required to transition from sleep mode to on mode to help manufacturers to determine if the basic model contains a sleep mode per DOE's proposed regulatory definition (discussed in section III.D.5 of the NOPR). According to the definition proposed for sleep mode in section III.D.5 of the NOPR, a STB is considered to be in sleep mode only if it can transition from sleep mode to on mode within 30 seconds. While STB manufacturers may know the time it takes for the STB to transition, DOE is including this test in today's proposed test procedure in the event there is any uncertainty if the STB meets the sleep mode requirements. The proposed test procedure for determining the transition time from sleep mode to on mode is described below and has been adopted from section 8.5.5 of the draft CEA–2043 standard's Power Mode Transition—''Sleep to On'' Transition test method. The proposed sleep to on mode transition time measurement test is

included in section 5.8 (Sleep to On Mode Transition Time Measurement) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

DOE proposes the following test to determine the sleep to on mode transition time. The test shall be used to verify two different cases. First, to determine the transition time from sleep to on mode for the manual sleep test, and second, to determine the transition time from sleep to on mode for the APD test. For the manual sleep test, the STB shall be placed into sleep mode according to the steps specified in the manual sleep mode test (described in section III.G.6.a of the NOPR). For the APD test, the STB shall be allowed to transition to sleep mode from on mode automatically, according to the steps specified in the APD test (described in section III.G.6.b of the NOPR). For both sleep mode tests, once the STB enters sleep mode, wait until the STB power consumption (P_{SLEEP}, which is generic for P_{SLEEP_MANUAL} or P_{SLEEP_APD}) is between P_{SLEEP} and P_{SLEEP} + 0.5W. That is, the power consumption should be less than P_{SLEEP} + 0.5 W and greater than P_{SLEEP}. After the power consumption reaches the desired value, wait for at least 5 minutes before pressing the ''Power'' button on the remote or front panel of the STB. Once the STB is powered, elapsed time measurement shall be started and the duration shall be measured until the STB enters on mode. It shall be ensured that the STB has entered on mode when it supports channel viewing on the connected display device or client. The duration to transition from sleep mode to on mode shall be recorded as $T_{SLEEP_TO_ON}$. If $T_{SLEEP_TO_ON}$ is greater than 30 seconds then P_{SLEEP_MANUAL} and/or P_{SLEEP_APD} shall be set equal to P_{WATCH}.

DOE's proposed test to determine the transition time from sleep mode to on mode is similar to the sleep to on mode transition test specified in the draft CEA–2043 standard, with some additional specifications. First, DOE's proposed test specifies that the STB shall be placed into sleep mode in two different ways; manually using the STB remote for the manual sleep test, and automatically for the APD test as described in section III.G.6.b of the NOPR. DOE has included this requirement to ensure that the STB is placed into sleep mode according to both sleep mode tests proposed in this NOPR. Next, the draft CEA–2043 standard does not explicitly specify the amount of time a STB should be kept in sleep mode, but states that it should be for the predetermined stabilization time. Therefore, DOE is proposing that the STB shall remain in sleep mode for at least 5 minutes to stabilize the STB in sleep mode. DOE believes that 5 minutes is a sufficient period of time to ensure the STB has completed any remaining operations.

For the sleep to on mode transition time measurement test, DOE also proposes that if $T_{SLEEP_TO_ON}$ is greater than 30 seconds, then P_{SLEEP_MANUAL} shall be set equal to P_{WATCH} and P_{SLEEP_APD} shall also be set equal to P_{WATCH}. DOE has included this requirement because if the transition time is greater than 30 seconds, then the STB will not meet the sleep mode definition described in section III.D.5 of the NOPR and will therefore, not be considered in sleep mode.

DOE requests comment on the proposed sleep to on mode transition time measurement test.

H. Sampling Plan

DOE is proposing the following sampling plan and rounding requirements for STBs to enable manufacturers to make representations of power consumption in the on, sleep, and off modes of operation. The represented power consumption values shall be used to calculate the AEC metric (discussed in section III.I of the NOPR), which shall be rounded according to the requirements proposed below. The sampling requirements are included in the proposed section 429.55 of Subpart B of 10 CFR Part 429.

DOE is proposing to keep the minimum sample size of STBs that shall be tested to determine rated power consumption at two, as defined in 10 CFR Part 429.11. However, manufacturers may choose to test a greater number of samples of a given basic model, if desired. Additionally, DOE is proposing that the rated value of power consumption in the on, sleep, and off modes of operation of a basic STB model for which consumers would favor lower power consumption values shall be greater than or equal to the higher of the mean of the sample or the 95 percent UCL of the true mean divided by 1.05. The equations below show the calculation of the mean and the UCL, respectively.

The mean of the sample is calculated as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ = the sample mean,
n = the number of samples, and
x_i= the ith sample.

The UCL is calculated as follows:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

Where:

$\bar{x}$= the sample mean,
s = the sample standard deviation,
n = the number of samples, and
$t_{0.95}$ = the t statistic for a 95 percent one-tailed confidence interval with n-1 degrees of freedom.

Based on internal testing DOE conducted on STBs (described in section III.G.4 of the NOPR), DOE expects that the proposed test procedure can provide repeatability within 2 percent. Thus, DOE proposes to divide the UCL value by 1.05. In the case where the two samples differ by 2 percent, the UCL value will be 6 percent greater than the mean, and dividing by 1.05 would result in a value that is only 1 percent greater than the mean. Larger variances in samples would result in greater UCL values as dictated by the 95 percent confidence interval. DOE invites interested parties to comment on the proposed sampling plan.

DOE proposes that only the mean and the UCL of the samples tested shall be rounded, while all calculations to

determine the mean and UCL shall be performed with unrounded values. For making representations using the power consumption values in each mode of operation, DOE proposes that the accuracy requirements discussed in section III.F.2 of the NOPR shall be used as rounding requirements. The proposed rounding requirements for the rated power consumption values are included in section 5.4 (Calculation of Average and Rated Power Consumption) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

Once the rated power consumption values for the on, sleep, and off modes are calculated and rounded, DOE proposes that these rated values shall be used to calculate the AEC metric, which is discussed in section III.I of the NOPR. For the rounding requirements of the AEC metric from the rated power consumption values, DOE proposes the following: If the AEC is 100 kWh or less, the value shall be rounded to the nearest tenth of a kWh. If the AEC is greater than 100 kWh, the value shall be rounded to the nearest kWh. The proposed rounding requirements for the AEC metric are also based on the accuracy requirements discussed in section III.F.2 of the NOPR. The proposed rounding requirements for the AEC metric are included in section 6 (Calculation of the Annual Energy Consumption of the Set-top Box) of the proposed Appendix AA to Subpart B of 10 CFR Part 430.

DOE requests comment on the proposed rounding requirements for representing the power consumption in each mode of operation and the rounding requirements for the AEC metric, which is calculated from the rated power consumption values.

I. Method To Calculate the Energy Consumption of a Set-Top Box

DOE received several comments about the metric that should be used to determine the annual energy consumption of a STB. CA IOUs commented that while typical energy consumption (TEC) calculation is common practice for rulemakings, it would not work for STBs because these products do not fit the mold for typically regulated products. (CA IOUs, No. 0033 at p. 3) Instead, they suggested a metric that would focus on sleep power levels. In contrast, AT&T commented that consistency with the ENERGY STAR testing methodology was desirable, particularly because regulation is being layered onto an already-existing voluntary program. (AT&T, No. 0032 at p. 28) AT&T further commented that the user profile should reasonably reflect the current usage patterns of their customers. (*Id.*) Finally, Cisco commented that the user profiles cannot be the only metrics considered by DOE for establishing STB testing and standards. Cisco commented that STBs are not manufactured based on the average usage profile, but on outlier consumer usage and worst case scenarios addressing decoding, multiple streams, maximal DVR usage, etc. (Cisco Systems, Inc., No. 0027 at p. 31)

Based on the comments received and analyzing the current STB market, DOE proposes that individual power consumption values in each mode of operation and an annualized energy metric, the AEC metric, shall be the metrics from today's proposed test procedure. That is, the power consumption in on mode (P_{WATCH} and P_{MULTI_STREAM}), sleep mode (P_{SLEEP_MANUAL} and P_{SLEEP_APD}), and off mode (P_{OFF}), and the AEC metric are the results of the proposed test procedure.

The average power consumption in each mode of operation is determined as described in sections III.G.5 through III.G.7 of the NOPR. Once the individual average power consumption values are determined, the rated power consumption in each mode of operation is calculated using the sampling plan and statistics discussed in section III.H. The rated power consumption in each mode of operation is then rounded according to the rounding requirements which are also discussed in section III.H. Finally, the AEC metric shall be calculated as a weighted average of the rounded, rated power consumption values, based on the expected time spent by the STB in the respective mode. DOE believes including both the individual power consumption metrics and an annualized metric provides both voluntary and State programs with the flexibility they may wish to run their respective programs. However, DOE reiterates that all representations of STB energy use must be made in accordance with one of these four metrics resulting from the DOE test procedure and sampling plan and as required by applicable State and federal law.

While the draft CEA–2043 standard describes how to measure the power in each mode of operation for a STB, it does not offer a way to combine the values into a single AEC metric. Therefore, to create a metric, DOE studied the ENERGY STAR test method for STBs. DOE believes the TEC metric used by ENERGY STAR is conceptually similar to the AEC metric that DOE is proposing in today's NOPR.

TEC is defined by ENERGY STAR as, ''a means for evaluating energy efficiency through a calculation of expected energy consumption for a typical user over a 1-year period, expressed in units of kilo-watt hours per year (kWh/year)''. The TEC metric uses a table of time coefficients to weight individual power measurements that are obtained under the proposed test procedure. DOE proposes to use the same approach, and to name the metric AEC. Like TEC, the AEC metric will produce values measured in kWh/year. The equation below presents this approach mathematically. Power values (P_i) are the rated values obtained from the proposed measurement tests for each mode of STB operation as discussed in sections III.G.5 through III.G.7 of the NOPR and calculated using the sampling plan and rounding requirements discussed in section III.H of the NOPR. Further, DOE proposes that the time coefficients (H_i) shall be obtained from a table according to the type of STB being tested, and the mode of STB operation.

$$AEC = 0.365 \times \sum_{i=1}^{n} (P_i \times H_i)$$

Where:

i = the mode of operation.

The main modes of operation measured by the proposed measurement tests are:

P_{WATCH} = the rated power consumption (in W) in on (watch TV) mode,

P_{MULTI_STREAM} = the rated power consumption (in W) in the multi-stream test in on mode,

P_{SLEEP_MANUAL} = the rated power consumption (in W) in the manual sleep test in sleep mode,

P_{SLEEP_APD} = the rated power consumption (in W) in the APD test in sleep mode, for STB's with APD capability, and

P_{OFF} = the rated power consumption (in W) in off mode.

Inserting each of these modes into the above equation, results in the equation below for AEC.

$$AEC = 0.365 \times \left(P_{WATCH} \times H_{WATCH} + P_{MULTI_{STREAM}} \times H_{MULTI_{STREAM}} + P_{SLEEP_{MANUAL}} \times H_{SLEEP_{MANUAL}} + P_{SLEEP_{APD}} \times H_{SLEEP_{APD}} + P_{OFF} \times H_{OFF}\right)$$

To determine the time coefficients, DOE evaluated the ENERGY STAR specification time coefficients as a possible source for the usage weightings. Table 3 below lists the ENERGY STAR usage weightings. For the sake of simplicity, the table excludes the ENERGY STAR weightings for deep sleep, which DOE is not proposing to adopt. DOE does not propose to adopt the ENERGY STAR deep sleep weightings because it believes that the proposed power consumption in sleep mode would capture the STB's deep sleep power as well, for any STBs that have deep sleep capabilities. This is because DOE's proposed time period for the sleep mode test is 4 to 8 hours, compared to ENERGY STAR's time period of 5 minutes.

TABLE 3—ENERGY STAR WEIGHTINGS

APD Enabled by default	DVR?	T_{TV}	T_{SLEEP}	T_{APD}	H_{RECORD}	$H_{PLAYBACK}$
NO	NO	14	10	0	0	0
YES	NO	7	10	7	0	0
NO	YES	9	10	0	3	2
YES	YES	2	10	7	3	2

The values in the ENERGY STAR specification do not directly map to the modes DOE is proposing to test. In particular, there are no separate record and playback tests in DOE's proposed test procedure because these are bundled into a single multi-stream test as discussed in section III.G.5.b of this NOPR. However, DOE is proposing to adopt the ENERGY STAR weightings with the following changes: The 3 hour record time is combined with the 2 hour playback time into a single 5 hour multi-stream test. Further, the ENERGY STAR specification does not test the STB in off mode, and therefore does not assign any weighting to the STB power consumption in off mode. While DOE is proposing a test procedure to test the STB in off mode, it is not proposing any weighting to the STB power consumption in off mode because consumers typically do not turn off STBs. This is because often a STB cannot be turned off. Further, for STBs that can be turned off, the time required to start up a STB from off mode is lengthy and this discourages consumer adoption to turn off the STB. Table 4 describes the weightings DOE is proposing to use, which have been developed from the ENERGY STAR weightings.

TABLE 4—DOE PROPOSED HOUR WEIGHTINGS

APD Enabled by default?	Multi-stream?	H_{WATCH}	$H_{MULTI\text{-}STREAM}$	$H_{SLEEP\ MANUAL}$	$H_{SLEEP\ APD}$	H_{OFF}
NO	NO	14	0	10	0	0
YES	NO	7	0	10	7	0
NO	YES	9	5	10	0	0
YES	YES	2	5	10	7	0

While DOE is proposing the hour weightings listed in Table 4 above, it also considered an alternative approach to estimate the time coefficients for each mode by researching STB usage profiles. The time coefficients from STB usage profiles is discussed in the following paragraphs and presented in Table 5, but is not proposed in today's NOPR. DOE is including this discussion to obtain stakeholders' feedback on the different possibilities to determine the hour weightings and the preferred approach that should be used for the calculation of AEC.

To determine STB usage profiles, DOE researched publically available usage data. According to the most recent publically available data from the Nielson Company, Americans spent 146.75 hours per month, or approximately 5 hours per day, watching TV in the home.[31] DOE interpreted this to mean that the average STB spends 5 hours per day in the on (watch TV) mode. DOE determined the number of hours a STB may be in sleep mode by referring to survey data from Fraunhofer USA developed for CEA. The survey indicates that 60 percent of STBs are turned ''off'' in tandem with the TV, while 40 percent are left on and run continuously.[32] Because a STB enters sleep mode when the power button on the remote is pressed to turn it ''off'', DOE assumes that the 60 percent value refers to the number of STBs that are placed in sleep mode. DOE estimates that the average STB spends virtually no time in off mode.

Using these data, DOE assumed that for STBs without APD or multi-streaming capability, 40 percent remain in the on mode 24 hours per day. The remaining 60 percent spend 5 hours in on mode, and 19 hours in sleep mode. Time spent in APD and multi-streaming is zero. Therefore, the average STB that does not have APD or multi-streaming capability, is in on (watch TV) mode approximately 13 hours per day (40 percent × 24 hours + 60 percent × 5 hours) and sleep mode 11 hours per day (40 percent × 0 hours + 60 percent × 19 hours).

DOE researched market data from The Nielsen Company and found that STBs with DVR capability spend approximately 5 hours viewing live programming and approximately 2 hours recording content and playing it back. For STBs with multi-streaming functionality, DOE assumed that of the 5 hours that are spent viewing live programming, at least 3 hours are viewed on a display device that is connected to a client. That is, at least 3 hours of TV programming is viewed through the multi-streaming functionality of the STB. While DOE does not have any market data that describes the number of hours a STB streams content to a client because multi-streaming is new functionality, it assumed that an increasing amount of content shall be viewed through a client as the technology progresses. Summing the 2 hours for recording and playing back content with the 3 hours for viewing a channel through a client, DOE

[31] State of the Media: U.S. Digital Consumer Report, Q3–Q4 2011, The Nielsen Company, p. 5.

[32] Energy Consumption of Consumer Electronics in U.S. Homes in 2010, Fraunhofer USA, December 2011, p. 88. DOE's understanding is that survey respondents interpreted the words ''off'' as a colloquialism for sleep mode.

assumed that the multi-streaming functionality of a STB is exercised approximately 5 hours per day and the on (watch TV) functionality is exercised approximately 2 hours per day. Therefore, for STBs with multi-streaming functionality, but no APD functionality, DOE assumed that an average STB spends approximately 9 hours per day in on (watch TV) mode (40 percent × 19 hours per day + 60 percent × 2 hours per day); 5 hours per day in multi-streaming functionality; and 10 hours per day in sleep mode (40 percent × 0 hours per day + 60 percent × 17 hours per day).

To determine the number of hours a STB with APD functionality would spend in APD, DOE assumed that users that place their STB into sleep mode manually when not being used do not get any benefit from APD. APD functionality is only triggered if the STB is left in on mode for a long period of time. DOE has assumed that, for STBs that would otherwise be left in on mode all day, the presence of APD implied that the STB enters sleep mode via APD for 12 hours per day. DOE does not have data on the actual amount of time a STB is in sleep mode via APD and requests stakeholders to submit data, if available. The assumption of 12 hours per day is an estimate based on the expectation that the STB is likely to enter sleep mode via APD during times of light TV use, such as overnight and/or during mid-day. Based on these assumptions, the average STB that has APD but not multi-streaming capabilities is in APD approximately 5 hours per day (40 percent × 12 hours + 60 percent × 0 hours). Thus, DOE expects that STBs that enable APD by default would be in sleep via APD 5 hours per day instead of being in the on (watch TV) mode.

Finally, for STBs that are capable of both multi-streaming and APD functionality and are placed into sleep mode, DOE again assumed that the STB spends 5 hours per day in multi-streaming functionality and 2 hours per day in on (watch TV) mode. For STBs that always remain in on mode, DOE assumed that the total time spent in APD is 10 hours. This assumption is made based on the previous assumption that a STB that is not capable of multi-streaming spends a total of 12 hours per day in APD. That is, for STBs that are not placed into sleep mode manually, the viewer watches content on a TV for approximately 5 hours per day and of the remaining 19 hours, the STB spends approximately 12 hours per day in APD. Therefore, for a STB that has multi-streaming functionality, the viewer watches, records, or plays back content for approximately 7 hours per day and of the remaining 17 hours, the STB spends approximately 10 hours per day in APD. For STBs that are not placed into sleep mode, the remaining 9 hours per day are spent in on (watch TV) mode. That is, DOE assumed that an average STB spends approximately 5 hours per day in on (watch TV) mode (40 percent × 9 hours per day + 60 percent × 2 hours per day); approximately 10 hours per day in sleep mode (40 percent × 0 hours per day + 60 percent × 17 hours per day); approximately 5 hours in multi-streaming functionality; and, approximately 4 hours per day in APD (40 percent × 10 hours per day + 60 percent × 0 hours per day).

The resulting estimates for time coefficients are presented in Table 5 below as alternative weightings to the proposed AEC metric.

TABLE 5—ALTERNATIVE HOUR WEIGHTINGS

APD Enabled by default?	Multi-stream?	H_{WATCH}	$H_{MULTI\text{-}STREAM}$	$H_{SLEEP\ MANUAL}$	$H_{SLEEP\ APD}$	H_{OFF}
NO	NO	13	0	11	0	0
YES	NO	8	0	11	5	0
NO	YES	9	5	10	0	0
YES	YES	5	5	10	4	0

DOE has proposed the hour weightings based on the ENERGY STAR specification (Table 4) in today's NOPR and requests comment on the proposed weightings and calculation of AEC. DOE also requests comment on the alternative hour weightings (Table 5) that were developed by researching STB usage profiles. In particular, DOE seeks feedback on the time coefficients for AEC and whether one approach is preferred over the other. The proposed AEC calculation is included in section 6 (Calculation of the Annual Energy Consumption of the Set-top Box) of the proposed Appendix AA to Subpart B of 10 CFR Part 430).

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel*.

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. The proposed rule prescribes the test procedure to measure the power consumption of STBs in the on, sleep, and off modes of operation and the calculation of an annualized energy metric, AEC, as a weighted average of the individual power consumption values. The initial regulatory flexibility analysis (IRFA) below discusses the potential impacts of the test procedure on small businesses and alternatives that would minimize the impact on small businesses consistent with statutory objectives.

(1) Description of the reasons why action by the agency is being considered.

A description of the reasons why DOE is considering this test procedure are

stated elsewhere in the preamble and not repeated here.

(2) Succinct statement of the objectives of, and legal basis for, the proposed rule.

The objectives of and legal basis for the proposed rule are stated elsewhere in the preamble and not repeated here.

(3) Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The Small Business Administration (SBA) has set a size threshold for manufacturers of STBs that defines those entities classified as ''small businesses'' for the purposes of the RFA. DOE used the SBA's small business size standards to determine whether any small manufacturers of STBs would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. DOE identified three NAICS codes that apply to the manufacturers of STBs. The reasons for selecting the following NAICS codes are discussed in further detail below.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing are classified under NAICS 334220. SBA sets a threshold of 750 employees or less for an entity to be considered a small business for this category.

Audio and Video Equipment Manufacturing are classified under NAICS 334310. SBA sets a threshold of 750 employees or less for an entity to be considered a small business for this category.

Cable and Other Subscription Programming are classified under NAICS 515210. The SBA threshold to qualify as a small business for this category requires that the average annual receipts should be $15,000,000 or less.

NAICS code 334220—Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing covers manufacturers of all products except OTT STBs. Because some manufacturers of OTT STBs were not listed under NAICS code 334220, DOE added consideration of small business manufacturers listed under NAICS code 334310—Audio and Video Equipment Manufacturing. Additionally, DOE included a search for small businesses listed under NAICS code 515210—Cable and Other Subscription Programming as some businesses in this category would also be subject to today's rulemaking based on the definition of manufacturer discussed in section III.D.3 of the NOPR.

To determine the number of small business manufacturers of STBs in each NAICS code category, DOE compiled a preliminary list of potential small business manufacturers of STBs by searching the Hoovers [33] and SBA databases. DOE confirmed if the companies were indeed small businesses by reviewing the company Web site and/or calling the company. Through this process, DOE identified five small business manufacturers of STBs that manufacture STBs as defined in section III.D.1. Of these five small business manufacturers, DOE identified two small business manufacturers each under NAICS codes 334220 and 334310 and one small business manufacturer under NAICS code 515210. DOE invites interested parties to comment on the expected number of small business manufacturers of STBs.

(4) Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule.

To determine the costs of the proposed test procedure on small STB manufacturers, DOE estimated the cost of testing two STBs, the minimum required sample size as discussed in section III.H of this NOPR. DOE estimated a one time setup cost and a labor cost for performing the tests. The labor cost of testing was then multiplied over the estimated number of basic models produced by a small manufacturer. The estimated cost of testing is discussed in further detail below.

For the initial setup for testing STBs, manufacturers require power supply, power meter, cables to connect equipment, and hardware and software instrumentation to measure the power consumption of the STB. DOE estimated an approximate cost of $4,000 for the power supply and $3,000 for the power meter. Further, the equipment cost for cables, monitors, and software was estimated at approximately $3,100 for a total initial setup cost of approximately $10,100.

DOE then estimated the time required to test each basic model of STB based on conservative estimates of the duration proposed for each test in the on, sleep, and off modes of operation. DOE's estimates assume the longest proposed duration for the tests in sleep mode (that is, 8 hours) and are as follows: 1 hour to set up and warm up the STB; half an hour each to perform the on (watch TV) test and multi-stream test of the STB in on mode; 8 hours for the manual sleep test; 12 hours to test the STB in APD; and, half an hour to test the STB in off mode. The total number of hours required to test one STB would be 22.5 hours. For testing two STBs by an electronics engineer whose rate is $40.98 per hour,[34] the labor cost would be approximately $1,850 for each STB model. Estimates for the labor cost associated with testing are based on feedback received during manufacturer interviews and Bureau of Labor Statistics regarding average salaries for engineering staff. For the five small business manufacturers of STBs that DOE identified, the average number of models produced per manufacturer is four. Therefore, for testing an average of four STB models, the testing cost in the first year would be approximately $7,400. DOE expects this cost to be lower in subsequent years because only new or redesigned STB models would need to be tested.

DOE used company reports from Dunn & Bradstreet to estimate the revenue for the five small business manufacturers identified. DOE then applied an industry weighted average research and development estimate to determine the budget for research and development for each small business. The average revenue of the five small business manufacturers is approximately $21.8M and the average budget for research and development is approximately $2.02M, or 9.4 percent of revenues. Relative to the average revenue and average research and development budget per small business manufacturer, the total testing cost in the first year is approximately $17,100. This cost is less than 0.1 percent of the average revenue and approximately 0.1 percent of the average research and development budget; that is, DOE believes the cost of testing STBs is relatively small. Therefore, DOE has tentatively concluded that testing costs would not be significant enough to pose a substantial burden on small manufacturers. DOE requests comments on its analysis of burden to small businesses for testing STBs according to the proposed test procedure.

[33] Hoovers, Inc. (2012). Search of domestic records matching NAICS codes 334220, 334310, and 515210. Retrieved June 22, 2012, from Hoover's Company Records database. Available by subscription at *www.hoovers.com*.

[34] Obtained from the Bureau of Labor Statistics (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 2720, Table 3 (''Full-time civilian workers,'' mean and median hourly wages) < *http://bls.gov/ncs/ocs/sp/nctb0717.pdf*.

(5) Relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

This proposed rule would, if adopted, establish a test procedure for STBs. DOE is not aware of any other Federal rules that establish such a procedure or would otherwise duplicate, overlap or conflict with this test procedure.

(6) Description of any significant alternatives to the proposed rule.

DOE considered a number of existing and under-development industry standards that measure the energy consumption of STBs to develop the proposed test procedure in today's rulemaking as discussed in section III.C of the NOPR. Of the standards reviewed, today's proposed rule is primarily based on the draft CEA–2043 standard because DOE believes it provides most of the information required for testing STBs and expects this standard to be adopted across industry to test the power consumption of STBs. DOE seeks comment and information on the need, if any, for alternative test methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. DOE will consider any comments received regarding alternative methods of testing that would reduce economic impact of the rule on small entities. DOE will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

C. Review Under the Paperwork Reduction Act of 1995

There is currently no information collection requirement related to the test procedure for STBs. In the event that DOE proposes to require the collection of information derived from the testing of STBs according to this test procedure, DOE will seek OMB approval of such information collection requirement.

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping was subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification was estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As stated above, in the event DOE proposes to require the collection of information derived from the testing of STBs according to this test procedure, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB control number 1910–1400 or as a separate proposed information collection requirement.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes a test procedure for STBs that it expects will be used to develop and implement any future energy conservation standard. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would propose a test procedure without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that does not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires

each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. 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.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to establish a test procedure for measuring the energy consumption of STBs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates the following commercial standards: CEA–770.3–D, ''High Definition TV Analog Component Video Interface;'' HDMI Specification Version 1.0, ''High-Definition Multimedia Interface Specification;'' ISO/IEC 7816–12, ''Identification cards—Integrated circuit cards—Part 12: Cards with contacts—USB electrical interface and operating procedures;'' ANSI/SCTE 28 2007, ''HOST–POD Interface Standard;'' ANSI/SCTE 55–1 2009, ''Digital Broadband Delivery System: Out of Band Transport Part 1: Mode A;'' and ANSI/SCTE 55–2 2008, ''Digital Broadband Delivery System: Out of Band Transport Part 2: Mode B''. These standards would be incorporated by reference in 10 CFR 430.3 (Materials incorporated by reference). The incorporated standards are respectively used to describe Component Video, HDMI, POD, smart card, and equipment that communicate with the STB. The Department has evaluated these standards and is unable to conclude whether these industry standards fully comply with the requirements of section 32(b) of the FEAA, (i.e., that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *http://www1.eere.energy.gov/buildings/appliance_standards/residential/set_top_boxes.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

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

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

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

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

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

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

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

reduces comment processing and posting time.

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

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

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

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on narrowing the scope of today's rulemaking to STBs and excluding network equipment. See section III.B for further detail.

2. DOE requests comment on using the draft CEA–2043 standard as the basis for today's proposed test procedure for STBs. See section III.C for further detail.

3. DOE requests comment on the proposed definition of STBs. In particular, DOE requests comment about whether the proposed definition is specific enough to exclude non-STB devices such as gaming consoles and smartphones, yet broad enough to cover traditional STBs and newer boxes. DOE also requests comment on the proposed definitions for direct video connection, HDMI, Component Video, S-Video, and Composite Video. See section III.D.1 for further detail.

4. DOE invites comment on the discussion of basic model as it pertains to the STB rulemaking. See section III.D.2 for further detail.

5. DOE invites interested parties to comment on the proposed definitions for the STB test procedure NOPR including the definitions for content provider and multi-stream and clarifying information included for the definitions of DVR, display device, and HNI. For the definition of DVR, DOE requests comment on the proposed approach of not testing STBs with external storage as a DVR. If DOE does consider testing the STB with an external storage device as DVR in response to comments, DOE specifically requests comments on the proper external storage device to use. See section III.D.4 for further detail.

6. DOE invites interested parties to comment on the proposed definitions of on, sleep, and off modes of operation of a STB. In particular, DOE requests comment, and data, if available, on the proposed requirement to transition from sleep mode to on mode within 30 seconds, or whether a different maximum allowable transition time should be considered. See section III.D.5 for further detail.

7. DOE requests comment on the proposed requirements for setting up the STB as installed in a consumer's home for testing. See section III.E.1 for further detail.

8. DOE requests comment on the proposed test room conditions for testing STBs, including air temperature, air speed, and thermally non-conductive test surface requirements. In particular, DOE invites interested parties to comment on the proposed air speed requirement of 0.5 m/s and whether this requirement should be relaxed to a higher value or removed altogether. See section III.E.2 for further detail.

9. DOE invites interested parties to comment on the proposed input power requirements for testing STBs. See section III.F.1 for further detail.

10. DOE requests comment on the proposed requirements for the accuracy of measuring the power consumption of STBs. See section III.F.2 for further detail.

11. DOE invites interested parties to comment on the recommended test equipment to measure the AC line current, voltage, and frequency. See section III.F.3 for further detail.

12. DOE requests comment on the proposed power meter instrumentation requirements such as, crest factor, bandwidth, frequency response, and sampling interval requirements. See section III.F.4 for further detail.

13. DOE requests comment on the proposed calibration requirements for testing STBs. See section III.F.5 for further detail.

14. DOE requests comment on the proposed requirements for testing STBs that require an HNI connection. Particularly, DOE requests comment on the proposed order in which HNI connections shall be used, that is, MoCA, followed by HPNA, followed by Wi-Fi, and finally any other connection. DOE also requests comment about whether there are any additional HNI connections that should be included and the order of preference in which they should be included. See section III.F.6.a for further detail.

15. DOE invites interested parties to comment on the proposed setup requirements for STBs requiring broadband service. Particularly, DOE requests comment on the clarification that a service provider network connection should take precedence over a broadband connection for STBs that are designed to operate on either connection. See section III.F.6.b for further detail.

16. DOE requests comment on the proposed exclusion of external equipment power consumption from the power consumption of the STB itself. Further, if stakeholders suggest that the power consumption of external equipment be tested and measured, DOE requests comment on the test method and standard configuration that should be used to test the external equipment. See section III.F.6.c for further detail.

17. DOE requests comment on the proposed exclusion of power consumption of the input signal equipment from the power consumption of the STB. Further, DOE requests comment on the clarification that such equipment should not supply any power to the STB. DOE also requests feedback on the potential use of a DC block to prevent power transfer to and from any input signal equipment. Finally, if stakeholders indicate that this equipment should be tested and the power consumption be measured, DOE requests comment on the test method and standard configuration that should be used to test this equipment. See section III.F.6.d for further detail.

18. DOE invites interested parties to comment on the proposed requirements for service provider network

connection. In particular, DOE requests comment and data, if available, about whether the power consumption of a STB is similar on a live network versus a closed network. See section III.F.6.e for further detail.

19. DOE requests comment on the proposed warm-up time for stabilizing the STB. See section III.G.1 for further detail.

20. DOE invites interested parties to comment on all aspects of the proposed configuration for testing STBs in the on, sleep, and off modes of operation. DOE is especially interested in receiving comments on the proposed connections for the test configuration. DOE also invites comments on the proposed order of preference for connecting a display device to the STB. See section III.G.2 for further information.

21. DOE requests comment on the proposed requirements for streaming an appropriate SD or HD stream to a display device. DOE also invites comment on the proposed requirement to record content on a DVR integrated into the STB. Finally, DOE requests comment on the proposed requirements to stream content to a connected client. Specifically, DOE requests comment on the proposed hierarchy of content to stream to a connected client, which is a recorded stream followed by a channel. See section III.G.3 for further detail.

22. DOE requests comment on the proposed methods to determine the average power consumption of the STB in each mode of operation. See section III.G.4 for further detail.

23. DOE invites comment on all aspects of the proposed approach for testing the STB in the on mode including the proposed time period of 2 minutes for all tests in the on mode. The on mode measurement test includes the on (watch TV) test and multi-stream test. See section III.G.5 for further detail.

24. DOE requests comment on the proposed method for the on (watch TV) test. In particular, DOE requests comment on the approach of using both, an SD and HD stream for testing HD STBs. DOE also requests interested parties to comment, and provide data if available, on the percentage of streams that are available in SD and HD for HD STBs, and whether the proposed equation for calculating P_{WATCH} should be changed. See section III.G.5.a for further detail.

25. DOE requests comment on the approach of using a single multi-stream test as well as the test procedure to test STBs with multi-streaming capability. DOE is especially interested in receiving comments on the proposed priority list for enabling streams for testing STBs with multi-streaming capability. DOE also seeks feedback on whether the number of additional streams that should be enabled should be other than three and the reasons for enabling a different number of streams. DOE requests comment on the possibility of including a maximum power test, which would test the STB such that the maximum number of streams is enabled. If included, DOE requests comment on the weighting that should be applied for the maximum streaming test in the calculation of the AEC. See section III.G.5.b for further detail.

26. DOE requests comment on all aspects of the proposed specification for setting up STBs for testing in sleep mode. In particular, DOE invites comment on the proposed duration (4 to 8 hours unless network activities prompt a longer time period) over which the power consumption of the STB shall be measured and averaged, and whether this duration should be increased or decreased to better represent the STB power consumption in sleep mode. See section III.G.6 for further detail.

27. DOE also requests comment on the proposed scheduled recording requirement prior to placing the STB in sleep mode to measure its power consumption. DOE requests interested parties to provide data, if available, on the variation in power consumption of a STB when a recording is scheduled versus when it is not scheduled. See section III.G.6 for further detail.

28. DOE invites interested parties to comment on all aspects of the proposed method to address network initiated actions. DOE requests comment and data, if available, on the approach proposed in today's NOPR, the approaches that were considered but have not been proposed, as well as any other approach that stakeholders believe would best capture the transition of the STB from sleep mode to on mode due to network initiated activities. See section III.G.6 for further detail.

29. DOE invites comments on the proposed requirements for testing STBs in manual sleep mode. See section III.G.6.a for further detail.

30. DOE requests comment on the proposed test for determining the STB power consumption in APD. In particular, DOE requests comment and data, if available, on the time required to transition to sleep mode from on mode and whether this time period should be set at a default value of 4 hours or adjusted during testing. DOE also requests comment on potential methods to scale APD and the advantages and disadvantages of scaling the power consumption in APD. Finally, DOE requests comment on potential methods to account for a scaling APD value in the AEC metric. See section III.G.6.b for further detail.

31. DOE invites interested parties to comment on the proposed requirements for testing STBs in off mode. See section III.G.7 for further detail.

32. DOE requests comment on the proposed sleep to on mode transition time measurement test. See section III.G.8 for further detail.

33. DOE requests comment on the proposed sampling plan and rounding requirements for making representations of the STB power consumption in each mode of operation. DOE also requests comment on proposed rounding requirements for AEC, which is calculated from the rated power consumption values. See section III.H for further detail.

34. DOE requests comment on the proposed calculation of the AEC metric for determining the annual energy consumption of the STB. DOE requests comment on the proposed hour weightings that were developed based on the ENERGY STAR specification or whether the alternate hour weightings should be considered instead. DOE also invites comment and data, if available, on the time coefficients for each mode of operation to calculate the AEC. See section III.I for further detail.

35. DOE requests comment on the analysis of the burden to small businesses for testing STBs according to the proposed test procedure. DOE also requests comment on the expected number of small business manufacturers of STBs. See section IV.B for further detail.

36. DOE requests additional information and comment for the development of a test procedure for LNBs, ONTs, ODUs, or other infrastructure devices and the standard configuration in which these devices should be tested, if stakeholders support developing a test procedure for them. See section III.B for further detail.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business

information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on January 11, 2013.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Subchapter D of the Code of Federal Regulations to read as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

§ 429.11 [Amended]

■ 2. Section 429.11 is amended in paragraphs (a) and (b) by removing ''429.54'' and adding in its place ''429.55''.

■ 3. Section 429.55 is added to read as follows:

§ 429.55 Set-top boxes.

(a) Sampling plan for selection of units for testing. (1) The requirements of § 429.11 are applicable to set-top boxes; and

(2) For each basic model of set-top box, samples shall be randomly selected and tested to ensure that—

(i) The represented value of power consumption in the on, sleep, and off modes of operation of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ^{ith} sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n-1 degrees of freedom (from Appendix A of this subpart).

and

(ii) Reserved.

(3) The represented value of the annual energy consumption shall be calculated from the rated power consumption in the on, sleep, and off modes of operation according to the calculation provided in section 6 of Appendix AA of Subpart B of 10 CFR part 430.

(b) *Reserved.*

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

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

■ 5. Section 430.2 is amended by adding in alphabetical order the definitions of ''Component Video'', ''Composite Video, ''Direct video connection'', ''High-Definition Multimedia Interface or HDMI'', ''Set-top box'', and ''S-Video'' to read as follows:

§ 430.2 Definitions.

* * * * *

Component Video means a video display interface that meets the specification in CEA–770.3–D (incorporated by reference; see § 430.3).

Composite Video means a video display interface that uses a Radio Corporation of America (RCA) connection to transmit National Television System Committee (NTSC) analog video.

* * * * *

Direct video connection means any connection type that is one of the following: High-Definition Multimedia Interface (HDMI), Component Video, S-Video, Composite Video, or any other video interface that may be used to output video content.

* * * * *

High-Definition Multimedia Interface or HDMI means an audio/video interface that meets the specification in HDMI Specification Version 1.0 (incorporated by reference; see § 430.3).

* * * * *

Set-top box means a device combining hardware components with software programming designed for the primary purpose of receiving television and related services from terrestrial, cable, satellite, broadband, or local networks, providing video output using at least one direct video connection.

* * * * *

S-Video means a video display interface that transmits analog video over two channels: luminance and color.

* * * * *

■ 6. Section 430.3 is amended by:

■ a. Redesignating paragraphs (i) through (k) as paragraphs (j) through (l) and adding a new paragraph (i).

■ b. Redesignating paragraph (l) as paragraph (n) and adding a new paragraph (m).

■ c. Redesignating paragraph (m) as paragraph (o) and adding paragraph (o)(3).

■ d. Redesignating paragraphs (n) and (o) as paragraphs (p) and (q).

■ e. Redesignating paragraph (p) as paragraph (s) and adding a new paragraph (r).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(i) *CEA.* Consumer Electronics Association, Technology & Standards Department, 1919 S. Eads Street, Arlington, VA 22202, 703–907–7600, or go to *www.CE.org.*

(1) CEA–770.3–D, High Definition TV Analog Component Video Interface, approved February 2008; IBR approved for § 430.2.

(2) [Reserved]

* * * * *

(m) *HDMI.* High-Definition Multimedia Interface Licensing, LLC, 1140 East Arques Avenue, Suite 100, Sunnyvale, CA 94085, 408–616–1542, or go to *www.hdmi.org.*

(1) HDMI Specification Version 1.0, High-Definition Multimedia Interface Specification, Informational Version 1.0, approved September 4, 2003; IBR approved for § 430.2.

(2) [Reserved]

* * * * *

(o) *IEC.* * * *

(3) ISO/IEC 7816–12, Identification cards—Integrated circuit cards—Part 12: Cards with contacts—USB electrical interface and operating procedures, approved October 1, 2005; IBR approved for appendix AA to subpart B.

* * * * *

(r) *SCTE.* Society of Cable Telecommunications Engineers, 140 Philips Road, Exton, PA 19341, 610–363–6888, or go to *www.scte.org/standards.*

(1) ANSI/SCTE 28 2007 (''ANSI/SCTE 28''), American National Standard, HOST–POD Interface Standard; IBR approved for Appendix AA to Subpart B.

(2) ANSI/SCTE 55–1 2009 (''ANSI/SCTE 55–1''), American National

Standard, Digital Broadband Delivery System: Out of Band Transport Part 1: Mode A; IBR approved for appendix AA to subpart B.

(3) ANSI/SCTE 55–2 2008 (''ANSI/SCTE 55–2''), American National Standard, Digital Broadband Delivery System: Out of Band Transport Part 2: Mode B; IBR approved for appendix AA to subpart B.

* * * * *

■ 7. Appendix AA to Subpart B of Part 430 is added to read as follows:

Appendix AA to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Set-top Boxes

1. *Scope:* This appendix covers the test requirements to measure the power consumption of set-top boxes (STBs) in the on, sleep, and off modes and provides the method to calculate the annual energy consumption (AEC) of the STB.

2. *Definitions*

2.1. *ANSI* means the American National Standards Institute.

2.2. *Auto power down (APD)* means a STB feature that monitors parameters correlated with user activity or viewing. If the parameters collectively indicate that no user activity or viewing is occurring, the APD feature enables the STB to transition to sleep or off mode.

2.3. *Client* means any device (example: STB, thin-client STB, smart television (TV), mobile phone, tablet, or personal computer) that can receive content over a home network interface (HNI).

2.4. *Content provider* means an entity that provides video programming content.

2.5. *Crest factor* means the ratio of the peak current to the root-mean-square (rms) current.

2.6. *Digital video recorder (DVR)* means a STB feature that records television signals on a hard disk drive (HDD) or other non-volatile storage device integrated into the STB. A DVR often includes features such as: Play, Record, Pause, Fast Forward (FF), and Fast Rewind (FR). STBs that support a service provider network-based ''DVR'' service are not considered DVR STBs for purposes of this test procedure. The presence of DVR functionality does not mean the device is defined to be a STB.

2.7. *Display device* means a device (example: TV, Computer Monitor, or Portable TV) that receives its content directly from a STB through a video interface (example: High-Definition Multimedia Interface (HDMI), Component Video, Composite Video, or S-Video), not through an HNI, and displays it for viewing.

2.8. *Harmonic* means a component of order n of the Fourier series that describes the periodic current or voltage (where n is an integer greater than 1).

2.9. *High definition test stream (HD)* means video content delivered to the STB by the content provider to produce a minimum output resolution of 1280 × 720 pixels in progressive scan mode at a minimum frame rate of 59.94 frames per second (fps) (abbreviated 720p60) or a minimum output resolution of 1920 × 1080 pixels in interlaced scan mode at 29.97 fps (abbreviated 1080i30).

2.10. *Home network interface (HNI)* means an interface with external devices over a local area network (example: Institute of Electrical and Electronics Engineers (IEEE) 802.11 (Wireless-Fidelity or Wi-Fi), Multimedia over Coax Alliance (MoCA), HomePNA alliance (HPNA), IEEE 802.3, HomePlug AV) that is capable of transmitting video content.

2.11. *IEC* means International Electrotechnical Commission.

2.12. *ISO* means the International Organization for Standardization.

2.13. *Low noise block-downconverter (LNB)* means a combination of low-noise amplifier, block-downconverter and intermediate frequencies (IF) amplifier. It takes the received microwave transmission, amplifies it, down-converts the block of frequencies to a lower block of IF where the signal can be amplified and fed to the indoor satellite TV STB using coaxial cable.

2.14. *Multi-stream* means a STB feature that may provide independent video content to one or more clients, one or more directly connected TVs, or a DVR.

2.15. *Outdoor unit (ODU)* means satellite signal reception components including: a receiving dish, one or more LNBs, and imbedded or independent radio frequency (RF) switches, used to distribute a satellite service provider network to consumer satellite STBs.

2.16. *Point of deployment (POD) module* means a plug-in card that complies with the ANSI/SCTE 28 (incorporated by reference; see § 430.3) interface and is inserted into a digital-cable-ready device to enable the decryption of services and provide other network control functions.

2.17. *Power mode* means a condition or state of a device that broadly characterizes its capabilities, power consumption, power indicator coding, and responsiveness to input.

2.18. *Principal STB Function* means functions necessary for selecting, receiving, decoding, decompressing, or delivering video content to a display device, DVR, or client. Monitoring for user or network requests is not considered a principal STB function.

2.19. *Satellite STB* means a STB that receives and decodes video content as delivered from a service provider satellite network.

2.20. *SCTE* means The Society of Cable Telecommunications Engineers, Inc.

2.21. *Service provider* means a business entity that provides video content, a delivery network, and associated installation and support services to subscribers with whom it has an ongoing contractual relationship.

2.22. *Smart Card* means a plug-in card that complies with ISO/IEC 7816–12 (incorporated by reference; see § 430.3) and is inserted into a satellite STB to enable the decryption of services and provide other network control functions.

2.23. *Standard definition test stream (SD)* means video content delivered to the STB by the content provider to produce an output resolution of 640 × 480 pixels in interlaced scan mode at minimum frame rate of 29.97 fps (abbreviated 480i30).

2.24. *Thin-client STB* means a STB that can receive content over an HNI from another STB, but is unable to interface directly to the service provider network.

2.25. *Definitions of Power Modes.*

2.25.1. *On mode* means the STB is connected to a mains power source. At least one principal STB function is activated and all principal STB functions are provisioned for use. The power consumption in on mode may vary based on specific use and configuration.

2.25.2. *Sleep mode* means a range of reduced power states where the STB is connected to a mains power source and is not providing any principal STB function. The STB may transition to on or off mode due to user action, internal signal, or external signal. The power consumed in this mode may vary based on specific use or configuration. If any principal STB function is activated while operating in this mode, the STB is assumed to transition to on mode. Monitoring for user or network requests is not considered a principal STB function. The STB shall be able to transition from this mode to on mode within 30 seconds to be considered in sleep mode.

2.25.3. *Off mode* means the STB is connected to a mains power source, has been de-activated, and is not providing any function. The STB requires a user action to transition from this mode to on or sleep mode.

Note: *Sleep and off modes may not be available on all STBs.*

3. *Test Conditions*

3.1. *Set-top Box Settings.*

3.1.1. For STBs that require subscription to a service, select the simplest available video subscription that supports all functionality specified in this test procedure (example: HD streaming, multi-stream, DVR, etc.). That is, select a subscription with TV services only; services with non-video capability, such as telephony, shall not be selected.

3.1.2. If the STB can be installed by the consumer per the manufacturer's instructions without the service of a technician, then install and setup the STB according to the instructions provided in the user manual shipped with the unit. Setup the STB using only those instructions in the user manual. Setup is considered complete once these instructions are followed.

3.1.3. If the STB must be installed by a technician per the manufacturer's instructions, then it shall be setup as installed by the technician using this test procedure. All steps that a technician would follow when installing a STB for use in a consumer residence should be followed. Information about each of the steps that were performed to setup the STB by a technician shall be recorded and maintained by the manufacturer pursuant to 10 CFR Part 429.71.

3.2. *Test Room.* Tests shall be carried out in a room with the following requirements:

3.2.1. The air speed surrounding the STB shall be less than or equal to 0.5 meters per second (m/s).

3.2.2. The ambient temperature shall be maintained at 23 °C ± 5 °C for the duration of the test.

3.2.3. The STB shall be tested on a thermally non-conductive surface.

4. *Test Setup*

4.1. *Test Voltage.* STBs intended to be powered by the alternating current (AC) mains shall utilize a power source with the following requirements:

4.1.1. An input voltage of 115 volts ± 1 percent.

4.1.2. A frequency of 60 hertz ± 1 percent.

4.1.3. Total harmonic distortion of the supply voltage shall not exceed 2 percent up to and including the 13th harmonic.

4.1.4. The peak value of the test voltage shall be between 1.34 and 1.49 times its rms value. That is, the crest factor shall be between 1.34 and 1.49.

4.2. *Measurement Accuracy.* Power measurements of 0.5 watt (W) or greater shall be made with an uncertainty of less than or equal to 2 percent at the 95 percent confidence level. Power measurements of less than 0.5 W shall be made with an uncertainty of less than or equal to 0.01 W at the 95 percent confidence level. The power measurement instrument shall have a resolution of:

4.2.1. 0.01 W or better for power measurements of 10 W or less;

4.2.2. 0.1 W or better for power measurements of greater than 10 W and up to 100 W; and

4.2.3. 1 watt or better for power measurements of greater than 100 W.

For equipment connected to more than one phase, the power measurement instrument shall be equipped to measure the total power of all of the phases connected.

4.3. *Test Equipment.* The following should be considered when selecting test equipment:

4.3.1. An oscilloscope with a current probe to monitor AC line current waveform, amplitude, and frequency.

4.3.2. A true rms voltmeter to verify voltage at the input of the STB.

4.3.3. A frequency counter to verify frequency at the input of the STB.

4.4. *True Power Wattmeter.*

4.4.1. *Crest factor.* A true power wattmeter shall be used and shall have:

4.4.1.1. Accuracy and resolution in accordance with section 4.2.

4.4.1.2. Sufficient bandwidth.

4.4.1.3. A crest factor rating that is appropriate for the waveforms being measured and capable of reading the available current waveform without clipping the waveform. The peak of the current waveform measured during sleep and on modes for the STB shall be used to determine the crest factor rating and the current range setting. The full-scale value of the selected current range multiplied by the crest factor for that range shall be at least 15 percent greater than the peak current to prevent measurement error.

4.4.2. *Bandwidth.* The current and voltage signal shall be analyzed to determine the highest frequency component (that is, harmonic) with a magnitude greater than 1 percent of the fundamental frequency under the test conditions. The minimum bandwidth of the test instruments shall be determined by the highest frequency component of the signal.

4.4.3. *Frequency response.* A wattmeter with a frequency response of at least 3 kilohertz (kHz) shall be used in order to account for harmonics up to the 50th harmonic.

4.4.4. *Sampling Interval.* The wattmeter shall be capable of sampling at intervals less than or equal to 1 second.

Note: Electronic equipment can cause harmonic waveforms that lead to inaccuracies in power measurements.

4.5. *Calibration.* Test instruments shall be calibrated annually to traceable national standards to ensure that the limits of error in measurement are not greater than ± 0.5 percent of the measured value over the required bandwidth of the output.

4.6. *Network Setup.*

4.6.1. *Home Network Connection.* STB configurations that require the use of a home network (example: thin-client STB) shall use the HNI option according to the following order of preference. The first available connection that the STB supports shall be used:

1. Multimedia over Coaxial Alliance (MoCA);
2. Home PNA Alliance (HPNA);
3. Wi-Fi (802.11); or
4. Other HNI connection.

4.6.2. *Broadband Service.* If the STB includes an HNI, and the HNI shall be connected to broadband service for operation of a principal STB function, it shall be tested while connected to a broadband network. Broadband performance criteria (that is, download speed, upload speed, latency, etc.) shall meet the specified requirements of the STB to fulfill the principal STB functions. For STBs designed to operate both with a broadband connection and a service provider network connection, the service provider connection takes precedence, and the broadband connection shall only be made if the STB requires it for operating a principal STB function.

4.6.3. *Service Provider Network Distribution Equipment.* If the STB requires the use of external equipment to connect the service provider network to the STB, then the power consumption of this equipment shall not be included as part of the STB power measurement. This includes required service provider network distribution equipment such as network gateways, network routers, network bridges, optical network terminals (ONTs), wireless access points, media extenders, or any other device required for distribution of a service provider network to the STB.

4.6.4. *Input Signal Equipment.* When an ODU, over the air (OTA) antenna amplifier, cable TV (CATV) distribution amplifier, or similar signal equipment is required and the power for that equipment is supplied from the STB, then the measurement shall not include the power consumption of that equipment, unless the equipment cannot be powered from a source other than the STB. If the signal equipment cannot be powered from a source other than the STB, then the power for these equipment shall be included in the STB power consumption measurement and the signal equipment should be configured in its lowest power consuming mode. However, if the signal equipment can be powered from a source other than the STB, then it shall be powered from another source, and such equipment shall not deliver any power to the connected STB.

4.6.5. *Service Provider Network Connection.* The STB shall be tested with a specific service provider network or a simulated environment verified by the service provider, and the STB shall be configured to simulate a subscriber operating environment. This shall include the ability to access the full services of the service provider network required by the STB, such as content, program guides, software updates, and other STB features that require network services to fully function. If the STB requires a POD or Smart Card, then it shall be connected, authorized, and operational. Essential STB peripheral devices, required for the normal operation of the STB, such as a Universal Serial Bus (USB) powered external HDD, a USB powered Wi-Fi dongle, or a USB powered OTA receiver, shall be connected and operational. Optional peripheral devices shall not be connected to the STB. The STB may be tested in a laboratory environment containing control equipment comparable to a live service provider system. For example, a cable STB may be tested in a laboratory that contains a conditional access system, the appropriate equipment to communicate with the STB (example: ANSI/SCTE 55–1 (incorporated by reference; see § 430.3) or ANSI/SCTE 55–2 forward and reverse data channel hardware or data-over-cable service interface specification (DOCSIS) infrastructure), and the appropriate interconnections (example: Diplexers, splitters, and coaxial cables).

5. *Test Procedure for Determining the Power Consumption of the Set-top Box in different Modes of Operation*

5.1. *Set-top Box Warm-up.* Allow the STB to operate in on mode while receiving and decoding video for at least 15 minutes so the STB can achieve stable condition.

5.2. *Test Configuration Information.*

5.2.1. The display device and client setup is described in Table 1 of this appendix. Based on the capability of the STB, the appropriate number of display devices and clients shall be connected.

TABLE 1—DISPLAY DEVICE AND CLIENT CONNECTION SETUP

Supports multiple display devices?	Supports DVR?	Supports clients?	Number of connected display devices	Number of connected clients
X	X	X	1	1
X	X		2	0
X		X	2	1
	X	X	1	1
X			2 or 3*	0
	X		1	0
		X	1	1 or 2*
			1	0

* The highest number of connections supported by the STB shall be used.

5.2.2. *Connecting to a Display Device.* The STB shall be connected to the number of display devices required based on the setup requirements specified in Table 1. The following order of preference shall be used to connect each display device to the STB. The first available connection that the STB supports shall be used:

1. HDMI
2. Component Video
3. S-Video
4. Composite Video
5. Other video interface

5.2.3. *Connecting to a Client.* The STB shall be connected to the number of clients required based on the setup requirements specified in Table 1. An HNI connection shall be used to connect the client to the STB. The order of preference in which an HNI connection shall be selected is specified in section 4.6.1.

5.3. *Test Conduct.*

The following section is provided as guidance when conducting the various on, sleep, and off mode tests. When multiple streams are enabled, different content shall be selected to output to a display device, record on a DVR integrated into the STB, and stream to a connected client.

5.3.1. *Output to a Display Device.* For tests requiring output to a display device, a channel shall be selected and viewed on the connected display device(s) as required by the test configuration. For STBs that do not support channels, an appropriate SD or HD test stream shall be selected and the content shall be viewed as indicated. If more than one display device is connected to the STB based on the test configuration from Table 1, then the content outputted on each display device shall be different.

5.3.2. *Recording for a STB with DVR capability.* For tests that require recording on a DVR, a channel shall be selected using a connected display device or a client and the program shall be recorded. If more than one recording is enabled on a DVR that is integrated into the STB, the content for each recording shall be different.

5.3.3. *Streaming to a Connected Client.* The content streamed to a client shall be selected in the following order of preference depending on the number of streams enabled. The first available stream that is supported by each connected client shall be enabled and the content on each stream shall be different.

5.3.3.1. Stream with recorded content. That is, previously recorded content shall be viewed on a display device connected to a client.

5.3.3.2. Stream with channel content. That is, a channel (SD stream for an SD client and HD stream for an HD client) shall be viewed on the connected display device. For clients that do not support channels, select an appropriate SD or HD test stream and view the content as indicated.

5.3.3.3. Other streaming option. If the streams from sections 5.3.3.1 and 5.3.3.2 are not supported, use another stream that is available.

5.4. *Calculation of Average and Rated Power Consumption.*

5.4.1. For all tests in the on, sleep, and off modes (sections 5.5, 5.6, and 5.7), the average power shall be calculated using one of the following two methods:

5.4.1.1. Record the accumulated energy (E_i) in kilo-watt hours (kWh) consumed over the time period specified for each test (T_i). The average power consumption is calculated as $P_i = E_i/T_i$.

5.4.1.2. Record the average power consumption (P_i) by sampling the power at a rate of at least 1 sample per second and computing the arithmetic mean of all samples over the time period specified for each test (T_i).

5.4.2. The rated power consumption in the on, sleep, and off modes shall be determined as follows:

5.4.2.1. Apply the sampling and statistical requirements described in 10 CFR part 429.55 to the average power consumption values in each mode of operation.

5.4.2.2. The resulting rated power consumption value, for each mode of operation, shall be rounded according to the accuracy requirements specified in section 4.2.

5.5. *On Mode Power Measurement.*

5.5.1. The time period for each test in the on mode (sections 5.5.2 and 5.5.3), T_{ON}, is 2 minutes.

5.5.2. *On (Watch TV).* The on (watch TV) test shall be performed on all STBs as follows.

5.5.2.1. *On (Watch TV SD).*

5.5.2.1.1. Configure the STB as specified in section 5.2.

5.5.2.1.2. Of all the connections to the STB, only one stream shall be enabled and shall stream to a display device. No additional streams shall be sent to other connected display devices and/or clients.

5.5.2.1.3. If supported, select an SD channel and view on the connected display device. For STBs using a content provider that does not support channels, select an appropriate SD test stream and view the content as indicated.

5.5.2.1.4. Begin on mode power consumption measurement and record the average power consumption with the SD source content for 2 minutes as P_{WATCH_SD}.

5.5.2.2. *On (Watch TV HD).*

5.5.2.2.1. If the STB supports HD streaming, repeat the test in section 5.5.2 using HD content instead of SD content and record this value as P_{WATCH_HD}.

5.5.2.3. *Calculation of P_{WATCH}.* Compute P_{WATCH} according to the following equation:

$$P_{WATCH} = \begin{cases} \dfrac{P_{WATCH_{SD}} + P_{WATCH_{HD}}}{2}, & \text{STB supports HD} \\ P_{WATCH_{SD}}, & \text{STB doesn't support HD} \end{cases}$$

Where:

P_{WATCH} = the power consumption (in watts (W)) in on (watch TV) mode,

P_{WATCH_SD} = the power consumption (in W) in on (watch TV SD) mode when an SD test stream is used, and

P_{WATCH_HD} = the power consumption (in W) in on (watch TV HD) state when an HD test stream is used.

5.5.3. *Multi-stream.*

5.5.3.1. Perform this test only if the STB supports multi-streaming as defined in section 2.14.

5.5.3.2. Configure the STB as specified in section 5.2 of this appendix. Table 2 of this

appendix describes how to setup the multi-stream test. Choose the highest priority (smallest number option) that the STB supports.

TABLE 2—PRIORITY LIST FOR THE MULTI-STREAM TEST

Priority for enabling multi-streaming −1 is highest priority −9 is lowest priority	Number of streams enabled:		
	To display devices	To record on DVR	To connect to clients
1	1	1	1
2	2	1	
3	2		1
4	1	2	
5	1		2
6	3		
7	1	1	
8	1		1
9	2		

5.5.3.3. All streams required for the feasible STB configuration shall be enabled using appropriate content as described in section 5.3 of this appendix. If the STB or connected client(s) support HD streaming, an HD stream shall be used, otherwise an SD stream shall be used.

5.5.3.4. Begin the multi-stream mode power consumption measurement and record the average power consumption for 2 minutes as P_{MULTI_STREAM}.

5.6. *Sleep Mode Power Measurement.*

5.6.1. Only run the test for each mode if the STB supports this functionality, as defined in section 2.25.2. If the STB cannot be placed in sleep mode as defined in section 2.25.2 using a remote control, then this test shall be skipped.

5.6.2. The time period for each test in the sleep mode (sections 5.6.7 and 5.6.8 of this appendix), T_{SLEEP}, shall be between 4 to 8 hours. The time period shall be extended beyond 8 hours only if required as described in section 5.6.4 of this appendix.

5.6.3. Assure no recording events are scheduled over the entire duration of the test, including the time prior to transitioning to sleep mode. If the STB is capable of scheduling a recording, schedule a recording 24 or more hours into the future.

5.6.4. Assure no service provider network initiated actions requiring a transition to on mode occur during the 4 to 8 hour time period that the STB is in sleep mode (example: Content downloads or software updates). If a service provider network initiated activity cannot be disabled, then this shall be monitored as follows:

5.6.4.1. The power consumption shall be sampled at a rate of at least 1 sample per second.

5.6.4.2. For input powers less than or equal to 1 W, a linear regression through all power readings shall have a slope of less than 10 milli-watts per hour (mW/h). If the slope of the linear regression is equal to or greater than 10 mW/h the test shall either be restarted or extended until a slope of less than 10 mW/h is achieved.

5.6.4.3. For input powers greater than 1 W, a linear regression through all power readings shall have a slope of less than 1 percent of the measured input power per hour. If the slope of the linear regression is equal to or greater than 1 percent the test shall either be restarted or extended until a slope of less than 1 percent is achieved.

5.6.4.4. If the test is extended beyond 8 hours to achieve the desired condition, the average power consumption over the entire test duration shall be reported for P_{SLEEP_MANUAL} and P_{SLEEP_APD} and these values shall be used to determine the AEC.

5.6.5. Assure no local area network initiated actions requiring a transition to on mode are scheduled during the 4 to 8 hour time period that the STB is in sleep mode (example: Mobile applications or other network devices requesting service).

5.6.6. Configure the STB as specified in section 5.2 of this appendix.

5.6.7. *Manual Sleep Test.*

5.6.7.1. If the STB does not support sleep mode, then set P_{SLEEP_MANUAL} equal to P_{WATCH}.

5.6.7.2. For STBs that are capable of transitioning to sleep mode, operate the STB in the multi-stream test configuration (section 5.5.3 of this appendix) for at least 5 minutes if the STB supports multi-streaming. If the STB does not support multi-streaming, operate the STB in the on (watch TV) configuration (section 5.5.2 of this appendix) for at least 5 minutes.

5.6.7.3. Momentarily (<1 second) press the ''Power'' button on the remote for the STB, and each locally connected display device and client, to place the STB, and each locally connected display device and client, into sleep mode as defined in section 2.25.2. Some STBs may require a short period of time before they actually enter a lower power consumption mode.

5.6.7.4. Do not use (or move) the STB remote control after section 5.6.7.3 of this appendix.

5.6.7.5. Ensure that the STB and each locally connected client has entered sleep mode by verifying no channel viewing or recording is supported on the STB and client(s). That is, there shall be no video output on the connected display device(s) from the STB and any locally connected clients.

5.6.7.6. Begin manual sleep mode power consumption measurement and record the average power consumed as P_{SLEEP_MANUAL} over the time period as determined in section 5.6.2 of this appendix.

5.6.8. *Auto Power Down (APD) Test.*

5.6.8.1. Perform this test only if the STB supports auto power down as defined in section 2.2 of this appendix.

5.6.8.2. If the STB supports multi-streaming, operate the STB in the multi-stream configuration (section 5.5.2 of this appendix) for at least 5 minutes. If the STB does not support multi-streaming, operate the STB in the on (watch TV) configuration (section 5.5.2 of this appendix) for at least 5 minutes.

5.6.8.3. Momentarily (<1 second) press the ''Power'' button on the remote only for any locally connected clients to place the clients into sleep mode as defined in section 2.25.2. Some clients may require a short period of time before they actually enter a lower power consumption mode. If more than one display device is locally connected to the STB, press the ''Power'' button for the additional locally connected display devices and stream content to one display device only.

5.6.8.4. Do not use (or move) the STB remote control after section 5.6.8.3 of this appendix.

5.6.8.5. Allow the STB to operate until the STB enters sleep mode or until 4 hours have elapsed, whichever occurs first.

5.6.8.6. If 4 hours have elapsed and the STB is not in sleep mode, then the unit is not considered to support APD and P_{SLEEP_APD} shall be set equal to P_{WATCH}.

5.6.8.7. Once the STB is in APD, begin power consumption measurement in APD and record the average power consumed as P_{SLEEP_APD} over the time period as determined in section 5.6.2 of this appendix.

5.7. *Off Mode Power Measurement.*

5.7.1. Place the STB in off mode. If the STB cannot be placed off mode as defined in section 2.25.3, then this test shall be skipped.

5.7.2. Wait until the STB enters off mode.

5.7.3. Record the average power for 2 minutes as P_{OFF}.

5.8. *Sleep to On Mode Transition Time Measurement.* The following test is optional and should be performed to verify that the STB's operation qualifies for sleep mode as described in section 2.25.2.

5.8.1. For the manual sleep test, place the STB in sleep mode according to the steps specified in sections 5.6.7.2 through 5.6.7.5 of this appendix. For the APD test, place the STB in sleep mode according to the steps

specified in sections 5.6.8.2 through 5.6.8.6 of this appendix.

5.8.2. Once the STB enters sleep mode, wait until the STB power consumption reaches P_{SLEEP_MANUAL} (+0.5 W, −0.0 W) for the manual sleep test and P_{SLEEP_APD} (+0.5 W, −0.0 W) for the APD test.

5.8.3. After the STB power consumption reaches the desired value as specified in section 5.8.2 of this appendix, remain in sleep mode for at least 5 minutes.

5.8.4. Momentarily (<1 second) press the ''Power'' button on the remote or front panel of the STB.

5.8.5. Begin the elapsed time measurement.

5.8.6. Stop elapsed time measurement when the STB enters on mode. It shall be ensured that the STB has entered on mode when it supports channel viewing on the connected display device or client.

5.8.7. The duration to transition from sleep mode to on mode shall be recorded as $T_{SLEEP_TO_ON}$, and this value shall be used to compare against the sleep mode requirements described in section 2.25.2.

6. *Calculation of the Annual Energy Consumption of the Set-top Box*

6.1. The AEC of the STB shall be calculated using the rated values of power consumption in the on, sleep, and off modes of operation (see section 5.4.2 for calculation of rated power consumption values).

6.2. Compute the AEC of the STB using the equation below. The computed AEC value shall be rounded as follows:

6.2.1. If the computed AEC value is 100 kWh or less, the rated value shall be rounded to the nearest tenth of a kWh.

6.2.2. If the computed AEC value is greater than 100 kWh, the rated value shall be rounded to the nearest kWh.

$$AEC = 0.365 \times \left(P_{WATCH} \times H_{WATCH} + P_{MULTI_{STREAM}} \times H_{MULTI_{STREAM}} + P_{SLEEP_{MANUAL}} \times H_{SLEEP_{MANUAL}} + P_{SLEEP_{APD}} \times H_{SLEEP_{APD}} + P_{OFF} \times H_{OFF}\right)$$

Where:

AEC = annual energy consumption (in kWh per year),

P_{WATCH} = the rated power consumption value (in W) in on (watch TV) mode,

H_{WATCH} = the number of hours assigned to on (watch TV) mode according to Table 3 of this appendix,

P_{MULTI_STREAM} = the rated power consumption (in W) in the multi-stream test in on mode,

H_{MULTI_STREAM} = the number of hours assigned to multi-stream according to Table 3 of this appendix,

P_{SLEEP_MANUAL} = the rated power consumption (in W) in the manual sleep test in sleep mode,

H_{SLEEP_MANUAL} = the number of hours assigned to manual sleep according to Table 3 of this appendix,

P_{SLEEP_APD} = the rated power consumption (in W) in the APD test in sleep mode,

H_{SLEEP_APD} = the number of hours assigned to APD according to Table 3 of this appendix,

P_{OFF} = the rated power consumption (in W) in off mode, and

H_{OFF} = the number of hours assigned to off mode according to Table 3 of this appendix.

TABLE 3—NUMBER OF HOURS ASSIGNED TO EACH STB MODE OF OPERATION

APD enabled by default?	Multi-stream?	H_{WATCH}	H_{MULTI_STREAM}	H_{SLEEP_MANUAL}	H_{SLEEP_APD}	H_{OFF}
NO	NO	14	0	10	0	0
YES	NO	7	0	10	7	0
NO	YES	9	5	10	0	0
YES	YES	2	5	10	7	0

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